

**CITY OF FALCON HEIGHTS**  
Regular Meeting of the City Council  
City Hall  
2077 West Larpenteur Avenue  
**AGENDA**  
March 10, 2021 at 7:00 P.M.

**NOTE: THIS MEETING WILL BE HELD BY WEB CONFERENCE\***

- A. CALL TO ORDER:
- B. ROLL CALL: ANDREWS \_\_\_ GUSTAFSON\_\_\_ LEEHY\_\_\_  
MIAZGA \_\_\_ WEHYEE\_\_\_  
STAFF PRESENT: THONGVANH\_\_\_
- C. PRESENTATION
- D. APPROVAL OF MINUTES:  
1. February 24, 2021 City Council Regular Minutes  
2. March 3, 2021 City Council Workshop Minutes
- E. PUBLIC HEARINGS:  
1. Conduit Bonding - New Harmony Care Center  
2. Tax Increment Financing - Amber Union
- F. CONSENT AGENDA:  
1. General Disbursements through: 3/04/21 \$37,459.56  
Payroll through: 2/28/21 \$19,394.24  
2. Post-Issuance Compliance Policy and Procedures  
3. 6-Month Performance Evaluation for Administrative and Communication Coordinator  
Ashleigh Walter
- 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:

\*You can participate in the meeting by clicking the following Zoom link:  
<https://us02web.zoom.us/j/89488033956>

Toll Free Number:  
1-833-548-0276  
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**CITY OF FALCON HEIGHTS**  
Regular Meeting of the City Council  
City Hall  
2077 West Larpenteur Avenue  
**MINUTES**  
February 24, 2021 at 7:00 P.M.

**NOTE: THIS MEETING WAS HELD BY WEB CONFERENCE**

- A. CALL TO ORDER: 7:09 PM
- B. ROLL CALL: ANDREWS \_\_X\_\_ GUSTAFSON \_\_X\_\_ LEEHY \_\_X\_\_  
MIAZGA \_\_X\_\_ WEHYEE \_\_X\_\_
- STAFF PRESENT: THONGVANH \_\_X\_\_

Motion to approve amended agenda adding a presentation from Ehlers regarding General  
Obligation Improvement Bonds by Mayor Gustafson;  
Approved, 5-0.

- C. PRESENTATION
1. General Obligation Improvement Bond, Series 2021A Pre-Sale

Administrator Thongvanh

On February 10, the Council awarded the 2021 pavement management project to Molnau Trucking. The next step would be to authorize the sale of the bond and accept the proposed opening during the March 24 City Council meeting for the purchase of considering and awarding the sale of the bond. The budget impact would be realized in 2022. Staff recommend approval of the attached resolution authorizing the sale of the bond.

Todd Hagen, Ehlers

The project is a lot larger than the amount needed in bonds. We are using some upfront storm sewer and sanitary sewer funds. We are also using some pre-paid special assessments and State aid. The bond is a five-year bond. Even though Falcon Heights has a triple A bond rating, we'll do a competitive sale without a bond rating because the term is so short. There is also no advantage to the bond being pre-payable. We will come back with bids on the bonds at the March 24 meeting. We are looking at a low interest rate, well under 1 percent.

Motion to approve Resolution 21-11 by Council Member Andrews;  
Approved, 5-0.

- D. APPROVAL OF MINUTES:
1. February 10, 2021 City Council Regular Minutes

Motion to approve by Council Member Wehyee;  
Approved, 5-0.

E. PUBLIC HEARINGS:

F. CONSENT AGENDA:

1. General Disbursements through: 2/18/21 \$69,997.87  
Payroll through: 2/15/21 \$18,153.94

Approved, 5-0.

G: POLICY ITEMS:

1. Honorary Naming of Larpenteur Avenue as Philando Castile Memorial Avenue

Administrator Thongvanh

At the December 16 Council Workshop, Council Member Leehy presented the concept of adding the name “Philando Castile Memorial Avenue” to Larpenteur Avenue. City Council directed staff to create a short survey, and the results were presented to Council at the February 3 City Council Workshop. The budget impact would be about \$600-\$1500 depending on the City’s authority to place signs at the Cleveland and Fairview intersections, as these are County roads.

There were around 1900 survey respondents in total. According to the survey, 60.3 percent of respondents said they would support the honorary naming, and 30.7 percent said they would not support it. We also received qualitative comments from respondents, these are available in the agenda packet for the February 3 Council Workshop. The bulk of respondents were between the age of 25 to 54. Females responded at a higher rate than males. About 48 percent of respondents were residents of Falcon Heights; 52 percent identified as non-residents. Of the respondents that identified as residents, most indicated that they had lived in Falcon Heights for over 16 years. Of the respondents that identified as residents, the highest percentage live in the southwest quadrant followed by the northwest quadrant, the northeast quadrant, and finally the southeast quadrant. Comparing responses, residents supported the honorary naming at a lower rate than residents. The northwest quadrant was the only quadrant that did not show a majority of residents in support of the naming, it was 50-50.

Council Member Andrews

I received a call from Sue Gehrz who has been involved with the memorial. She reported everything is going well with the State Fair people and they have received the go ahead to continue.

Council Member Leehy

This item goes along with us being a welcoming and inclusive city and as a small city, it’s an opportunity to have an impact locally and globally. It’s an opportunity for all of us to have a learning point from the sad tragedy and to celebrate Philando Castile at the same time.

Council Member Miazga

I was initially hesitant but what brought me in support was aligning this item with the Peace Garden opening.

Council Member Wehyee

This makes a statement about who we are as a community. I think this is an opportunity for us to move forward.

Susan Gehrz

I co-chair the peace garden planning group, we've been working for 4-years for a more permanent memorial at the site. Things are going well and I see a great opportunity to coordinate the garden installation with the unveiling of the signs. There are already homemade signs stating "Philando Castile Memorial Avenue" at the garden, but it would be nice to have something more permanent. We've already received donations; the plan is to begin in April with completion of the garden in July.

Nora Hall

I'm one of the project coordinators on Philando Castile Peace Garden Committee. I wanted to say thank you to the City Council for hosting this workshop and for considering this issue.

Valerie Castile

Since 2016 we've been in a whirlwind. This journey has not been easy and I wanted to make sure that Philando was not forgotten. My fear was that it's going to happen again and that no one will remember who Mr. Phil was. Falcon Heights has become a model for the world for bridging gaps. I appreciate everyone who has been working in whatever areas to have these difficult conversations.

Representative John Thompson

One of the reasons Philando is not with us is because there has been a historical underinvestment in black communities. I want to keep his name alive. This city has done a lot of work to get to this point. I'm so excited about the direction its going in. Thank you.

Motion to approve Resolution 21-12 by Council Member Leehy;  
Approved, 5-0.

Administrator Thongvanh

I just wanted to thank all members on the council past and present who have done work to get us to this point. It's been a long journey and it will continue to be a journey. To all of the different inclusion events that we held, guest speakers, panel discussions, and individuals that helped us with this work, we are grateful.

H. INFORMATION/ ANNOUNCEMENTS:

Council Member Leehy

- First I want to add to our list, thank you to everyone that has participated in the work. I also want to thank Sharon Press for her involvement from the beginning.
- The Planning Commission will not be meeting in March.
- I want to call attention to our last meeting during which we received a presentation by St. Paul Regional Water Services about upgrades to the water treatment plant.

Council Member Andrews

- The Parks & Recreation Commission will be meeting next week.

Mayor Gustafson

- The Community Engagement Commission will be meeting on the third meeting in March.

Administrator Thongvanh

- We're wrapping up the winter season. Staff and I are working on different communication tools for the website and the newsletter. I appreciate the mayor's video update. We'll probably do shorter videos in the future on a specific topic. I'll be reaching out to the Council liaison for each commission to do an update on the commissions.
- We're expecting the building permit application on the Amber Union project shortly. We have been updating information on our website on the project, as well as information about TIF and the Pavement Management Project.
- We'll be hosting the council retreat in March or April.
- We're reaching out to other communities to find out how they are handling park programming.
- Public Works will be expanding the community garden.

Council Member Wehyee

- When will we have the capacity to start the speed reduction study?

Administrator Thongvanh

- Currently staff is working on it. I'm looking at having a discussion at the next council workshop. I will also be providing an update on the CARES funding, as well as police services.

Mayor Gustafson

- I got a nice thank you letter from NYFS, I would encourage others to donate to the organization. They do a lot of good work.

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: 8:18 PM

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Randall C. Gustafson, Mayor

Dated this 24th day of February, 2021

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Sack Thongvanh, City Administrator



2. Amber Union Project Updates
  - Tax Increment Financing (TIF)
  - Website Updates

Sack Thongvanh

Staff has created a webpage on TIF as well as the Amber Union project. The next step will be to hold a public hearing on March 10 prior to the creation of the TIF district. The City will be issuing a pay as you go note for the developer. The developer is now looking at 50 percent AMI so there was a gap in funding that TIF will close.

After the public hearing on March 10, the City can issue building permits. The plans have been submitted and currently we are working with the developer on details.

Once we adopt the TIF district, Ehlers will request certification of the TIF district with Ramsey County. Ehlers and the developer will be at the public hearing next week for any questions that residents or Council has.

Council Member Leehy

Do you expect that on March 11, the permit will be approved and breaking ground will happen?

Administrator Thongvanh

It will happen sometime after that as we still have to do the preconstruction meeting so that we can be on the same page on expectations. Hopefully we will be able to complete the parking lot part of the work done before the City's street project begins.

Mayor Gustafson

I like how the website is coming together with the information, it looks good.

3. CARES Funding – Enhancement Program

Administrator Thongvanh

Regarding the CARES funding, we've used some of the money for COVID-related expenses. Based on our auditor's recommendation, we've allocated our funds through public safety. This means that the dollars the City received via the CARES act were moved to the general fund and now we have more flexibility in our timeline for determining what uses we would like them to go to.

We have received some requests from nonprofits including the Como Block Nurse Program and Northeast Youth and Family Services (NYFS). I've received requests to use funding for residential housing but if we are going to go that route, I would like to make the policy as broad as possible so that we do not have to collect as much personal data.

Council Member Miazga

What is the reasoning to not collect this data?



Administrator Thongvanh

There are certain regulations we would have to follow if we are collecting this data. It's a process, there are waivers.

Council Member Miazga

My two cents would be to use the funding for individuals who aren't connected to a larger organization.

Council Member Wehyee

As far as the data question, I wonder if the process wouldn't be similar to when we have license applications from individuals. Is the information on these applications different that we would need to gather for a program?

Council Member Leehy

The information we collect does not include residents' personal information on income, etc.

Administrator Thongvanh

We provide scholarships for our parks programming. We don't ask for very much data, we just rely on people to be honest. In the past we haven't had people abuse the program and I don't think they would with a COVID-related program.

Council Member Leehy

By removing the barrier of filling out forms to prove need, that helps eliminate the emotional drain that can sometimes be caused by social assistance programs. I don't think there are that many non-profits that are out there applying for support.

Mayor Gustafson

I did put in a research request to the League of Minnesota Cities (LMC) to find out if there were any legal requirements for a direct payment program.

Administrator Thongvanh

As long as the city has a policy and procedure to administer the program, it would be acceptable. It would meet the requirements of public use with these items in place.

Council Member Andrews

I want to do something but administering a program like this is complicated and that concerns me.

Mayor Gustafson

If we require residency requirements we could make them similar to those required for voting.

Council Member Andrews

I wish there was a way we could give everyone in the city 'x' amount of dollars, and it would be up to them to waive it. I'm not opposed to a program like this but I feel like it's a can of worms.

Administrator Thongvanh

Do you all feel comfortable with allocating 50K to a COVID relief program and having a form to ask how the funds will be used? We can communicate it to residents. The remaining amount of COVID funding could be used for other projects that would otherwise require increased taxes. We will work on putting a program together and bring it back to Council the first week in April.

Council Member Wehyee

We established that 50K will go to this program but I don't think we discussed how the remaining funds would be used?

Mayor Gustafson

We have discussed about it going to other City projects such as the new park building that we know are planned expenses in the near future.

Administrator Thongvanh

Let's plan to have this as a policy item at the first meeting in April.

4. Police Service Updates

Administrator Thongvanh

I have talked to a number of communities, most have said they don't have the capacity or are not interested at this time. I have not yet received the letter from Sheriff Fletcher regarding the increased cost in our contract that he mentioned in September but I am still anticipating a letter. Even if I don't receive it, there is a provision in the contract that the City would be required to pay whatever is appropriate for providing services to the City.

I am in communication now with another agency, they stated that they are interested in providing police services to Falcon Heights. Right now, long term it's the most affordable but in the short term there is an increased cost. We will need to give notice to Ramsey County before April 1. I'm looking at hosting a second workshop in March because things will be moving quickly if this aligns.

5. Speed Limits

Administrator Thongvanh

There have been concerns with residents about traffic, most recently with requests for stop signs. The memo included in the packet discusses a reduction in speed limits on residential streets.

Council Member Leehy

If we decide to lower the speed limits, my preference is to just 25 not 20 because it gets confusing when traveling to different cities.

Mayor Gustafson

All the residential speed limits in Minneapolis and Saint Paul are 20, and I believe Saint Anthony is also moving in that direction. It would make sense coming out of Saint Paul to keep it consistent. I'm in favor of 20 for residential.

Council Member Andrews

People who don't live here don't always know where the boundaries are. It might be confusing going from 20 to 25.

Mayor Gustafson

Once other cities start to adopt, it will be easier because people get used to it.

6. Council Town Hall Meetings

Administrator Thongvanh

The Council Town Hall Meetings were established with the strategic planning effort. Due to COVID, we didn't have the capacity. Circling back to this, I'm looking at setting up some kind of event and would like Council input.

Council Member Leehy

My thought is that we have the Zoom event sometime within a month after our retreat. Then things will be fresh in our minds and we could even do a Q&A with residents. We could do break out sessions based on quadrants and assign council member in each quadrant.

Council Member Andrews

I like the idea of hosting this after the retreat. I'm not sure how effective the neighborhood piece would be. How would we prepare for that?

Administrator Thongvanh

We will have staff identify possible dates for this Zoom event.

7. Fire Equipment

Administrator Thongvanh

About 80 percent of the equipment is dated and would not be worth anything if the city wanted to sell it. I'm working on getting an appraisal for all the vehicles. If we do release the equipment, we are probably looking at a couple thousand dollars. We purchased the truck for about \$750K but its value is much less now. We are looking at donating equipment that is not up to standards in the US to other countries through an organization in Roseville.

I'm looking at storing equipment and Public Works vehicles in the garages once the fire equipment is gone. This will help alleviate storage costs in the future.

## 8. Committee Appointments

### Administrator Thongvanh

Council liaison appointments for the four city commissions are discussed with the Mayor and the Mayor makes the appointments and the Council approves. In addition to commissions, there are working groups that are not officially sanctioned such groups tasked with working on the City logo and the City survey. We rotate council members among commissions so that they get exposure to the different projects.

### Council Member Wehyee

That is mostly straightforward. It feels like the process with the inclusion subgroup wasn't followed because there was not notice that membership would be changing. I think giving council members the option to express whether they want to be on a working group is a good practice. That's what I was hoping would happen with respect to the appointment for the inclusion subgroup. I don't think it was communicated as well as it should have been. In terms of sustainability I think its important to allow others the chance to step in.

### Council Member Leehy

When the other working groups were described, they were short term and once the end goal was accomplished they no longer existed. I am the person that called for this work group and I provide continuity in implementing the recommendations from 2016 and the five community conversations. I made a commitment to see these things through.

### Administrator Thongvanh

Having some continuity on the workgroup is important because knowing what the City has done in the past with regard to inclusion and equity is really important.

### Council Member Andrews

The inclusion workgroup is not a commission. Having been on the taskforce, I was personally amazed and very grateful for the time that Melanie and Randy put in.

## E. INFORMATION/ANNOUNCEMENTS:

### Administrator Thongvanh

At the meeting next week, we will have a public hearing on the conduit bonding as well as the creation of the TIF district for Amber Union. I had a Parks Commission meeting this past week, we discussed the Community Park building. One of the requests was to establish a permanent ice rink there. The feedback we are hearing from the community is that they do want a park building. The logo rollout will be a soft rollout to keep costs reasonable.

### Mayor Gustafson

We received the report from NineNorth with some information about their operations. The Sheriff's Office is providing information to the community in advance of the Derek Chauvin trial.

F. ADJOURNMENT: 9:23 PM

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Randall C. Gustafson, Mayor

Dated this 3rd day of March 2021,

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Sack Thongvanh, City Administrator

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## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	March 10, 2021
<b>Agenda Item</b>	Public Hearing E1
<b>Attachment</b>	Documents
<b>Submitted By</b>	Sack Thongvanh, City Administrator

<b>Item</b>	Issuance of Conduit Revenue Notes by the City of Falcon Heights for New Harmony Care Center
<b>Description</b>	<p>The City of Falcon Heights has received a request from New Harmony Care Center, Inc. a MN nonprofit corporation to issue conduit bond to be used for the acquisition, construction, and equipping of a new senior healthcare and housing facility.</p> <p>The senior healthcare and housing facility will be located in the City of Maplewood. The project will include approximately 48 skilled nursing beds, transitional skilled nursing beds, 35 independent apartment units, 36 assisted living apartment units, 14 memory care apartment units, and 12 care suite apartment units.</p> <p>There will be three other communities acting as a conduit for bonding. They include the City of Landfall Village (\$10 million), City of Hampton (\$10 million), and the City of Little Canada (\$6.75 million).</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 an estimated \$18,750 for the issues of the bond which is ¼ of 1%.
<b>Attachment(s)</b>	<ul style="list-style-type: none"> <li>• Resolution 21-13 Approving the Issuance and Sale of a Senior Housing and Healthcare Revenue Note, Series 2021C and Authorizing the Execution of Documents Relating Thereto (New Harmony Project)</li> <li>• Letter from Taft - Catherine Courtney</li> <li>• Agreement to Purchase</li> <li>• Loan Agreement</li> </ul>

	<ul style="list-style-type: none"> <li>• Revenue Note, Series 2021C</li> <li>• Pledge Agreement</li> <li>• Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Financing Agreement</li> <li>• Subordination and Intercreditor Agreement</li> <li>• Guaranty</li> <li>• Disbursement Agreement</li> <li>• Joint Powers Agreement</li> </ul>
<b>Action(s) Requested</b>	Staff would recommend approval of attached resolution and authorize the Mayor and City Administrator to execute all necessary documents.





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80 South 8th Street  
Minneapolis, MN 55402  
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**Catherine J. Courtney**  
(612) 977-8765  
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January 27, 2021

**BY E-MAIL**

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

**Re: Issuance of Conduit Revenue Notes by the City of Falcon Heights for New Harmony Care Center**

Dear Mr. Thongvanh:

This letter is in follow-up to correspondence that I have had with you related to a request that the City of Falcon Heights has received from New Harmony Care Center, Inc., a Minnesota nonprofit corporation and 501(c)(3) organization (the "Borrower"), the sole member of which is Elim Care, a Minnesota nonprofit corporation and 501(c)(3) organization, the sole member of which is Cassia, a Minnesota nonprofit corporation and 501(c)(3) organization, regarding consideration by the City to act as an issuer of 501(c)(3) revenue obligations (the "Notes") in an amount of approximately \$7,500,000. The proceeds of the Notes would be loaned to the Borrower to be used to finance, in part, the acquisition, construction, and equipping of a new senior healthcare and housing facility, including approximately 48 skilled nursing beds, 16 transitional skilled nursing beds, 35 independent apartment units, 36 assisted living apartment units, 14 memory care apartment units, and 12 care suite apartment units, to be located at 1534 County Road C East in the City of Maplewood (the "Project"). The City of Landfall Village (\$10,000,000), the City of Hampton (\$10,000,000), and the City of Little Canada (approx. \$6,750,000) will act as the other issuers of the remaining amount needed to finance the Project in full. Hampton, Landfall Village, Falcon Heights, and Little Canada are referred to collectively in this letter as the "Issuers." Taft Stettinius & Hollister LLP, formerly known as Briggs and Morgan, Professional Association, will act as bond counsel on the issuance of such Notes. The Notes are expected to be purchased directly by Bremer Bank, National Association (the "Lender"). The City of Little Canada's obligations will be in the form of subordinate bonds, which will be underwritten by Northland Securities.

State and federal laws allow local government units to enter into arrangements to issue tax-exempt obligations and loan the proceeds to nonprofit corporations to finance 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 providers like the Borrower.

To accomplish this purpose, the Issuers will enter into Loan Agreements with the Borrower under which the Borrower will agree to pay all principal and interest on the Notes (or bonds). The Issuers will assign all of their rights to payments under the Loan Agreements the Lender, who will purchase the Notes and loan the purchase price of the Notes directly to the Borrower. (In the case of Little Canada's bonds, the rights will be assigned to U.S. Bank, as the trustee.) The Issuers are merely a conduit and the money and obligations flow only between the Lender and the Borrower.

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

The issuance of the Notes will not affect the Issuers' credit rating on bonds they issue 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, which is the type of obligation that the Lender wishes to acquire. Because the total cost of the financing is approximately \$36,000,000 and Maplewood has its own bond issuance planned for 2021, Maplewood cannot issue bank-qualified debt for the benefit of the Borrower. Therefore, other cities are being sought to act as the issuers for the Notes and other obligations. Under the federal tax law, alternative issuers are permitted, but a "nexus" between the jurisdictional city and the issuer is preferred. In this case, Falcon Heights has geographical proximity to Maplewood and is within the market area for the Project. Falcon Heights's residents could be potential beneficiaries of the Project, either as employees or future residents of the Project.

The Notes will affect the bank-qualified status of any of the City's tax-exempt obligations issued for its own governmental purposes in 2021. It is our understanding that Falcon Heights

will be issuing bonds on its own behalf of approximately \$2,000,000, leaving \$8,000,000 of bank-qualification available for this purpose. It is currently estimated that the Note issued by Falcon Heights will be in an amount of approximately \$7,500,000. The Notes will not affect the bank-qualified status of tax-exempt obligations in future years. It is also important to note that the bonds that will be issued for the benefit of the Amber Union project do not count toward the \$10,000,000 bank-qualification limit. The bonds for the Amber Union project can be issued over and above the \$10,000,000 limit, as they are issued under a different section of the federal tax code.

The Notes 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. Maplewood, as the host city, will give permission to Falcon Heights (and the other Issuers) to issue its Notes. In addition, the Issuers and Maplewood will enter into a joint powers agreement for the purpose of issuing the Notes.

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.

As noted above, under federal and State law, in order for the Notes to be a tax exempt obligation, they must be issued by a political subdivision. This requires that the City hold a public hearing and approve issuance of the Notes and approve the execution of related documents. If the City is willing to act as a conduit issuer for the Borrower, we propose that the City adopt a resolution at its February 10<sup>th</sup> meeting that calls for that public hearing. The resolution authorizes the City Administrator to set the actual date of the public hearing, but we are currently expecting that it would occur at the City Council’s March 10<sup>th</sup> meeting. We will also prepare and take care of submitting the public hearing notice to the City’s official newspaper.

Following the public hearing, the City Council would then consider for adoption a resolution approving the issuance of the Notes.

It is expected that the City will receive an administrative fee of ¼ of 1%, paid by the Borrower. In addition, you should be aware that the Borrower is responsible for paying all costs of the transaction. There will be no costs paid by the City.

Assuming the Council is willing for the City to act as an issuer for the Borrower, I ask that the Council adopt the resolution that we will provide separately that calls for the public hearing so that we can get the process started.

Sack Thongvanh  
January 27, 2021  
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Thank you for considering this request on behalf of Cassia. It is always a pleasure to work with the City of Falcon Heights. Please feel free to contact me if you have any questions or comments.

Very truly yours,



Catherine J. Courtney

**JOINT POWERS AGREEMENT  
PROVIDING FOR THE ISSUANCE OF REVENUE NOTES AND BONDS TO  
FINANCE SENIOR HOUSING AND HEALTHCARE FACILITIES  
(NEW HARMONY CARE CENTER PROJECT)**

This Agreement is entered into as of [\_\_\_\_\_], 2021, by and between the City of Hampton, Minnesota (“Hampton”), the City of Landfall Village, Minnesota (“Landfall Village”), the City of Falcon Heights, Minnesota (“Falcon Heights” and, together with Hampton and Landfall Village, the “Note Issuers”), the City of Little Canada, Minnesota (“Little Canada” or the “Subordinate Bonds Issuer” and, together with the Note Issuers, the “Issuers”), and the City of Maplewood, Minnesota (“Maplewood” or the “Host City” and, together with the Issuers, the “Cities”). Each of the Cities is a municipal corporation duly organized under the laws of the State of Minnesota.

**WHEREAS**, the Issuers propose to adopt a housing program (the “Housing Program”) in accordance with Minnesota Statutes, Chapter 462C; and

**WHEREAS**, it has been proposed by New Harmony Care Center, Inc. (the “Borrower”), a Minnesota nonprofit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), the sole member of which is Elim Care, Inc., a Minnesota nonprofit corporation and an organization described in Section 501(c)(3) of the Code, whose sole member is Cassia, a Minnesota nonprofit corporation and an organization described in Section 501(c)(3) of the Code, that the Issuers undertake a program to assist in financing the Project (defined below) through the issuance by the Note Issuers of revenue notes or other obligations in an aggregate principal amount not to exceed \$28,000,000 (the “Notes”) and through the issuance by the Subordinate Bonds Issuer of subordinate revenue bonds or other obligations in an aggregate principal amount not to exceed \$8,000,000 (the “Subordinate Bonds” and, together with the Notes, the “Obligations”); and

**WHEREAS**, the Cities desire to assist the Borrower pursuant to this Agreement;

**NOW, THEREFORE**, for and in consideration of the mutual covenants and representations hereinafter contained, the parties hereto agree as follows:

1. Minnesota Statutes, Section 471.59 (the “Joint Powers Act”) provides that two or more governmental units, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise any power common to the contracting parties, and may provide for the exercise of such power by one of the participating governmental units.

2. In connection with revenue bonds issued under Minnesota Statutes, Chapter 462C (the “Housing Programs Act”), Section 462C.14, Subdivision 3 provides for joint action between cities pursuant to the Joint Powers Act.

3. The Borrower has proposed, and the Cities hereby agree, to enter into this Agreement pursuant to the Housing Programs Act. Under the Housing Programs Act, the Issuers (who may be joined by other municipalities) will issue the Obligations and loan the proceeds thereof to the Borrower pursuant to agreements with the Borrower that obligate the Borrower to use the proceeds of the Obligations to finance the Project (defined below). The Cities expect that

Hampton will issue Notes in a principal amount not to exceed \$10,000,000, Landfall Village will issue Notes in a principal amount not to exceed \$10,000,000, and Falcon Heights will issue Notes in a principal amount not to exceed \$8,000,000. The Cities expect that Little Canada will issue Subordinate Bonds in a principal amount not to exceed \$8,000,000.

4. Each Note Issuer reasonably anticipates that the amount of the Notes and other tax-exempt obligations it will issue during this calendar year will not exceed \$10,000,000. On that basis, the Cities expect each Note Issuer to issue its Notes as a “qualified small issuer” and to formally designate the Notes it issues as “qualified tax-exempt obligations” under Section 265(b)(3) of the Code. The Cities do not expect the Subordinate Bonds Issuer to issue the Subordinate Bonds as a “qualified small issuer” under Section 265(b)(3) of the Code.

5. As further described in the Housing Program, the “Project” consists of (i) financing the acquisition, construction, and equipping of a new senior healthcare and housing facility, including approximately 48 skilled nursing beds, 16 transitional skilled nursing beds, 35 independent apartment units, 36 assisted living apartment units, 14 memory care apartment units, and 12 care suite apartment units, to be located at 1534 County Road C East (the “New Harmony Facilities”) in the Host City, (ii) funding any required reserve funds, and (iii) paying all or a portion of the costs of issuance (collectively, the “Project”). The New Harmony Facilities are and will be owned and operated by the Borrower.

6. Each of the Issuers has adopted a resolution joining in and adopting the Housing Program.

7. Each of the Cities has adopted a resolution evidencing its intent to enter into this Agreement. As required under the Code, the Host City has adopted a resolution granting host approval of the issuance of the Obligations by the Issuers and each of the Issuers has adopted a resolution approving the issuance of its Obligations.

8. The Issuers shall exercise the powers of the Housing Programs Act by adopting, approving, and executing such resolutions, documents, and agreements as shall be necessary or convenient to authorize, issue, and sell the Obligations and such other resolutions, documents, and agreements as shall be necessary or required in connection with the issuance of the Obligations and giving effect to or carrying out the provisions of this Agreement and documents under which the Obligations are issued and/or secured.

9. The Obligations issued by each respective Issuer will be special, limited obligations of that Issuer, payable solely from proceeds, revenues, and other amounts pledged thereto and more fully described in a loan agreement between that Issuer and the Borrower, executed in connection with the Project. In no event shall the Obligations ever be payable from or charged upon the general credit, taxing powers, or any funds of any of the Cities; the Cities are not subject to any liability thereon; no owners of the Obligations shall ever have the right to compel the exercise of the taxing power of any of the Cities to pay any of the Obligations or the interest thereon, nor to enforce payment thereof against any property of any of the Cities; the Obligations shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of any of the Cities; and the Obligations do not constitute an indebtedness of any of the Cities within the meaning of any constitutional, statutory, or charter limitation.

10. This Agreement will terminate upon the retirement or defeasance of all of the Obligations or any bonds issued to refund the Obligations, and this Agreement may not be terminated in advance of such retirement or defeasance.

11. This Agreement may be executed in counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

12. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. For purposes of this paragraph: (i) "electronic signature" means a manually signed original signature, an electronic image of a handwritten signature, or a digital signature provided by DocuSign, Adobe Sign, or any other electronic signature provider acceptable to the parties, which in each case is transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a PDF (i.e. portable document format) or other replicating image attached to an electronic mail or internet message. Paper copies or "printouts" of this Agreement, if introduced as evidence in any judicial, arbitral, mediation, or administrative proceeding will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party may contest the admissibility of true and accurate copies of documents transmitted by electronic means and containing, or to which there is affixed, an electronic signature on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

[Remainder of page intentionally blank; signature page follows.]

IN WITNESS WHEREOF, each of the Cities has caused this Agreement to be executed on its behalf by its duly authorized officers, all as of the day and year first above written.

CITY OF HAMPTON, MINNESOTA,  
a Note Issuer

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
City Clerk

[Signature page to Joint Powers Agreement]



CITY OF LANDFALL VILLAGE, MINNESOTA,  
a Note Issuer

By \_\_\_\_\_  
Mayor

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

[Signature page to Joint Powers Agreement]

CITY OF FALCON HEIGHTS, MINNESOTA,  
a Note Issuer

By \_\_\_\_\_  
Mayor

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

[Signature page to Joint Powers Agreement]

CITY OF LITTLE CANADA, MINNESOTA,  
the Subordinate Bonds Issuer

By \_\_\_\_\_  
Mayor

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

[Signature page to Joint Powers Agreement]

CITY OF MAPLEWOOD, MINNESOTA,  
the Host City

By \_\_\_\_\_  
Mayor

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

[Signature page to Joint Powers Agreement]

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**LOAN AGREEMENT**  
**BETWEEN**  
**CITY OF FALCON HEIGHTS, MINNESOTA**  
**AND**  
**NEW HARMONY CARE CENTER, INC.**

**Dated as of May 1, 2021**

**[\$8,000,000]**  
**City of Falcon Heights, Minnesota**  
**Senior Housing and Healthcare Revenue Note**  
**(New Harmony Project)**  
**Series 2021C**

**Certain of the rights and the interest of the City of Falcon Heights, Minnesota (the "City") in this Loan Agreement (other than the City's rights to payment of its fees and expenses and to indemnification) have been assigned to Bremer Bank, National Association, Minneapolis, Minnesota pursuant to a Pledge Agreement of even date herewith.**

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This instrument drafted by:  
Taft Stettinius & Hollister LLP (CJC)  
2200 IDS Center  
80 South 8th Street  
Minneapolis, Minnesota 55402

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THIS LOAN AGREEMENT, dated as of May 1, 2021, is between the CITY OF FALCON HEIGHTS, MINNESOTA, a municipal corporation and a political subdivision under the laws of the State of Minnesota (the "City"), and NEW HARMONY CARE CENTER, INC., a Minnesota nonprofit corporation (the "Company").

**WITNESSETH:**

WHEREAS, the City is authorized under the provisions of Minnesota Statutes, Chapter 462C, as heretofore and hereafter amended (the "Act"), among other things, authorizes cities to issue revenue bonds to finance or refinance a program for the purposes of planning, administering, making, or purchasing loans with respect to one or more multifamily housing developments and health care facilities; and

WHEREAS, pursuant to and in accordance with the provisions of the Act, at the request of the Company, the City has agreed to issue its Senior Housing and Healthcare Revenue Note (New Harmony Project) Series 2021C, in the principal amount of \$[8,000,000] (the "Note"), and loan the proceeds thereof to the Company to be used to (i) finance the acquisition, construction, and equipping of a new senior healthcare and housing facility, including approximately 48 skilled nursing beds, 16 transitional skilled nursing beds, 35 independent apartment units, 36 assisted living apartment units, 14 memory care apartment units, and 12 care suite apartment units, to be located at 1534 County Road C East in the City of Maplewood, Minnesota (the "Host City"); (ii) fund any required reserve funds; and (iii) pay all or a portion of costs of issuance (collectively, the "Project"); and

WHEREAS, the Note will be secured by (i) a mortgage on and security interest in the Project to be executed by the Company in favor of the Lender, (ii) an assignment of leases and rents, (iii) an assignment of this Loan Agreement and the revenue to be derived by the City from this Loan Agreement, and (iv) a guaranty from the sole member of the Company in favor of the Lender; and the Note and the interest on the Note shall be payable solely from the revenues pledged therefor; and the Note shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation, shall not constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers, and shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City except the revenues received under this Loan Agreement; and

WHEREAS, the Company proposes to carry out the financing of the Project, and the City desires to finance the Project upon the terms and conditions as required by the Act and this Loan Agreement; and

WHEREAS, the execution, delivery, and performance of this Loan Agreement have been duly authorized by a Resolution of the City adopted on March 10, 2021;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:



**ARTICLE 1**  
**DEFINITIONS AND RULES OF INTERPRETATION**

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

Act: Minnesota Statutes, Chapter 462C, as heretofore and hereafter amended;

Advance: means a disbursement of proceeds of the Loan by the Lender pursuant to Article IV hereof;

Affiliate: any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company. For the purposes of this definition, "control" means the power to direct the management and policies, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing;

Annual Debt Service: with respect to any Fiscal Year the sum of (i) the principal of Indebtedness due and payable in such Fiscal Year, and (ii) the interest accrued or to accrue on Indebtedness during such Fiscal Year, calculated as provided in Section 5.9;

Bond Counsel: Taft Stettinius & Hollister LLP or any other attorney or firm of attorneys nationally recognized as experienced in tax-exempt municipal financing, retained by the Company and acceptable to the Lender and the City;

City: City of Falcon Heights, Minnesota, its successors and assigns;

Closing Date: the date on which the Note is delivered by the City to the Lender in exchange for the purchase price thereof;

Code: the Internal Revenue Code of 1986, as amended;

Commitment Fee: the Lender's fee, in an amount equal to 0.55% of the original principal amount of the Note, for its commitment to make the Loan;

Company: New Harmony Care Center, Inc., a Minnesota nonprofit corporation, its successors and assigns;

Company Certificate: a written certificate signed in the name of the Company by its Chair, President, Chief Financial Officer, Secretary, or Treasurer, and delivered to the City and the Lender;

Company Documents: this Loan Agreement, the Mortgage, the Disbursement Agreement, and such other documents, instruments, and agreements as may be required by this Loan Agreement or as the Lender may otherwise reasonably require;

Company Equity Contribution: the Company's equity contribution to pay for Project Costs in an initial amount equal to \$[2,545,800];

Date of Taxability: the date as of which interest on the Note becomes subject to federal income taxes, as specified in the ruling, notice, or other instrument constituting the Determination of Taxability; provided, that if no such date is specified in the ruling, notice, or other instrument constituting the Determination of Taxability, the Date of Taxability shall be the date on which such ruling, notice, or other instrument is issued, released or published;

Days Cash on Hand Ratio: for any specified period, the sum of the Company's unrestricted cash and cash equivalents, short term and long term liquid marketable securities or investments divided by the quotient of the Company's total annual operating expenses net of depreciation and amortization divided by 365; if the specified period is a Fiscal Year, the ratio shall be calculated on the basis of the audited financial statements of the Company for such Fiscal Year;

Debt Service Coverage Ratio: for any specified period, the ratio of Income Available for Debt Service for such period to Annual Debt Service for such period; if the specified period is a Fiscal Year, the ratio shall be calculated on the basis of the audited financial statements of the Company for such Fiscal Year;

Determination of Taxability: the issuance by the Internal Revenue Service of a statutory notice of deficiency, or a ruling of the National Office or any District Office of the Internal Revenue Service, or a final decision of a court of competent jurisdiction which holds that the interest payable on the Note is includable in the gross income of the Noteholder for federal income tax purposes to an extent to which such interest was not includable as of the date of issuance of the Note, if the period, if any, for contest or appeal of such action, ruling or decision by the Company or Noteholder has expired without any such contest or appeal having been properly instituted by the Noteholder or the Company;

Disbursement Agreement: the Disbursement Agreement dated as of the date hereof between the Company, the Lender, the Subordinate Bonds Trustee, and the disbursing agent named therein;

Event of Default: any of the events described as such in Section 7.1 hereof;

Fiscal Year: the period beginning on January 1 of each year and ending on December 31 of such year, or such other period of twelve (12) consecutive months as may be specified by a Company Certificate as the fiscal year of the Company;

GAAP: the generally accepted accounting principles in the United States of America;

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

Gross Revenues: the total operating revenues of the Company for a specified period;

Guarantor: Elim Care, Inc., a Minnesota nonprofit corporation, its successors and assigns;

Guaranty: the Guaranty dated as of the date hereof from the Guarantor to and for the benefit of the Lender, as amended and supplemented from time to time;

Hampton: City of Hampton, Minnesota;

Hampton Note: the \$10,000,000 Senior Housing and Healthcare Revenue Note, Series 2021A (New Harmony Project) to be issued by Hampton on a parity basis with the Note and the Landfall Village Note in accordance with the Intercreditor Agreement;

HIPAA: Health Insurance Portability and Accountability Act;

Holder: the Noteholder;

Host City: City of Maplewood, Minnesota;

Income Available for Debt Service: operating income (or loss) of the Company for a specified period plus all interest income, unrestricted gifts and grants, depreciation, amortization, interest expense and equity contributions less distributions;

Indebtedness: without duplication, (i) all indebtedness of the Company, including the Series 2021 Obligations, whether or not represented by bonds, debentures, notes or other securities, for the repayment of money borrowed, (ii) all indebtedness of the Company created or arising under a conditional sale, capitalized lease or other title retention agreement relating to acquisition of property or assets by the Company, (iii) all guaranties (except guaranties of the obligations of Affiliates), endorsements, assumptions and other contingent obligations of the Company in respect of, or to purchase or otherwise acquire, indebtedness of others and (iv) all indebtedness secured by any mortgage, pledge or lien existing on property owned by the Company, subject to such mortgage, pledge or lien, whether or not the indebtedness secured thereby shall have been assumed by the Company;

Independent: a Person who does not have any direct financial interest or any material indirect financial interest in the Company or any organization affiliated with the Company, and who is not an officer, employee, trustee, or director of the Company or any organization affiliated with the Company;

Intercreditor Agreement: the Subordination and Intercreditor Agreement of even date herewith between the Subordinate Bonds Trustee and the Lender, as the holder of the Note, the Hampton Note, and the Landfall Village Note,

Issuance Costs: those items of issuance cost referred to in Section 147(g) of the Code incurred or payable by the Company in connection with the issuance of the Note: all legal and accounting fees and expenses, all costs of printing or reproducing the Note, this Loan Agreement, the Mortgage, or other documents, the Commitment Fee, the title insurance premium, and any administrative or other fee payable to the City;

Land: the real estate described in Exhibit A to the Mortgage;

Landfall Village: City of Landfall Village, Minnesota;

Landfall Village Note: the \$10,000,000 City of Landfall Village, Minnesota Senior Housing and Healthcare Revenue Note (New Harmony Project), Series 2021B, to be issued by

Landfall Village on a parity basis with the Note and the Hampton Note in accordance with the Intercreditor Agreement;

Lender: Bremer Bank, National Association, its successors and assigns, or such other Person as may be at any time the registered Holder of the Note;

Little Canada: City of Little Canada, Minnesota;

Little Canada Bonds: City of Little Canada, Minnesota Subordinate Senior Housing and Healthcare Revenue Bonds (New Harmony Project), Series 2021D, to be issued by Little Canada and subordinate to the Note, the Hampton Note, and the Landfall Village Note, in accordance with the Intercreditor Agreement;

Loan: the loan by the City to the Company of the proceeds of the Note pursuant to this Loan Agreement;

Loan Agreement: this Loan Agreement, between the City and the Company, including any amendment hereof or supplement hereto;

Loan Payments: the payments required of the Company pursuant to Sections 3.2, 3.3 and 7.8 of this Loan Agreement;

Medicaid: that certain program of medical assistance, funded jointly by the federal government and the States, for impoverished individuals who are aged, blind and/or disabled, and/or members of families with dependent children, which program is more fully described in Title XIX of the Social Security Act (42 U.S.C. §§ 1396 *et seq.*) and the regulations promulgated thereunder.

Medicare: that certain federal program providing health insurance for eligible elderly and other individuals, under which physicians, hospitals, skilled nursing homes, home health care and other providers are reimbursed for certain covered services they provide to the beneficiaries of such program, which program is more fully described in Title XVIII of the Social Security Act (42 U.S.C. §§ 1395 *et seq.*) and the regulations promulgated thereunder;

Mortgage: the Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Financing Statement, dated as of **[the date hereof]**, to be executed by the Company in favor of the Lender, including any amendment thereof;

Note: City of Falcon Heights, Minnesota Senior Housing and Healthcare Revenue Note (New Harmony Project), Series 2021C, to be issued by the City pursuant to the Note Resolution on a parity basis with the Hampton Note and the Landfall Village Note in accordance with the Intercreditor Agreement;

Noteholder: the Person in whose name the Note is registered in the Note Register;

Note Register: the register maintained by the City Administrator pursuant to Section 2.6 of the Note Resolution for registration of ownership and transfers of the Note;

Note Resolution: the resolution adopted by the City Council of the City on March 10, 2021, authorizing the issuance of the Note and establishing the terms and conditions thereof;

Person: any individual, corporation, partnership (general, limited, or limited liability), joint venture, association, trust, unincorporated organization, or government or any agency or political subdivision thereof;

Pledge Agreement: the Pledge Agreement, of even date herewith, from the City to the Lender;

Project: the financing of the acquisition, construction, and equipping of the Project Facilities, the funding of any required reserve funds, and the payment of all or a portion of Issuance Costs;

Project Costs: the costs of the Project identified in Section 4.1 hereof;

Project Facilities: a new senior healthcare and housing facility, including approximately 48 skilled nursing beds, 16 transitional skilled nursing beds, 35 independent apartment units, 36 assisted living apartment units, 14 memory care apartment units, and 12 care suite apartment units, to be located at 1534 County Road C East in the Host City;

Series 2021 Obligations: the Note, the Hampton Note, the Landfall Village Note, and the Little Canada Bonds;

State: the State of Minnesota;

Subordinate Bonds Trustee: U.S. Bank National Association, a national banking association, as trustee with respect to the Little Canada Bonds, and its successors and assigns;

Tax-Exempt Organization: a Person which is an organization described in Section 501(c)(3) of the Code and which is exempt from federal income taxes under Section 501(a) of the Code and which is not a "private foundation" within the meaning of Section 509(a) of the Code, or equivalent provisions of the Code from time to time in effect; and

Title Company: Commercial Partners Title, LLC, its successors and assigns, or any other title insurance company designated by the Company and acceptable to the Lender.

Section 1.2. Rules of Interpretation.

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

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

C. The article and section headings herein and the table of contents are for convenience only and shall not affect the construction hereof.

D. Unless the context clearly requires otherwise, references in this instrument to any particular section or subdivision hereof are to the section or subdivision of this instrument as originally executed.

E. All accounting terms used herein and not otherwise defined have the meanings assigned them in accordance with generally accepted accounting principles, and all financial computations herein provided for shall be made in accordance with GAAP.

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

**ARTICLE 2**  
**REPRESENTATIONS**

Section 2.1. Representations by the City. The City makes the following representations as the basis for its covenants herein:

A. The City is a municipal corporation and political subdivision, duly organized and existing under the laws of the State.

B. The City is authorized and empowered (i) to issue revenue bonds to pay the cost of financing expenses incurred in the acquisition and betterment of senior housing and healthcare facilities, and (ii) to enter into a loan agreement in such manner that payments required thereby to be made by the company acquiring and bettering those facilities shall be fixed, and revised from time to time as necessary, so as to produce income and revenue sufficient to provide for the prompt payment of principal of and interest on such revenue bonds when due. The City does not expect to issue more than \$[8,000,000] in tax-exempt governmental and qualified 501(c)(3) bonds in 2021 and hereby designates the Note as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code.

C. In authorizing the issuance of the Note, the City's purpose and intended effect is to promote the retention of quality senior housing and healthcare facilities within the State and the general welfare of its inhabitants.

D. The issuance and sale of the Note, the execution and delivery of this Loan Agreement and the assignment of certain of the rights and the interest of the City in this Loan Agreement (other than the City's rights to payment of its fees and expenses and to indemnification) to the Lender, and the performance of all covenants and agreements of the City contained in the Note and this Loan Agreement have been duly authorized by resolutions of the governing body of the City adopted at meetings thereof duly called and held by the affirmative vote of not less than a majority of its members.

E. To provide funds to pay the Project Costs and in anticipation of the receipt of Loan Payments hereunder, the City has duly authorized the Note to be issued upon the terms set forth in the Note Resolution, under the provisions of which the City has resolved to assign its interest in this Loan Agreement and in the Loan Payments to the Lender as security for the payment of the principal of and interest on the Note and as security for the obligations of the Company under this Loan Agreement.

F. The execution and delivery of this Loan Agreement, the Pledge Agreement, and the Note will not constitute on the part of the City a breach of, or a default under, any existing law or legislative act, constitution, or other proceeding establishing or relating to the establishment of the City or its affairs or its resolutions, or any agreement, indenture, mortgage, lease, or other instrument to which the City is a party or by which it is bound.

G. No officer of the City who is authorized to take part in any manner in making this Loan Agreement or any contract contemplated hereby has a personal financial interest in, or has personally or financially benefited from, this Loan Agreement or any such contract.

H. There is not pending or, to the City's knowledge, threatened any suit, action or proceeding against the City before or by any court, arbitrator, administrative agency or other governmental authority which, if determined adversely to the City, would materially and adversely affect the validity or enforceability, as to the City, of this Loan Agreement, the Note, and any of the City's obligations hereunder or thereunder or any of the transactions contemplated hereby or thereby.

I. Pursuant to Section 462C.04, subdivision 2, of the Act, the City, Hampton, Landfall Village, and Little Canada developed a housing program providing for the issuance of the Series 2021 Obligations, and on or before the day on which notice of a public hearing thereon was published, the City submitted the housing program to the appropriate regional development commission for review and comment.

J. On March 10, 2021, after due publication of notice of hearing in the City's official newspaper, a newspaper of general circulation in the City, the governing body of the City held a public hearing on the Project and the issuance of the Note pursuant to the Act and Section 147(f) of the Code and, on the date thereof, duly adopted a resolution approving the issuance and sale of the Note and the assignment of this Loan Agreement to the Lender, authorizing the execution and delivery of this Loan Agreement, and approving the performance of all covenants and agreements of the City contained in the Note, this Loan Agreement, or both.

Section 2.2. Representations by the Company. The Company makes the following representations, upon which the Lender and the City may rely:

A. The Company is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State. The Company has full power to enter into this Loan Agreement and the other Company Documents and carry out its obligations hereunder and thereunder, and by proper action has authorized the execution and delivery of this Loan Agreement and the other Company Documents.

B. The Company is a Tax-Exempt Organization and has received or may rely upon a determination letter from the Internal Revenue Service to that effect. All property financed and refinanced by the net proceeds of the Note is or will be owned by the Company or another Tax-Exempt Organization. Not more than five percent (5%) of the proceeds of the Note will be used, directly or indirectly, to finance or refinance property used in an unrelated trade or business of the Company determined by applying Section 513(c) of the Code or in the trade or business of any Person other than a Tax-Exempt Organization. There is no action, proceeding or investigation pending or threatened or, to the knowledge of the Company, any basis therefor by the Internal Revenue Service or authorities of the State which, if adversely determined, might result in a modification of the status of the Company as a Tax-Exempt Organization.

C. The execution and delivery of this Loan Agreement and the other Company Documents, and the consummation of the transactions contemplated hereby and thereby and the fulfillment of the terms and conditions hereof and thereof, do not and will not conflict with or result in a breach of the Articles of Incorporation or the Bylaws of the



Company or of any of the terms and conditions of any court order, judgment, or decree or any mortgage, indenture, loan agreement or other restriction or any agreement or instrument to which the Company is a party or to which any property of the Company is subject, and do not and will not constitute a default under any of the foregoing or result in the creation or imposition of any lien, charge, or encumbrance of any nature upon any property or assets of the Company contrary to the terms of any agreement or instrument to which the Company is a party or by which the Company is bound.

D. [Intentionally Omitted.]

E. The Company is duly authorized and licensed to operate the Project Facilities under the laws, rulings, regulations and ordinances of the State and the departments, agencies and political subdivisions thereof, and the Project Facilities are in compliance in all material respects with applicable federal, state and local laws, regulations, codes and ordinances.

F. There is no suit, action, proceeding, or investigation with respect to the Company (or to the knowledge of the Company any basis therefor) that is (i) pending or threatened at law or in equity or (ii) by or before any court, arbitrator, administrative agency, or other federal, state, or local governmental authority which individually or in the aggregate, if adversely determined, might have a material adverse effect on, or affect the validity or enforceability as to the Company of, this Loan Agreement or the other Company Documents or any of the transactions contemplated hereby or thereby or the ability of the Company to perform its obligations hereunder or thereunder or as contemplated hereby or thereby.

G. The Company has reviewed and approved the terms and conditions of the Note.

H. The Company has no current intention to sell or otherwise dispose of the Project Facilities during the term of the Note.

I. To the best of the Company's knowledge (i) no member of the governing body or other officer or employee of the City has any direct or indirect personal or financial interest in this Loan Agreement or any contract, agreement, or job hereby contemplated to be entered into or hereby taken and (ii) the Company has not paid or given any officer or employee of the City any money or other consideration for obtaining this Loan Agreement.

J. Since the date of the last audited financial statements of the Guarantor, of which the Company was included in the consolidating detail for such Fiscal Year, there has been no material adverse change in the business, operations, or financial condition of the Company, material diminution of value of the property subject to the Mortgage, except as the result of market conditions, if at all, or discovery of any adverse environmental conditions with respect to the property subject to the Mortgage.

K. The Company currently has in effect provider agreements authorizing its participation as a certified provider with the Medicare and Medicaid programs; the Company has received no notice (and has no knowledge) of any condition that would

constitute a violation of any laws, regulations or manual provisions governing the Medicare or Medicaid programs and the Company has no notice or knowledge of any existing operation, condition or agreement which (i) is contrary to existing law or regulation and as a consequence thereof may lead to termination or suspension of the right to participate in the Medicare or Medicaid programs or (ii) could result in a material civil penalty. No further notice, approval, consent or action is necessary for the Company to continue conducting its business as a certified provider under the Medicare and Medicaid programs.

L. The Company has adopted, or will adopt, a post-issuance tax compliance policy.

M. The Company is the fee owner of the Land on which the Project will be located and has no current intention to sell or otherwise dispose of any part of the Project during the term of the Note.

N. The Project conforms, or will conform, in all material respects with all applicable zoning, planning, building, and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project (including, but not limited to, the Americans With Disabilities Act), all necessary utilities are, or will be, available to the Project, and the Company has obtained, or will obtain, all requisite zoning, planning, building, and environmental and other permits which may become necessary from time to time with respect to the Project. The Company has obtained, or will obtain, all licenses, permits, and approvals necessary for the construction, ownership, operation, and management of the Project, as applicable, including all approvals essential to the transactions contemplated by this Loan Agreement and any other documents contemplated hereby or thereby.

Section 2.3. Tax Covenants. The Company makes the following covenants regarding issues raised by the Code, upon which the Lender and the City may rely:

A. It will fulfill all conditions specified in Sections 103 and 141 through 150 of the Code and applicable Treasury Regulations as necessary to maintain the tax-exempt status of the interest borne by the Note.

B. All of the property financed, refinanced, or otherwise provided by the net proceeds of the Note is and will be owned by the Company or by another Tax-Exempt Organization during the entire term of the Note.

C. Less than five percent (5%) of the net proceeds of the Note (less any amounts devoted to Issuance Costs) will be used either (i) by a Tax-Exempt Organization in an activity which constitutes an unrelated trade or business, or (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).

D. As of the date hereof, the Company is the only "principal user" of the Project Facilities to be financed by the Note, and the Company will not permit any other Person to

become a "principal user" of those facilities if such action would cause the interest on the Note to become subject to federal income taxation in the hands of the Holder thereof.

E. The Company is not under the management or control of any Person other than the sole member of the Company.

F. The weighted average maturity of the Note does not exceed 120% of the average reasonably expected economic life of the Project Facilities as determined in accordance with Section 147(b) of the Code.

G. No portion of the proceeds of the Note will be used to provide any airplane, skybox or other private luxury box, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises, or residential rental housing.

H. The Issuance Costs financed by the Note will not exceed two percent (2%) of the proceeds of the Note.

I. Each of the Series 2021 Obligations are treated as separate issues under Section 1.150-1(c)(1) of the Regulations as the same were sold at least fifteen days from each other and from any other tax exempt obligations.

J. The Company will provide the City all information required to satisfy the informational requirements set forth in Section 149(e) of the Code, including the information necessary to complete IRS Form 8038.

K. The Company agrees it will not use the proceeds of the Note in such a manner as to cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Code and applicable Treasury Regulations. The Company expects that all proceeds of the Note, including earnings thereon, will be disbursed and expended for payment of the Project within six (6) months after the date of issuance of the Note. The Company will comply with the provisions of the Company's Tax Certificate or similar certificate executed by the Company and delivered on the Closing Date.

L. The Company has not leased, sold, assigned, granted or conveyed and will not lease, sell, assign, grant or convey all or any portion of the properties financed with any of the Note proceeds or any interest therein to the United States or any agency or instrumentality thereof within the meaning of Section 149(b) of the Code.

M. It reasonably expects that eighty-five percent (85%) of the spendable proceeds of the Note will be used to carry out the governmental purpose of the issue within three (3) years of the date the Note is issued. Not more than fifty percent (50%) of the proceeds of the Note will be invested in nonpurpose investments (as defined in Section 148(f)(6)(A) of the Code) having a substantially guaranteed yield for four (4) years or more.

N. It will 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 facilities financed or refinanced by the Note to the end that interest on the Note shall at all times be free from federal income taxation.

Section 2.4. The Lender May Rely on Representations. The City and the Company agree that the representations contained in this Article 2 are for the use and benefit of the Lender, and the Lender shall be entitled to rely thereon, subject however, to the limitations on the City's liability set forth in Section 8.6 hereof.

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### **ARTICLE 3** **THE LOAN**

Section 3.1. Amount and Source of the Loan; City Fee. The City agrees to lend to the Company and the Company agrees to borrow from the City, upon the terms and conditions herein, in the Mortgage and the Note, the principal amount of the Note, which shall not exceed \$[8,000,000] by having the proceeds of the Note applied and disbursed in accordance with the provisions of this Loan Agreement. Forthwith upon the execution and delivery of this Loan Agreement and all other documents and instruments necessary to the transactions contemplated hereby and thereby, the payment of the administrative fee of the City in the amount of \$[20,000], and the recording and filing of the Mortgage and such documents as may be required to be filed or recorded by the Lender or Bond Counsel, the City will execute the Note and deliver it to the Lender. All advances of Loan proceeds shall be evidenced by the Note. Notwithstanding the stated principal amount of the Note, the Company will not be obligated to repay more than the unpaid balance of advances made to the Company by the Lender, together with interest thereon at the rate or rates specified in the Note, computed on each Advance from the date made by the Lender.

#### Section 3.2. Repayment of the Loan.

A. Subject to any rights of prepayment granted herein and in the Note, the Company agrees to repay the Loan in installments on the dates and in amounts sufficient to provide for the prompt and full payment of the principal of, premium, if any, and interest on the Note.

B. All Loan Payments shall be made directly to the Noteholder at its principal office for the account of the City.

C. The Lender shall maintain an accurate record of all Advances made by the Lender to the Company with respect to the Note and all Loan Payments received by the Lender from the Company, and such records may be inspected by the Company at the office of the Lender at any time during normal business hours. Such records shall be prima facie evidence of the amount advanced and the amount paid on the Note, but neither any error therein nor failure of the Lender to maintain such record shall relieve the Company of any of its obligations hereunder or under the Note. The Lender's calculation at any time of the amount of principal and interest due on the Note shall be presumed correct, absent clear mathematical error. The Lender may, but shall not be obligated to, make notation on the Note of the amounts advanced and amounts paid thereunder.

Section 3.3. Determination of Taxability. Upon occurrence of a Determination of Taxability, the rate of interest on the Note shall be automatically increased, effective as of the Date of Taxability, as provided in the Note, in which event the Loan Payments required hereunder by the Company shall be adjusted accordingly with the increased payments required pursuant to the Note. In such case, the Company agrees also to pay to the Holder of the Note forthwith an amount equal to the aggregate difference between (i) the amounts actually paid between the Date of Taxability and the date of receipt of notice of the Determination of Taxability and (ii) the payments due during such period based upon the

increased rate. Neither the Company nor the Noteholder shall be required to contest or appeal any Determination of Taxability.

Section 3.4. Notice of Proposed Taxability and Procedure Thereon. If the Internal Revenue Service initiates an investigation or audit questioning the federal income tax exemption of the interest payable on the Note or if the Holder, or the Company on behalf of the Holder, chooses to contest any statutory notice of deficiency, ruling of the Internal Revenue Service or judgment of a court of competent jurisdiction, the Holder, at its election, may increase the rate of interest on the Note to the rate specified in Section 3.3, and require that the Company make Loan Payments based upon such increased rate pending the final results of such investigation, suit or contest. The additional funds collected as a result of the rate increase shall be placed in escrow by the Holder and shall bear interest at a rate no greater than the original rate of interest on the Note. In the event the contest is resolved in favor of the Holder and the Company, and the interest on the Note continues to be exempt from federal income taxation, the funds held in such escrow account shall be returned to the Company and shall in no event be used to pay any interest or principal on the Note. In the event the contest is resolved against the Holder and the Company and interest payable on the Note is held to be subject to federal income taxation, the amount on hand in the escrow account shall be applied to the additional Loan Payments then due pursuant to this Section, with any excess returned to the Company.

Section 3.5. Company's Obligations Unconditional. All Loan Payments and all other payments required of the Company hereunder shall be paid without notice or demand (except as provided herein and in the Note) and without setoff, counterclaim, abatement, deduction or defense. The Company will not suspend or discontinue any payments, and will perform and observe all of its other agreements in this Loan Agreement and the Mortgage and, except as expressly permitted herein, will not terminate this Loan Agreement for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project Facilities, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of the City or the Lender, change in the tax or other laws or administrative rulings or actions of the United States of America or of the State or any political subdivision thereof or failure of the City or the Lender to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with the Company Documents and the Note.

Section 3.6. Extraordinary Prepayments. Upon the occurrence of an event of damage to or destruction of the Project Facilities, and in the event the Company does not have the right or does not choose to restore the Project Facilities pursuant to the Mortgage, or in the event the mortgagee under the Mortgage so requires, the Net Proceeds of any insurance or condemnation award shall be applied in prepayment of the Note, without a premium. If all or any part of the Project Facilities are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of the award or other payment for such taking, acquisition or damages made in consideration thereof shall be applied in prepayment of the Note, without a premium. Insurance proceeds in excess of those required to discharge the Note shall be remitted to the Company.

## **ARTICLE 4**

### **FINANCING**

Section 4.1. Deposit of Loan Proceeds; Payment of Advances. The Lender shall make an initial Advance of \$100,000 of the proceeds of the Loan on the Closing Date for the payment of Issuance Costs related to the Note and other Project Costs (defined below). After all of the proceeds of the Little Canada Bonds and the Company Equity Contribution have been spent on Issuance Costs and other Project Costs, the Lender shall make further Advances under the Note as provided in the Disbursement Agreement from time to time at the request of the Company in order to pay or as reimbursement to the Company for payments made by it for Project Costs.

The Company shall use the proceeds of the Note to pay, or as reimbursement to the Company for payments made by it for, the costs of the Project, including expenditures in connection with (i) the preparation of plans and specifications for the Project Facilities (including any preliminary study or planning of the Project Facilities or any aspect thereof) and payment of any architectural, engineering or supervisory fees and expenses, (ii) costs of demolition of any existing building or structure, (iii) the construction of the Project Facilities, including but not limited to labor, services, materials and supplies used in construction, and all construction, acquisition and installation expenses required to provide utility services or other facilities, and all real or personal properties deemed necessary in connection with the Project Facilities (including architectural, engineering and supervisory services with respect to any of the foregoing), (iv) the acquisition of equipment for use and/or installation at the Project Facilities, (v) Issuance Costs related to the Note (not to exceed 2% of the issue price of the Note as set forth in Section 2.3(H) hereof), and (vi) any other costs and expenses relating to the Project Facilities (all of the foregoing, the "Project Costs").

On the Closing Date, the Company shall pay the Lender a Commitment Fee of \$55,000.

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**ARTICLE 5**  
**THE COMPANY'S COVENANTS**

Section 5.1. Assignment. The Company recognizes the authority of the City to assign its interest in this Loan Agreement and pledge all money receivable under this Loan Agreement (other than any payments required to be made to the City under Sections 5.4 or 7.4 hereof) to the Lender as security for the payment of the principal of and interest on the Note and the payment of all fees and expenses of the Lender and others as provided herein and consents to such assignment.

Section 5.2. General Covenants of the Company. The Company covenants and agrees with the City and the Lender that the Company will:

A. Repay the Loan by making Loan Payments which will be at all times sufficient to provide for the prompt payment of the principal of, premium, if any, and interest on the Note.

B. Pay or cause to be paid all expenses of the operation and maintenance of the Project Facilities, including property and liability insurance in the amounts and with the coverage determined by the Company, and pay or cause to be paid all taxes and special assessments levied upon or with respect to the Project Facilities. To this end, the Company agrees to perform all of the terms and covenants of the Mortgage as fully as if the Mortgage were set forth in full herein.

C. Maintain the Project Facilities in good repair and in good operating condition at its own cost making such repairs and replacements as are necessary in the judgment of the Company so that the interest on the Note will not become includable in the gross income for federal income tax purposes of the recipient.

D. Comply throughout the term of the Note with all requirements of the Code, and any regulations promulgated thereunder, to assure that interest on the Note shall at all times be free from federal income taxation.

E. Not lease the Project Facilities or enter into an operating contract for the Project Facilities except to a Tax-Exempt Organization whose activities with respect to the Project Facilities will not constitute an unrelated trade or business for more than 5% of the square feet of the entire facility.

F. Provide the Lender such information, including copies of records and documents of the Company, as the Lender may from time to time reasonably request in order to determine whether the Company has complied with its obligations under this Loan Agreement and the Mortgage subject to the limits of HIPAA regulations.

G. Maintain the Project Facilities in compliance with the ADA Accessibility law.

H. Permit the Lender, its representative or agent authorized in writing, at the Lender's expense, to visit and inspect the Project Facilities and examine, make copies and



extracts of, the Company's books of account, records, reports, and other papers, at reasonable times and upon reasonable notice subject to the limitations of HIPAA regulations.

I. The Company will not use (or permit to be used) the Project Facilities or use or invest (or permit to be used or invested) the proceeds of the Note or any other sums treated as "bond proceeds" under Section 148 of the Code including "investment proceeds," "invested sinking funds" and "replacement proceeds," in such a manner as to cause the Note to be, classified as an "arbitrage bond" within the meaning of Section 148 of the Code and applicable Treasury Regulations or a "federally guaranteed obligation" within the meaning of Section 149(b) of the Code.

J. The average maturity of the Note does not exceed one hundred twenty percent (120%) of the average reasonably expected economic life of the Project Facilities within the meaning of Section 147(b) of the Code.

K. The Company, on behalf of the City, shall pay to the United States, as a rebate, an amount equal to the sum of (i) the excess of (A) the aggregate amount earned on all nonpurpose obligations (other than investments attributable to an excess described in this clause), over (B) the amount which would have been earned if all nonpurpose obligations were invested at a rate equal to the yield on the Note, plus (ii) any income attributable to the excess described in clause (i) at the times and in the amounts required by Section 148(f) of the Code, all within the meaning of Section 148(f) of the Code. The Company shall maintain records of the interest rate borne by the Note in adequate detail to enable the Company to calculate the amount of any rebate required to be made to the United States. The Company shall pay the rebate to the United States at times and in installments which satisfy Section 148(f) of the Code and the regulations, at least once every five years and within thirty (30) days after the day on which the Note is paid in full. Calculations of the amount to be rebated shall be made by the Company at least every five (5) years, and the City and the Lender shall be furnished with such calculations within sixty (60) days of the time they are made. Such calculations shall be retained until six years after the retirement of the Note. The rebate shall be calculated in a manner consistent with Section 148(h) of the Code and Treasury Regulations thereunder. The Company shall avoid prohibited payments with respect to nonpurpose obligations under the Code.

L. The Company will fulfill all conditions specified in Sections 103 and 141 through 150 of the Code and applicable Treasury Regulations as necessary to maintain the tax-exempt status of the interest borne by the Note and will not otherwise use Note proceeds, including earnings thereon, or take, or permit or cause to be taken, any action that would adversely affect the exclusion of the interest on the Note from gross income for purposes of federal income taxation, nor otherwise omit to take or to cause to be taken any action necessary to maintain such tax-exempt status; and, if it should take or permit, or omit to take or to cause to be taken, as appropriate, any such action, the Company shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

M. The net sale proceeds of the Note will be used to finance the Project and pay costs of issuance, and no other purpose or property. The Project Facilities and the Land will be owned by Tax Exempt Organizations or by governmental units (within the meaning of Section 141 of the Code) while the Note is outstanding.

N. [Intentionally Omitted.]

O. [Intentionally Omitted.]

P. The Company is and will remain at all times until the Note has been fully paid and retired a Tax Exempt Organization.

Q. The Company is not a private foundation as defined in Section 509(a) of the Code.

R. [Intentionally Omitted.]

S. The proceeds of the Note, including income from investment thereof, will not exceed the amount necessary for the governmental purposes of the Note.

T. [Intentionally Omitted.]

U. The Company covenants that it will not spend less than ninety-five percent (95%) of the proceeds of the Note to pay the costs of acquisition and construction of the Project (not including costs of issuance of the Note) and the Company will not use more than two percent of the amount drawn under the Note for payment of "issuance costs" within the meaning of Section 147(g) of the Code.

V. [Intentionally Omitted.]

W. No portion of the Project Facilities will be used (i) by a Tax-Exempt Organization in an activity that constitutes an unrelated trade or business, or (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) or (iii) in a use not permitted within the meaning of Section 145(a) of the Code.

X. [Intentionally Omitted.]

Y. Neither the Company nor any "related party," as defined in Treasury Regulations, Section 1.150-1(b), shall, pursuant to an arrangement, formal or informal, purchase the Note in an amount related to the obligations payable by such party under this Loan Agreement or any other "acquired purpose obligation," acquired by the City from the Company or any such related party.

Section 5.3. Continuing Existence and Qualification. The Company will maintain its existence as a Minnesota nonprofit corporation and will take no action nor suffer any action to be taken by others which will alter, change or destroy its status as a Tax-Exempt Organization. The Company will remain duly qualified to do business in the State and will

not dispose of all or substantially all of its assets by sale, lease, or otherwise, or consolidate with or merge into another entity or permit any other entity to consolidate with or merge into it unless:

A. The Lender provides its prior written consent to such merger or consolidation;

B. The surviving, resulting or transferee entity, as the case may be, if other than the Company, is organized under the laws of the United States or one of the states thereof, shall have a total unrestricted fund balance at least equal to that of the Company as of the date of such consolidation, merger or transfer, and shall be duly qualified to do business in the State;

C. At least thirty (30) days before any merger, consolidation or transfer of assets becomes effective, the Company shall give the City and the Lender written notice of the proposed transaction;

D. Prior to any merger, consolidation or transfer of assets, an opinion of Bond Counsel shall be delivered to the City and the Lender stating that such merger, consolidation or transfer of assets will not cause interest on the Note to become includable in the gross income of the Noteholder for federal income tax purposes; and

E. Prior to any merger, consolidation or transfer of assets, the surviving, resulting or transferee entity, as the case may be, if other than the Company, shall deliver to the City and the Lender a written instrument assuming all of the obligations of the Company under this Loan Agreement and the other Company Documents and an opinion of counsel for such successor Company stating that such instrument is (subject to customary qualifications) a valid, binding and enforceable obligation of such successor and that all of the conditions of this Section have been satisfied, and thereafter the Company may merge, consolidate or dispose of all or substantially all of its assets and thereafter dissolve.

Section 5.4. Indemnity.

A. The Company will pay, and will protect, indemnify and save the City and the Lender, their officers, employees and agents harmless from and against all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees), causes of action, suits, claims, demands and judgments of any nature arising from:

(i) Any injury to or death of any person or damage to property in or upon the Project Facilities or growing out of or connected with the use, non-use, condition or occupancy of the Project Facilities or any part thereof;

(ii) Any violation of any agreement or covenant of this Loan Agreement or the Mortgage, except by the City or the Lender as the case may be;

(iii) Any violation of any contract, agreement or restriction by the Company relating to the Project Facilities;

(iv) Any violation by the Company of any law, ordinance or regulation affecting the Project Facilities or any part thereof or the ownership, occupancy or use thereof;

(v) Any statement or information relating to the expenditure of the proceeds of the Note contained in the Company's Tax Certificate or similar document furnished by the Company to the City or the Lender which, at the time made, is misleading, untrue or incorrect in any material respect;

(vi) Any other cause whatsoever pertaining to the issuance, sale and delivery of the Note, the refinancing and operation of the Project Facilities, or any action taken in good faith by the City or the Lender, their officers and employees, to carry out the transaction contemplated by this Loan Agreement; and

(vii) Compliance with an audit, random or otherwise, by the Internal Revenue Service, the Minnesota Department of Revenue, the Minnesota Office of the State Auditor, or any other governmental agency with respect to the Note.

B. The provisions of this Section shall survive payment of the Note and termination of this Loan Agreement.

Section 5.5. Reports to Governmental Agencies. The Company will furnish to agencies of the State such periodic reports or statements as are statutorily required throughout the term of this Loan Agreement, or, to the extent the City is required to furnish such reports, will cooperate with the City in furnishing all information reasonably necessary and will indemnify the City for any costs incurred. Annually, not later than March 1, in every year while any portion of the Note remains outstanding, the Company agrees to provide a report to the City documenting the then-outstanding principal amount of the Note. This provision cannot be enforced by the Lender.

Section 5.6. Equipment. The Company covenants and agrees to keep the Project Facilities fully and properly furnished and equipped. If any such furniture or equipment becomes inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for the operation of the Project Facilities, the Company shall have the right to acquire and install substitute or replacement furniture or equipment, including through finance lease transactions, which substitute or replacement furniture or equipment may be subject to a purchase money lien.

Section 5.7. Financial Statements; Annual Certificate. The Company agrees to keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of the Company, in accordance with generally accepted accounting principles consistently applied. The Company agrees to furnish the Lender within one hundred twenty (120) days after the last day of each Fiscal Year, the audited financial statements of the sole member of the Guarantor, of which the Company will be included in the consolidating detail for such Fiscal Year, accompanied by (i) a written report thereon of Independent certified public accountants, which written report of Independent certified public accountants shall include a written statement that in

making such audit the accountants have obtained no knowledge of any Event of Default or event which, with notice or lapse of time, or both, would constitute an Event of Default, or if they have obtained knowledge of any such event, disclosing the nature thereof, but such accountants shall not hereby be liable directly or indirectly to the Lender for failure to obtain knowledge of any default, and (ii) a Company Certificate substantially in the form attached hereto as Exhibit A. The Company will also furnish to the Lender (a) for each Fiscal Year, an internally prepared balance sheet and related statements of revenues and expenses and cash flows comparing the current Fiscal Year to the preceding fiscal year, such comparative statement to be delivered with the audited financial statements for such Fiscal Year, (b) internally prepared quarterly financial statements of the Company within 45 days of the end of each fiscal quarter and (c) such other financial information as the Lender may, from time to time, reasonably request.

Section 5.8. Financial Covenants.

A. Beginning with the Fiscal Year ended December 31, 2024, the Company shall maintain a Debt Service Coverage Ratio for each Fiscal Year of at least 1.2 to 1. Notwithstanding the foregoing, for each Fiscal Year ending after the release of the Guaranty, if the Company maintains a Debt Service Coverage Ratio of at least 1.2 to 1 exclusive of any distributions to, or equity contributions from, its affiliates and a Days Cash on Hand Ratio of at least 90 days, then the Company's required minimum Debt Service Coverage Ratio for each such Fiscal Year will be reduced to 1.0 to 1, inclusive of distributions to affiliates.

B. Commencing with the Fiscal Year in which the Guaranty is released, the Company agrees to maintain a Days Cash on Hand Ratio for each Fiscal Year of at least 60 days.

C. The covenants contained in this Section may be modified by written agreement between the Company and the Lender without involvement of the City.

Section 5.9. Calculation of Indebtedness and Annual Debt Service. For all purposes of this Loan Agreement, Indebtedness and Annual Debt Service shall be calculated in accordance with the following rules:

A. There shall be excluded from Annual Debt Service any item of Indebtedness, or interest on any item of Indebtedness, for the payment, prepayment, redemption or satisfaction of which in accordance with its terms there shall have been deposited irrevocably in trust with a depository satisfactory to Lender, whose consent shall not be unreasonably withheld, the funds necessary for payment of such item of indebtedness or interest on such item of indebtedness.

B. There shall be excluded from Indebtedness any item of Indebtedness which is owed by the Company to an affiliate which is subordinate to the Note.

C. Annual Debt Service for any item of Indebtedness shall be calculated on the assumption that such indebtedness will be paid when due, including any sinking fund or

other analogous fund required to be maintained for payment of an installment or portion of such Indebtedness.

Section 5.10. Replacement Reserve Fund. The Company shall deposit \$65,000 in the Replacement Reserve Fund to be established with the Lender on or prior to January 1, 2025. Disbursements from the Replacement Reserve Fund shall be made on request by the Company for capital repairs and improvements to the Project. If the balance of the Replacement Reserve Fund falls below \$65,000, the Company will deposit \$2,000 per month into the Replacement Reserve Fund until the balance is at least \$65,000.

Section 5.11. Depository and Treasury Management Relationship. The Company shall maintain its main depository, checking and treasury management relationship with the Lender while the Note is outstanding.

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**ARTICLE 6**  
**TERMINATION**

Section 6.1. Termination Upon Retirement of the Note. At such time as no principal balance on the Note remains outstanding, and arrangements satisfactory to the Lender and the City have been made for the discharge of all other accrued liabilities, if any, under this Loan Agreement, this Loan Agreement shall by its terms terminate.

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

**ARTICLE 7**  
**EVENTS OF DEFAULT AND REMEDIES**

Section 7.1. Events of Default. Any one or more of the following events is an Event of Default under this Loan Agreement:

A. If the Company shall fail to pay any Loan Payment required under this Loan Agreement on or before the date that the payment is due and such failure shall continue for fifteen (15) days;

B. If the Company shall fail to observe and perform any other covenant, condition or agreement on its part under this Loan Agreement for a period of thirty (30) days after written notice, specifying such default and requesting that it be remedied, given to the Company by the City or the Lender, unless the Lender shall agree in writing to an extension of such time prior to its expiration;

C. If the Company shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present state law, or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer seeking a reorganization, arrangement with creditors or similar relief under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof, or a receiver, trustee or liquidator of the Company, or of all or substantially all of the assets of the Company, or of the Project Facilities, shall be appointed in any proceeding brought against the Company and shall not be discharged within ninety (90) days after such appointment or if the Company shall consent to or acquiesce in such appointment;

D. If any event of default has occurred under any of the other Company Documents and is continuing, notwithstanding any other provisions of this Loan Agreement;

E. If there is a determination that any representation or warranty made by the Company in this Loan Agreement or the other Company Documents or in any certificate, document or instrument furnished in connection with the issuance and sale of the Note or under the terms of this Loan Agreement or the other Company Documents is untrue in any material respect;

F. If the Company defaults in the payment of any Indebtedness for money borrowed in a principal amount in excess of \$275,000, and such default is sufficient to accelerate payment of such principal amount, unless such default is waived by the Person to whom such Indebtedness is owed or unless the Company has good faith defenses to such payment and establishes adequate cash reserves with respect to such Indebtedness; or

G. The Guarantor revokes or purports to revoke the Guaranty or to pay when due any amounts required to be paid by the Guarantor under the Guaranty; or



H. If a judgment for payment of money in an amount in excess of \$275,000 and not fully covered by insurance is entered against the Company and is not stayed or discharged within sixty (60) days thereafter.

I. If there is an event of default under any of the following documents: (i) the Loan Agreement dated of even date herewith between Hampton and the Company and pledged to the Lender, (ii) the Loan Agreement dated of even date herewith between Landfall Village and the Company and pledged to the Lender, (iii) the Loan Agreement dated of even date herewith between Little Canada and the Company and pledged to the Subordinate Bonds Trustee, (iv) any of the Series 2021 Obligations, or (vi) any other documents issued in connection with the documents listed in this Section.

Section 7.2. Remedies. Whenever any Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken by the City, with the prior written consent of the Lender, or by the Lender, pursuant to Section 7.6 hereof:

A. Declare all installments of the loan payable under this Loan Agreement (being an amount equal to that necessary to pay in full the principal balance of the Note assuming acceleration of the Note under the terms thereof and pay all other indebtedness thereunder) to be immediately due and payable, whereupon the same shall become immediately due and payable by the Company; and

B. Take whatever action at law or in equity may appear necessary or appropriate to collect the amounts then due and thereafter to become due or to enforce performance and observance of any obligation agreement or covenant of the Company under this Loan Agreement.

**THE COMPANY IS HEREBY ADVISED THAT THE LENDER HAS THE RIGHT TO PROCEED TO OBTAIN AND COLLECT A DEFICIENCY JUDGMENT AGAINST THE COMPANY TOGETHER WITH A FORECLOSURE OF THE PROPERTY DESCRIBED IN THE MORTGAGE UNDER APPLICABLE LAWS.**

Section 7.3. Manner of Exercise. No remedy herein conferred upon or reserved to the City and the Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Company Documents or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City or the Lender to exercise any right reserved to it in this Article, it shall be necessary to give only such notice as may be herein or therein expressly required, but no remedy shall be exercised by the City without the prior written consent of the Lender).

Section 7.4. Attorneys' Fees and Expenses. If because of any default by the Company under this Loan Agreement, the City or the Lender employs attorneys or incurs other expenses for the collection of payments or the enforcement of performance of any obligation or agreement on the part of the Company, the Company will, on demand and receipt

of an accounting therefor, pay to the City or the Lender, respectively, the reasonable fee of such attorneys and such other reasonable and necessary expenses so incurred.

Section 7.5. Effect of Waiver. The Lender may, in its discretion, waive any Event of Default hereunder and its consequences and rescind any declaration of acceleration of principal; provided, however, that no action or inaction by the Lender shall be deemed a waiver of any of the Lender's rights or remedies unless the Lender specifically agrees in writing that such action or inaction will constitute a waiver of its rights or remedies. Any waiver shall only apply to the particular instance for which it was agreed. No delay by either party in exercising and no failure by either party in exercising any right or remedy hereunder, or afforded by law, shall be a waiver of or preclude the exercise of any right or remedy hereunder, or provided by law, whether on such occasion or any future occasion, nor shall such delay be construed to be a waiver of any Event of Default or acquiescence therein. The exercise or the beginning of the exercise of one right or remedy shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

Section 7.6. The Lender's Exercise of the City's Remedies. Whenever any Event of Default shall have happened and be subsisting the Lender may, but shall not be obliged to, exercise any or all of the rights of the City under this Article 7, upon notice as required of the City unless the City has already given the required notice.

Section 7.7. Application of Money. The proceeds and avails of any remedy hereunder, other than any remedy exercised by the City under the last sentence of Section 7.2(B) hereof, shall be applied as follows:

- A. First, to the payment of all costs and proper expenses (including reasonable attorneys' fees as permitted by law), liabilities incurred, or advances made hereunder by the City or the Lender;
- B. Second, to the payment to the Lender of any late fee, prepayment fee, or other fees due on the Note as described in the Note or in this Loan Agreement;
- C. Third, to the payment to the Lender, on behalf of the City, of the amount then owing or unpaid for principal and interest due on the Note and in case any such proceeds shall be insufficient to pay the whole amount so due, then first to the payment of interest thereon and then to the payment of principal;
- D. Fourth, to the payment of the Lender, on behalf of the City, of any amounts to be applied towards prepayment of the principal installments of the Note in inverse order of maturity and in a manner consistent with the terms of the Note; and
- E. Fifth, to the payment of any excess to the Company, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

Section 7.8. Late Fee. In the event that any Loan Payment under Section 3.2 is made more than ten (10) **[business]** days after the date due, a late payment fee of five percent (5%) of the amount of the payment which is late shall be paid by the Company to the Lender.

**ARTICLE 8**  
**GENERAL**

Section 8.1. Notices. All notices of an Event of Default hereunder shall be sufficiently given when delivered in person to an officer of the Company or when mailed by certified or registered mail, postage prepaid, to the Company with proper address as indicated in this Section. Notices of any prepayment or redemption shall be given to the registered Holder of the Note by first-class mail at least 60 days prior to the date fixed for prepayment or redemption. All other notices, certificates and communications hereunder are properly and sufficiently given when delivered in person to an officer of the party to whom directed or when mailed to such party by regular mail, postage prepaid, with proper address as indicated in this Section. All mailed notices, certificates and communications shall be deemed given three (3) days after the date of deposit in the mail. The City, the Company and the Lender may, by written notice given by each to the others, designate any other address or addresses to which notices, certificates or other communications or matters to them shall be sent when required as contemplated by this Loan Agreement. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

To the City:	City of Falcon Heights 2077 Larpenteur Ave. W. Falcon Heights, MN 55113 Attn: City Administrator
To the Company:	New Harmony Care Center, Inc. 7171 Ohms Lane Edina, MN 55439 Attn: Chief Financial Officer
To the Lender: (one copy)	Bremer Bank, National Association 225 South Sixth Street Minneapolis, MN 55402 Attn: David Borden
(one copy)	Kutak Rock LLP 60 South Sixth Street, Suite 3400 Minneapolis, MN 55402 Attn: David C. Murphy

Section 8.2. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the City and the Company and their respective successors and assigns. Nothing contained herein or in any related document may be deemed to render the Lender or the City a partner of the Company for any purpose. This Loan Agreement has been executed for the sole benefit of the City and the Lender, and no third party is authorized to rely upon the City's or the Lender's rights hereunder or to rely upon an assumption that either the City or the Lender has or will exercise its rights under this Loan Agreement or under any document referred to herein.

Section 8.3. Severability. If any term, condition or provision of this Loan Agreement or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder thereof and the application of such term, provision and condition to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Loan Agreement and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and be complied with to the full extent permitted by law.

Section 8.4. Amendments, Changes and Modifications. Except as otherwise provided in this Loan Agreement or the Mortgage, subsequent to the Closing Date and before the Mortgage is terminated in accordance with its terms, this Loan Agreement and the Note may be effectively amended, changed, modified, altered or terminated with the written consent of the Lender, provided that no consent is required of the City.

Section 8.5. Execution Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.6. Limitation on the City's Liability. No agreement or provision contained in this Loan Agreement or any agreement, representation, covenant or undertaking by the City contained in any document executed by the City in connection with the Project Facilities shall give rise to any pecuniary liability of the City or a charge against its general credit or taxing powers, or shall obligate the City financially in any way except with respect to this Loan Agreement and the application of revenues therefrom and the proceeds of the Note. No failure of the City to comply with any term, condition, covenant or agreement herein, or in any other document executed by the City in connection with the Project Facilities, shall subject the City to liability for any claim for damages, costs or other financial or pecuniary charges except to the extent that the same can be paid or recovered from this Loan Agreement or revenues therefrom or proceeds of the Note.

Section 8.7. Governing Law and Construction. The validity, construction and enforceability of this Loan Agreement and the Note shall be governed by the internal laws of the State, without giving effect to conflict of laws or principles thereof, but giving effect to federal laws of the United States applicable to national banks. Whenever possible, each provision of this Loan Agreement and any other statement, instrument or transaction contemplated hereby or relating hereto, shall be interpreted in such manner as to be effective and valid under such applicable law, but, if any provision of this Loan Agreement or any other statement, instrument or transaction contemplated hereby or relating hereto shall be held to be prohibited or invalid under such applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Loan Agreement or any other statement, instrument or transaction contemplated hereby or relating hereto.

Section 8.8. Electronic Signatures. The parties agree that the electronic signature of a party to this Loan Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Loan Agreement. For purposes of this Section: (i) "electronic signature" means a manually signed original signature, an electronic image of a

handwritten signature, or a digital signature provided by DocuSign, Adobe Sign, or any other electronic signature provider acceptable to the parties, which in each case is transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a PDF (i.e. portable document format) or other replicating image attached to an electronic mail or internet message.

Paper copies or "printouts" of this Loan Agreement, if introduced as evidence in any judicial, arbitral, mediation, or administrative proceeding will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party may contest the admissibility of true and accurate copies of documents transmitted by electronic means and containing, or to which there is affixed, an electronic signature on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

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

IN WITNESS WHEREOF, the City and the Company have caused this Loan Agreement to be executed in their respective names, all as of the date first above written.

CITY OF FALCON HEIGHTS, MINNESOTA

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

By: \_\_\_\_\_  
Its: City Administrator

Signature page to Loan Agreement between  
City of Falcon Heights, Minnesota and New Harmony Care Center, Inc.

NEW HARMONY CARE CENTER, INC.

By: \_\_\_\_\_  
Its: Chief Financial Officer

Signature page to Loan Agreement between  
City of Falcon Heights, Minnesota and New Harmony Care Center, Inc.

**ACKNOWLEDGEMENT OF LENDER**

The Lender has read the preceding Loan Agreement between City of Falcon Heights, Minnesota and New Harmony Care Center, Inc. and agrees to be bound by provisions therein relating to the Lender.

BREMER BANK, NATIONAL  
ASSOCIATION

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

Signature page to Loan Agreement between  
City of Falcon Heights, Minnesota and New Harmony Care Center, Inc.



**EXHIBIT A**

**FORM OF COMPLIANCE CERTIFICATE**

Bremer Bank, National Association  
225 South Sixth Street  
Minneapolis, MN 55402  
Attn: David Borden

Re: Loan Agreement, dated as of May 1, 2021 ("Loan Agreement"), between New Harmony Care Center, Inc., a Minnesota nonprofit corporation ("Company") and City of Falcon Heights, Minnesota, a political subdivision, as assigned to Bremer Bank, National Association ("Bank")

Ladies and Gentlemen:

The undersigned, the Chief Financial Officer of the Company, hereby certifies that, as of the end of the fiscal year ended December 31, 20\_\_, the computations of financial covenants and tests contained in the Loan Agreement and related documents are as follows:

Income Available for Debt Service

a) Operating Income (or loss)	\$ _____
b) Plus Interest Income	
c) Plus unrestricted gifts and grants	
d) Plus depreciation and amortization	
e) Plus interest expense	
f) Plus equity contributions	
g) Less distributions	\$ _____
<b>TOTAL</b>	<b>\$ _____</b>

Debt Service (monthly payment x 12) \_\_\_\_\_  
Required: 120% of Annual Debt Service \_\_\_\_\_  
Amount Over (Under) \_\_\_\_\_

Days Cash on Hand Ratio \_\_\_\_\_

All capitalized terms not defined herein shall have the meaning ascribed to them in the Loan Agreement. This Compliance Certificate is the Company Certificate referred to in Section 5.7 of the Loan Agreement.

The undersigned further confirms that each representation and warranty contained in the Loan Agreement and related documents is true and accurate as of the date hereof.

The undersigned further confirms that as of the date hereof no Event of Default has occurred and is continuing and no event which with the giving notice or the passage of time or both would constitute an Event of Default has occurred and is continuing.\*

Sincerely,

NEW HARMONY CARE CENTER, INC.

By: \_\_\_\_\_  
Its: Chief Financial Officer

\* If the foregoing sentence is not correct, in lieu of the foregoing sentence, describe the default or Event of Default and the status thereof.

**UNITED STATES OF AMERICA  
STATE OF MINNESOTA**

**CITY OF FALCON HEIGHTS, MINNESOTA**

**SENIOR HOUSING AND HEALTHCARE REVENUE NOTE  
(NEW HARMONY PROJECT), SERIES 2021C**

**Dated Date: May [ ], 2021**

No. R-1

**[\$8,000,000]**

1. THE CITY OF FALCON HEIGHTS, MINNESOTA, a municipal corporation and political subdivision of the State of Minnesota (the “Issuer”), for value received, hereby promises to pay to the order of Bremer Bank, National Association, Minneapolis, Minnesota, or registered assigns (the “Purchaser” or the “Registered Owner”), from the source and in the manner hereinafter provided, the principal sum of **[Eight]** Million Dollars (**[\$8,000,000]**), or so much thereof as has been advanced and remains unpaid from time to time (the “Principal Balance”), with interest on the outstanding Principal Balance at the Interest Rate determined as hereinafter provided. The principal and interest shall be paid in any coin or currency which at the time or times of payment is legal tender for the payment of public and private debts in the United States of America.

2. The Issuer shall loan the proceeds of the Note to New Harmony Care Center, Inc., a Minnesota nonprofit corporation (the “Borrower”), the sole member of which is Elim Care, Inc., a Minnesota nonprofit corporation, the sole member of which is Cassia, a Minnesota nonprofit corporation, pursuant to the Loan Agreement between the Issuer and the Borrower, dated as of May 1, 2021 (the “Loan Agreement”).

3. Principal and interest on this Note is payable as follows:

(a) On the first day of each month, commencing on **[July]** 1, 2021, to and including **[May]** 1, 2023 (the “Conversion Date”), monthly installments of interest only shall be paid to the Purchaser in the amount of interest accrued on the outstanding Principal Balance of this Note at the Initial Interest Rate or, in certain cases, at the Modified Tax-Exempt Rate or the Taxable Rate (each as defined below);

(b) On the first day of each month, commencing **[June]** 1, 2023, to and including the next succeeding Interest Rate Adjustment Date (defined below), level monthly installments of principal and interest shall be paid in an amount computed by the Purchaser to be the amount necessary to amortize the then-outstanding Principal Balance of the Note over a twenty-three (23) year period commencing on the Conversion Date and ending on **[May]** 1, 2046 (the “Final Maturity Date”), at the Initial Interest Rate or Adjusted Interest Rate (hereinafter defined) then in effect, as the case may be, or, in certain cases, at the Modified Tax-Exempt Rate or the Taxable Rate then in effect (each as defined below);

(c) The Purchaser, with 180 days' written notice to the Borrower, has the option to require the Borrower to pay the remaining outstanding principal and interest on this Note, plus accrued interest thereon on [May] 1, 2031 and 2041; and

(d) On the Final Maturity Date, all remaining outstanding principal of this Note plus accrued interest thereon shall be immediately due and payable.

(e) If any payment required to be made on this Note is not paid within ten (10) days of the due date thereof, the Borrower shall pay to the Purchaser a late charge equal to five percent (5%) of the amount of such installment.

(f) In all cases interest shall be calculated on the basis of a year of three hundred sixty (360) days and charged for actual days that principal is unpaid.

*Initial Interest Rate:* The interest on the outstanding principal of this Note commencing on the Dated Date shall be equal to \_\_\_\_% (the "Initial Interest Rate").

*Adjusted Interest Rate:* On [May] 1, 2026, and on each [May] 1 in the years 2031, 2036, and 2041 (each such date, an "Interest Rate Adjustment Date"), the interest rate on this Note will adjust to an interest rate per annum ("Adjusted Interest Rate") determined by the Purchaser on each such date (or if it is not a business day, on the next succeeding business day) to be the rate per annum equal to seventy-nine percent (79%) of the sum of (i) the five (5) year U.S. Treasury Rate in effect on that Interest Rate Adjustment Date plus (ii) 250 basis points (each such computed rate, an "Adjusted Interest Rate"); provided, however, that no Adjusted Interest Rate shall be lower than 2.77% per annum nor higher than 235 basis points more than the immediately preceding interest rate (whether the Initial Interest Rate or an Adjusted Interest Rate) or higher than 350 basis points more than the Initial Interest Rate. Further provided, this provision shall not apply to the Taxable Rate (as defined below).

*Modified Tax-Exempt Rate:* If there is a change in the Maximum Federal Corporate Tax Rate (defined below) as a result of a change in law, the interest rate on this Note shall be adjusted by the Purchaser to equal (a) the interest rate before the adjustment, times (1 - new Maximum Federal Corporate Tax Rate), divided by (b) 0.79 (the "Modified Tax-Exempt Rate"). The Purchaser shall provide the Borrower with [30 days' notice] of any such adjustment and the resulting interest rate. **[If the interest rate on this Note is increased due to such adjustment, this Note is subject to optional prepayment without penalty within nine (9) months of such adjustment.]** As used herein, the "Maximum Federal Corporate Tax Rate" means the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Internal Revenue Code of 1986, as amended (the "Code"), as in effect from time to time or, if as a result of a change in the Code the rate of income taxation imposed on corporations generally shall not be applicable to the Purchaser, the maximum statutory rate of federal income taxation which would apply to the Purchaser.

*Taxable Rate:* If the interest on the Note should become subject to federal income taxation pursuant to a Determination of Taxability, then the per annum rate of interest of this Note shall be automatically increased effective as of the Date of Taxability to a rate equal to the interest rate calculated hereinabove and then in effect divided by (1 - Maximum Federal Corporate Tax Rate)

(the “Taxable Rate”). In that event, the Borrower shall forthwith pay to the Purchaser the aggregate difference between (i) the amounts actually paid hereunder between the Date of Taxability and the date of receipt of notice of the Determination of Taxability and (ii) the amounts which would have been due during such period if the increased interest rate had been in effect.

If on an Interest Rate Adjustment Date, the outstanding principal amount of this Note bears interest at the Taxable Rate, the Taxable Rate will adjust to a rate (the “Adjusted Taxable Rate”) that is determined by the Purchaser on each such date (or if such date is not a business day, on the next succeeding business day) to be the rate per annum equal the sum of (i) the five (5) year U.S. Treasury Rate in effect on that Interest Rate Adjustment Date plus (ii) 250 basis points. In no event shall the Adjusted Taxable Rate be less than 2.77% per annum.

In all cases interest shall be calculated on the basis of a year of three hundred sixty (360) days and charged for actual days principal is unpaid.

If any payment required to be made on this Note is not paid within ten (10) days of the due date thereof, the Borrower shall pay to the Purchaser a late charge equal to five percent (5%) of the amount of such installment.

4. This Note is issued pursuant to Minnesota Statutes, Chapter 462C, as heretofore and hereafter amended (the “Act”), and in conformity with the provisions, restrictions and limitations thereof, has been authorized by law to be issued and has been issued for the purpose of funding a loan from the Issuer to the Borrower in order to finance costs incurred with respect to the Project described in the Loan Agreement. This Note is issued pursuant to the Loan Agreement and a Resolution duly adopted by the City Council of the Issuer on March 10, 2021 (the “Note Resolution”). Pursuant to a Pledge Agreement, dated as of May 1, 2021, between the Issuer and the Purchaser (the “Pledge Agreement”), the Issuer has assigned its interest in the Loan Agreement (except for certain unassigned rights, including its rights to indemnity and payment of fees, expenses and advances) to the Purchaser. This Note is secured by the Loan Agreement, the Pledge Agreement, the Mortgage, the Assignment, and the Guaranty, each as defined in the Note Resolution, as well as a Security Agreement between the Borrower and the Purchaser (collectively, the “Note Documents”). Reference is hereby made to all such documents and any supplements thereto for a description and limitation of the property, revenues and funds pledged and appropriated to the payment of the Note, the nature and extent of the security thereby created, the rights of the owner of the Note, and the rights, immunities and obligations of the Issuer thereunder.

5. This Note shall never constitute an indebtedness of the Issuer, within the meaning of any state constitutional provision or statutory limitation, and shall not constitute nor give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers and does not grant to the owner of this Note any right to have the Issuer levy any taxes or appropriate any funds for the payment of the principal hereof or interest hereon, nor is this Note a general obligation of the Issuer or the individual officers or agents thereof. This Note and interest hereon are payable solely from the moneys received under the Loan Agreement, including loan repayments to be made by the Borrower and the security provided therefor.

6. **[On or prior to the Conversion Date, this Note is subject to optional prepayment on any date without premium. After the Conversion Date,]** this Note is subject

to optional prepayment on any date at a prepayment price equal to the principal amount to be prepaid on such date plus accrued interest plus premium of two percent (2%) of the principal amount prepaid. Notwithstanding the preceding sentence, this Note may be optionally redeemed in whole or in part, without premium, (1) in certain events of damage, destruction or condemnation, (2) in an amount not to exceed 15% of the outstanding principal of the Note as of January 1 of such year provided the funds are solely from the Borrower's internal resources, and (3) on any date within 60 days prior to an Interest Rate Adjustment Date; provided the Borrower gives 60 days' written notice to the Note Holder. The Borrower shall also give 60 days' written notice to the Note Holder for any prepayments that exceed 15% of the outstanding principal of the Note. All prepayments shall be applied first to accrued interest and then to principal. All prepayments applied to principal shall be applied to installments of principal in inverse order of maturity. Reamortization of the Note upon a partial prepayment shall be made by the Purchaser upon request of the Borrower provided the Borrower is not in default under the Note or the Loan Agreement.

7. Notice of any such prepayment or redemption shall be given to the Registered Owner of this Note by first-class mail, addressed to such owner at its registered address, at least sixty (60) days prior to the date fixed for prepayment or redemption except as provided above.

8. This Note has been designated as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

The Purchaser may extend the times of payment of interest and/or principal of or any penalty, charge or premium due on this Note, except the date of final maturity, with the consent of the Issuer but without any requirement of notice to or the consent of any other party liable herein and without releasing any such party.

All of the agreements, conditions, covenants, provisions and stipulations contained in the Note Documents are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein.

This Note is transferable upon the books of the Issuer at the office of the City Administrator, by the registered holder in person or by its attorney duly authorized in writing, upon surrender hereof together with a written instrument of transfer satisfactory to the City Administrator, duly executed by the registered holder or its duly authorized attorney. Upon such transfer, the City Administrator will note the date of registration and the name and address of the newly registered holder in the registration blank appearing below. Alternatively, the City Administrator will, at the request of the registered holder, issue a new note in an aggregate principal amount equal to the unpaid Principal Balance of this Note, and of like tenor except as to number, principal amount, and the amount of the periodic installments payable thereunder, and registered in the name of the registered holder. The City Administrator may deem and treat the person in whose name this Note is last registered upon the books of the City Administrator, with such registration noted on this Note, as the absolute owner hereof for the purpose of receiving payment of or on account of the Principal Balance, prepayment price, or interest and for all other purposes; all such payments so made to the registered holder or upon its order shall be valid and effectual to satisfy and discharge the liability upon this Note to the extent of the sum or sums so paid, and the City Administrator shall not be affected by any notice to the contrary.

In case an event of default as defined in the Loan Agreement occurs, the principal of this Note outstanding may be declared or may become due and payable prior to the stated maturity hereof in the manner and with the effect and subject to the conditions provided in the Loan Agreement. In the event the Borrower should fail to make any loan payments required by the Loan Agreement within ten (10) days after the date due, the item in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon until paid at the rate per annum then payable under the Loan Agreement on the Loan, plus five percent (5%), or the maximum rate permitted by law, whichever is less.

The terms and provisions of the Note Resolution, the Loan Agreement, and the Pledge Agreement or of any instrument supplemental thereto, may be modified or altered only pursuant to Section 8.4 of the Loan Agreement.

It is intended that this Note is made with reference to and shall be construed as a Minnesota contract and governed by the laws thereof

This Note has been issued without registration under state, federal or other securities laws in reliance on an exemption therefrom. Consequently, this Note may not be assigned or transferred in whole or in part, nor may any participation interest in this Note be given pursuant to any participation agreement or otherwise except for participations by the Purchaser to other banks or financial institutions or except in accordance with such registration requirements or in reliance on an applicable exemption from such registration requirements.

[Remainder of page intentionally left blank;  
signature page follows.]

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, and things required to exist, happen, and be performed precedent to or in the issuance of this Note do exist, have happened, and have been performed in regular and due form as required by law.

IN WITNESS WHEREOF, the Issuer has caused this Note to be duly executed by the signatures of its Mayor and City Administrator, the seal having been intentionally omitted as permitted by law, all as of the Dated Date hereof.

CITY OF FALCON HEIGHTS, MINNESOTA

By: \_\_\_\_\_  
Mayor

Attest

By: \_\_\_\_\_  
City Administrator

Signature Page to City of Falcon Heights,  
Minnesota Senior Housing and Healthcare Revenue Note



**PROVISIONS OF REGISTRATION**

The ownership of the unpaid Principal Balance of this Note and the interest accruing therein is registered on the books of City of Falcon Heights, Minnesota, in the name of the registered Holder last noted below.

<u>Date of Registration</u>	<u>Name and Address of Registered Owner</u>	<u>Signature of the City Administrator</u>
Dated Date	Bremer Bank, National Association 225 South Sixth Street Suite 200 Minneapolis, Minnesota 55402	_____
_____	_____	_____
	_____	
	_____	_____
	_____	

**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

---

(Please print or type name and address of Transferee)

The within Note and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

---

Please Insert Social Security Number or Other  
Identifying Number of Assignee

---

Notice: The signature to this assignment must correspond with the name as it appears on the face of this Note in every particular, without alteration or any change whatever.

AGREEMENT TO PURCHASE  
(Series 2021C Note)

[May 03], 2021  
(Dated Date)

New Harmony Care Center, Inc.  
7171 Ohms Lane  
Edina, MN 55439

City of Falcon Heights, Minnesota  
2077 Larpenteur Ave. W.  
Falcon Heights, Minnesota 55113-5551

Ladies and Gentlemen:

The undersigned (the "Purchaser") hereby agrees to purchase from the City of Falcon Heights, Minnesota (the "Issuer") the Issuer's \$[8,000,000] Senior Housing and Healthcare Revenue Note (New Harmony Project), Series 2021C (the "Series 2021C Note") subject to the conditions hereinafter set out. The proceeds of the Series 2021C Note will be loaned and disbursed to, or at the direction of, New Harmony Care Center, Inc. (the "Borrower"), for the purpose of (i) financing the acquisition, construction, and equipping of a new senior healthcare and housing facility, including approximately 48 skilled nursing beds, 16 transitional skilled nursing beds, 35 independent apartment units, 36 assisted living apartment units, 14 memory care apartment units, and 12 care suite apartment units, to be located at 1534 County Road C East in the City of Maplewood, Minnesota (the "Host City"); (ii) funding any required reserve funds; and (iii) paying all or a portion of costs of issuance (collectively, the "Project").

The Series 2021C Note will be issued with an initial interest rate per annum equal to the greater of (i) seventy-nine percent (79%) of the sum of the five (5) year U.S. Treasury Rate in effect on the date of issuance, plus 365 basis points or (ii) 2.96% per annum (the "Rate"). The Series 2021C Note shall be subject to other terms and conditions in the terms attached hereto as Exhibit A. On the closing date of the Series 2021C Note, the Issuer and the Borrower will enter into a Loan Agreement (the "Loan Agreement") evidencing the Borrower's obligation to repay the loan pursuant to the terms of the Loan Agreement and containing financial covenants, security provisions and other terms acceptable to the Purchaser and the Borrower.

The Purchaser's purchase of the Series 2021C Note is not contingent upon the purchase by the Purchaser of any notes, bonds or other obligation to be issued in the future by the Issuer or any other issuer to finance a portion of the Project.

The Purchaser's purchase of the Series 2021C Note is subject to satisfaction of certain closing conditions and final legal documentation satisfactory to Purchaser.

The parties agree that the electronic signature of a party to this Purchase Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Purchase Agreement. For purposes of this Section: (i) "electronic signature" means a manually

signed original signature, an electronic image of a handwritten signature, or a digital signatures provided by DocuSign, Adobe Sign, or any other electronic signature provider acceptable to the parties, which in each case is transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a PDF (i.e. portable document format) or other replicating image attached to an electronic mail or internet message.

Paper copies or "printouts" of this Purchase Agreement, if introduced as evidence in any judicial, arbitral, mediation, or administrative proceeding will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party may contest the admissibility of true and accurate copies of documents transmitted by electronic means and containing, or to which there is affixed, an electronic signature on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

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

IN WITNESS WHEREOF, the Purchaser has caused this Purchase Agreement to be executed in its name, all as of the Dated Date.

BREMER BANK, NATIONAL  
ASSOCIATION

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

[Execution Page for Agreement to Purchase]

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IN WITNESS WHEREOF, the Borrower has caused this Purchase Agreement to be executed in its name, all as of the Dated Date.

NEW HARMONY CARE CENTER, INC.

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

[Execution Page for Agreement to Purchase]

IN WITNESS WHEREOF, the Issuer has caused this Purchase Agreement to be executed in its name as of the Dated Date.

CITY OF FALCON HEIGHTS, MINNESOTA

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Administrator

[Execution Page for Agreement to Purchase]

EXHIBIT A  
LOAN TERMS

Principal Amount:                   **[\$8,000,000]**

Maturity Date:                       25 years with a call option in year 10 and year 20

Amortization:                        23 years, beginning on **[June]** 1, 2023

Rate:                                    The interest rate on the Series 2021C Note will be initially set at a rate equal to the greater of (i) seventy-nine percent (79%) of the sum of the five (5) year U.S. Treasury Rate in effect on the date of issuance, plus 365 basis points or (ii) 2.96% per annum (the "Initial Interest Rate").

On each Interest Rate Adjustment Date (as defined below), the interest rate on the Series 2021C Note will be reset at a rate equal to seventy-nine percent (79%) of the sum of (i) the five (5) year U.S. Treasury Rate in effect on that Interest Rate Adjustment Date plus (ii) 250 basis points (each such computed rate, an "Adjusted Interest Rate"); provided, however, that no Adjusted Interest Rate shall be lower than 2.77% per annum nor higher than 235 basis points more than the immediately preceding interest rate (whether the Initial Interest Rate or an Adjusted Interest Rate) or higher than 350 basis points more than the Initial Interest Rate. Further provided, this provision shall not apply to the Taxable Rate (defined below).

The interest rate on the Series 2021C Note shall be subject to further adjustment if there is a change in the Maximum Federal Corporate Tax Rate as a result of a change in law. "Maximum Federal Corporate Tax Rate" means the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Internal Revenue Code of 1986, as amended (the "Code"), as in effect from time to time or, if as a result of a change in the Code the rate of income taxation imposed on corporations generally shall not be applicable to the Purchaser, the maximum statutory rate of federal income taxation which would apply to the Purchaser. The adjustment in interest rate will be equal to (a) the



interest rate before the adjustment times (1 - new Maximum Federal Corporate Tax Rate) divided by (b) 0.79.

Interest Rate Adjustment Date: Every five years on the 1st day of each May commencing **[May 1]**, 2026 (each such date, an "Interest Rate Adjustment Date").

Payments: Monthly payments shall be on the 1st day of each month, commencing **[July 1]**, 2021 (the "Payment Date"). Payments through **[May]** 1, 2023 (the "Conversion Date"), shall be interest only, with payments of principal plus interest commencing on **[June]** 1, 2023.

Prepayment: **[On or prior to the Conversion Date, the Series 2021C Note is subject to optional prepayment on any date without premium. After the Conversion Date,]** the Series 2021C Note is subject to optional prepayment on any date at a prepayment price equal to the principal amount to be prepaid on such date plus accrued interest plus premium of two percent (2%) of the principal amount prepaid. However, the Series 2021C Note may be optionally redeemed in whole or in part, without premium, (1) in certain events of damage, destruction or condemnation, (2) in an amount not to exceed 15% of the outstanding principal of the Note as of January 1 of such year provided the funds are solely from the Borrower's internal resources, and (3) on any date within 60 days prior to an Interest Rate Adjustment Date; provided the Borrower gives 60 days' written notice to the Purchaser. The Borrower shall also give 60 days' written notice to the Purchaser for any prepayments that exceed 15% of the outstanding principal of the Series 2021C Note.

Taxable Rate: If the interest on the Note should become subject to federal income taxation pursuant to a Determination of Taxability, then the per annum rate of interest of the Note shall be automatically increased effective as of the Date of Taxability to a rate equal to the interest rate calculated hereinabove and then in effect divided by (1 - Maximum Federal Corporate Tax Rate) (the "Taxable Rate"). The Borrower shall forthwith pay to the Purchaser the aggregate difference between (i) the amounts actually paid under the Note between the Date of Taxability and the date of receipt of notice of the Determination of Taxability and (ii) the amounts which would

have been due during such period if the increased interest rate had been in effect.

On each Interest Rate Adjustment Date, if the interest on the Note shall be at the Taxable Rate, the interest rate on the Note will adjust to a rate ("Adjusted Taxable Interest Rate") determined on each such date (or if such date is not a business day, on the next succeeding business day) to be the rate per annum determined by the Purchaser to be equal to a per annum rate equal to the sum of the five (5) year U.S. Treasury Rate in effect on that Interest Rate Adjustment Date, plus 250 basis points. In no event shall the Adjusted Taxable Interest Rate be less than 2.77% per annum.

## PLEDGE AGREEMENT

This Pledge Agreement is made as of May 1, 2021 between the City of Falcon Heights, Minnesota, a municipal corporation and political subdivision of the State of Minnesota (the "City"), and Bremer Bank, National Association, a national banking association: (the "Lender").

### Recitals

WHEREAS, New Harmony Care Center, Inc. (the "Borrower"), a Minnesota nonprofit corporation and 501(c)(3) organization, and the City have entered into a Loan Agreement (the "Loan Agreement") of even date herewith, pursuant to which the City will lend to the Borrower the proceeds of the \$[8,000,000] Senior Housing and Healthcare Revenue Note, Series 2021C (New Harmony Project) (the "Note"); and

WHEREAS, the Note is to be payable from and secured by the loan repayments to be made by the Borrower under the Loan Agreement; and the Lender, as a condition to the purchase of the Note, has required the execution of this Pledge Agreement.

NOW THEREFORE, as an inducement to the Lender to purchase the Note, and in consideration of the promises and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties hereby agree as follows:

1. In order to secure the due and punctual payment of the Note and all other sums due the Lender under the Loan Agreement, the City does hereby pledge and assign to the Lender all of the City's right, title and interest in and to the Loan Agreement, subject to the City's rights to payments under Sections 5.4, 7.2, 7.4, and 7.7 thereof (the "Unassigned Rights").

2. The City hereby represents and warrants to the Lender that the City's right, title and interest in the Loan Agreement is free and clear of any lien, security interest or other encumbrance other than that arising under this Pledge Agreement.

3. The City hereby authorizes the Lender to exercise, whether or not a default exists under the Note or an Event of Default has occurred under the Loan Agreement, either in the City's name or the Lender's name, any and all rights or remedies available to the City under the Loan Agreement (except the Unassigned Rights). The City agrees, on request of the Lender but without expense to the City, to execute and deliver to the Lender such other documents or instruments as shall be deemed reasonably necessary or appropriate by the Lender at any time to confirm or perfect the security interest hereby granted. The City hereby appoints the Lender its attorney-in-fact to execute on behalf of the City, and in its name, any and all such assignments, financing statements or other documents or instruments which the Lender may deem necessary or appropriate to perfect, protect or enforce the security interest hereby granted.

4. The City will not:

(a) exercise or attempt to exercise any remedies under the Loan Agreement, except with respect to the Unassigned Rights or as permitted by Section 7.2 of the Loan

Agreement, or terminate, modify or accept a surrender of the same, or by affirmative act, consent to the creation or existence of any security interest or other lien in the Loan Agreement to secure payment of any other indebtedness; or

(b) receive or collect or permit the receipt or collection of any payments, receipts, rentals, profits or other moneys under the Loan Agreement (except as allowed thereunder) or assign, transfer or hypothecate (other than to the Lender hereunder) any of the same then due or to accrue in the future.

5. The City expressly covenants and agrees that the Lender shall be entitled to receive all payments under the Loan Agreement (except any payments due the City thereunder, including with respect to the Unassigned Rights), and hereby authorizes and directs the Borrower to make such payments directly to the Lender. The Lender covenants and agrees that all payments received by the Lender pursuant to the Loan Agreement shall be applied as provided in the Loan Agreement.

6. The Lender agrees to advance the purchase price of the Note directly to the Borrower as provided in the Note, the Loan Agreement, and the Disbursement Agreement. In accordance with the Loan Agreement the Lender hereby assumes the City's and Lender's obligations to the Borrower thereunder.

7. If an Event of Default (as defined in the Loan Agreement) shall occur and be continuing, the Lender may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, in addition to any other remedy at law or in equity or specified in the Loan Agreement, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) The Lender may, without prior notice of any kind declare the principal of and interest accrued and any premium (as defined in the Loan Agreement) on the Note immediately due and payable.

(b) The Lender may exercise any rights and remedies and options of a secured party under the Uniform Commercial Code as adopted in the State of Minnesota and any and all rights available to it under the Loan Agreement, Mortgage, Security Agreement, and Guaranty securing payment of the Note.

8. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Pledge Agreement contained by or on behalf of the City or the Lender shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

9. The unenforceability or invalidity of any provision or provisions of this Pledge Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

10. This Pledge Agreement shall in all respects be construed in accordance with and governed by the laws of the State of Minnesota. This Pledge Agreement may not be amended or modified except in writing signed by the City and the Lender.

11. This Pledge Agreement may be executed, acknowledged and delivered in any number of counterparts and each of such counterparts shall constitute an original but all of which together shall constitute one agreement.

12. The terms used in this Pledge Agreement which are defined in the Loan Agreement shall have the meanings specified therein, unless the context of this Pledge Agreement otherwise requires, or unless such terms are otherwise defined herein.

13. No obligation of the City hereunder shall constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers, but shall be payable solely out of the proceeds and the revenues derived under the Loan Agreement. The Lender recognizes and agrees to the limitation of the City's liability as set forth in the Loan Agreement and that the City has no pecuniary liability to the Lender or any subsequent holder of the Note for the City's failure to investigate, or negligence in the investigation of, the financial position or prospects of the Borrower or for failure of the City to consider, or negligence in the City's consideration of, the adequacy of terms of, or collateral security for, the Note or any related agreement. The Lender recognizes and agrees that the City has no liability in connection with the issuance or sale of the Note concerning representations made by or for performance of the obligation of any party to a related transaction or agreement, except as specifically provided in this Pledge Agreement, the Loan Agreement, and the Note.

14. The parties agree that the electronic signature of a party to this Pledge Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Pledge Agreement. For purposes of this Section: (i) "electronic signature" means a manually signed original signature, an electronic image of a handwritten signature, or a digital signatures provided by DocuSign, Adobe Sign, or any other electronic signature provider acceptable to the parties, which in each case is transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a PDF (i.e. portable document format) or other replicating image attached to an electronic mail or internet message. Paper copies or "printouts" of this Pledge Agreement, if introduced as evidence in any judicial, arbitral, mediation, or administrative proceeding will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party may contest the admissibility of true and accurate copies of documents transmitted by electronic means and containing, or to which there is affixed, an electronic signature on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

[Remainder of Page Left Intentionally Blank; Two Signature Pages Follow]

IN WITNESS WHEREOF, the City and the Lender have caused this Pledge Agreement to be duly executed as of the day and year first above written.

CITY OF FALCON HEIGHTS, MINNESOTA

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its City Administrator

Signature page to Pledge Agreement

BREMER BANK, National Association

By \_\_\_\_\_  
Its Senior Vice President

Signature page to Pledge Agreement

---

**SPACE ABOVE THIS LINE FOR RECORDER'S USE**

This Combination Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents contains after-acquired property provisions and constitutes a fixture financing statement under Minnesota Statutes, Section 336.9-502.

**MORTGAGE, SECURITY AGREEMENT,  
ASSIGNMENT OF RENTS AND LEASES  
AND FIXTURE FINANCING STATEMENT**

**Dated as of May 1, 2021**

**NEW HARMONY CARE CENTER, INC.  
to  
BREMER BANK, NATIONAL ASSOCIATION**

---

The Maximum Principal Indebtedness Secured by this Mortgage is \$\_\_\_\_\_.

This instrument was drafted by:  
Kutak Rock LLP  
60 South Sixth Street  
Minneapolis, MN 55402



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**MORTGAGE, SECURITY AGREEMENT,  
ASSIGNMENT OF RENTS AND LEASES  
AND FIXTURE FINANCING STATEMENT**

This MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FINANCING STATEMENT dated as of May 1, 2021 (the “Mortgage”), is granted by NEW HARMONY CARE CENTER, INC., a Minnesota nonprofit corporation (the “Mortgagor”), to BREMER BANK, NATIONAL ASSOCIATION, a national banking organization, as mortgagee (the “Mortgagee”).

W I T N E S S E T H:

WHEREAS, the Mortgagor and the City of Falcon Heights, Minnesota (the “Issuer”) are parties to that certain Loan Agreement, dated as of May 1, 2021 (“Loan Agreement”), as assigned to Mortgagee pursuant to that certain Pledge Agreement, dated as of May 1, 2021 (“Pledge Agreement”);

WHEREAS, pursuant to the terms of the Loan Agreement, the Issuer has issued the City of Falcon Heights, Minnesota Senior Housing and Healthcare Revenue Note (New Harmony Care Center Project), Series 2021C in the amount of \$\_\_\_\_\_ dated as of May [\_\_\_], 2021 (the “Note”);

WHEREAS, the proceeds of the Note will be used to finance the acquisition, construction, and equipping of a new senior healthcare and housing facility, including approximately 48 skilled nursing beds, 16 transitional skilled nursing beds, 35 independent apartment units, 36 assisted living apartment units, 14 memory care apartment units, and 12 care suite apartment units, to be located at 1534 County Road C East in the City of Maplewood, Minnesota;

WHEREAS, the Mortgagor owns certain personal property located on the Land (as defined herein) or within the improvements on the Land; and

WHEREAS, the Mortgagor has agreed to mortgage and grant to the Mortgagee a security interest in the Mortgaged Property (as defined herein), as defined herein, to secure its obligations under the Loan Agreement, including its obligation to make payments at times and in amounts sufficient to pay when due the principal of, premium, if any, and interest on the Note, bearing interest at a variable rate as provided therein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to secure the due and punctual payment of any and all liabilities of the Mortgagor under the Loan Agreement, including (without limitation) payments in the amounts and at times sufficient to pay the principal of, premium, if any, and interest on the Note, and to secure the payment of all fees and expenses and advances due the Mortgagee under this Mortgage, the Mortgagor does hereby grant, convey, and assign to the Mortgagee, its successors and assigns, a lien on and security interest in, and does hereby mortgage and pledge unto the Mortgagee, its successors and assigns, forever, with power of sale, the following:

I.

All of Mortgagor's rights, title and interest in and to the tracts, parcels and interests in land described in Exhibit A hereto (the "Land"), and the buildings, structures and other improvements now standing or at any time hereafter constructed or placed upon the Land by the Mortgagor (the "Buildings"), including, but not limited to (i) all building materials, supplies and equipment now or hereafter located on the Land and suitable or intended to be incorporated in any building, structure, or other improvement located or to be erected on the Land, (ii) all heating, plumbing and lighting apparatus, motors, engines and machinery, electrical equipment, incinerator apparatus, air conditioning equipment, water and gas apparatus, pipes, faucets, and all other fixtures of every description which are now or may hereafter be placed or used upon the Land or in any building or improvement now or hereafter located thereon, (iii) all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds to and of any and all of the foregoing, and (iv) all hereditaments, easements, appurtenances, estates, access rights, and other rights and interests now or hereafter belonging to or in any way pertaining to the Land or to the Buildings or any building or other improvement now or hereafter located thereon.

II.

All furniture, equipment, machinery, inventory, and all other tangible personal property now or hereafter located in the Building or elsewhere on the Land and owned by the Mortgagor, and all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds to and of any and all such personal property, including but not limited to all beds, desks, tables, ranges, refrigerators, garbage disposals, kitchen hoods and fans, dishwashers, microwave ovens and fireplaces, plus any repairs, replacements, and betterments thereto and proceeds and products thereof (the "Equipment").

III.

All rents now due or which may hereafter become due to Mortgagor under or by virtue of any lease, license, sublease, or agreement, whether written or verbal, for the use or occupancy of the Land, the Buildings or any part thereof (the "Rents").

IV.

Any and all awards or compensation made to the Mortgagor by any governmental or other lawful authorities for the taking or damaging by eminent domain of the whole or any part of the Land, the Buildings or the Equipment, including any award for a temporary taking, change of grade of streets or taking of access, and any and all insurance proceeds for loss or damage to the Buildings or the Equipment (the "Awards").

V.

All other personal property and business assets owned by the Mortgagor and located on the Land and all replacements and substitutions therefor (the "Personal Property").

## VI.

All other rights and interests in property, whether tangible or intangible, required to be subject to the lien hereof, or from time to time by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder by the Mortgagor or by anyone on its behalf or with its written consent to the Mortgagee, 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.

TO HAVE AND TO HOLD the Land, the Buildings, the Equipment, the Rents, the Awards and the Personal Property (the "Mortgaged Property"), together with all privileges, hereditaments and appurtenances thereunto now or hereafter belonging, or in any way appertaining, and the proceeds thereof, unto the Mortgagee, its successors and assigns forever.

PROVIDED, NEVERTHELESS, that if the Mortgagor shall pay or cause to be paid to the Mortgagee the principal sum of [\_\_\_\_\_ Dollars (\$\_\_\_\_\_)], the principal amount of the Note, with interest, according to the terms of the Note, all of the terms of which are hereby made a part of this Mortgage to the same extent and with the same effect as if they were fully set forth herein, and if the Mortgagor shall also pay all other sums, with interest thereon, as may be advanced by the Mortgagee in accordance with this Mortgage, either to protect the lien of this Mortgage, or by way of additional loan or for any other purpose, and shall also keep, perform and observe, all and singular, the conditions and covenants contained in this Mortgage and the Note, which are to be kept, performed and observed by the Mortgagor, then this Mortgage shall be null and void, in which event the Mortgagee will execute and deliver to the Mortgagor, in form suitable for recording, a full release of this Mortgage, otherwise this Mortgage shall remain in full force and effect.

And the Mortgagor for itself, its successors and assigns, does covenant with the Mortgagee, its successors and assigns, that it is lawfully seized of the Land in fee simple; that it has good right and title to sell and convey the Mortgaged Property; that the Mortgaged Property is free from all encumbrances except as further stated on Exhibit B to this Mortgage (the "Permitted Encumbrances"); that the Mortgagor shall quietly enjoy and possess the same; and that the Mortgagor will warrant and defend the title to the same against all lawful claims not specifically excepted in this Mortgage.

The Mortgagor further covenants and agrees as follows:

### **ARTICLE I – DEFINITIONS AND EXHIBITS**

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

Code: the Minnesota Uniform Commercial Code;

Event of Default: any of the events referred to as such in Section 8.1 hereof;

Impositions: all taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever assessed or charged against or constituting a lien on the Mortgaged Property or any interest therein;

Issuer: the City of Falcon Heights, Minnesota;

Liens: mechanic's, materialmen's and other liens (other than Permitted Encumbrances) not expressly subordinated to the lien of this Mortgage on terms acceptable to the Mortgagee in its discretion;

Levy: levy, execution or attachment;

Loan Agreement: the Loan Agreement dated as of May 1, 2021, between the Mortgagor and the Issuer.

Mortgage: this Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Financing Statement, including any mortgage supplemental hereto entered into in accordance with the provisions hereof;

Mortgaged Property: all interests of the Mortgagor in the Land, the Buildings, the Equipment, the Rents, the Awards and the Personal Property, and all other property covered by the Granting Clauses I through VI hereof, as they may at any time exist;

Mortgagee: Bremer Bank, National Association, a national banking association, its successors and assigns;

Mortgagor: New Harmony Care Center, Inc., a Minnesota nonprofit corporation, its successors and assigns;

Permitted Encumbrances: those encumbrances specified in Exhibit B attached hereto or otherwise consented to by the Mortgagee in writing;

Security Documents: the Note, the Loan Agreement, financing statements, and all other documents and agreements contemplated by this transaction which relate to the security of the Mortgagee.

**Section 1.2 Exhibits.** Attached to and by reference made a part of this Mortgage are the following exhibits:

- (a) Exhibit A: a legal description of the Land; and
- (b) Exhibit B: a list of Permitted Encumbrances.

## **ARTICLE II – GENERAL COVENANTS, AGREEMENTS, WARRANTIES**

**Section 2.1 Payment of Indebtedness and Observance of Covenants.** The Mortgagor shall make all payments when due under the Note, and shall perform and comply with all covenants, agreements, conditions, provisions, stipulations and obligations set forth therein, in

the Loan Agreement, or in any other agreements or instruments delivered by the Mortgagor in connection with the issuance of the Note on its part to be performed, at the times and in the manner required thereby.

**Section 2.2 Maintenance; Repairs.** The Mortgagor agrees that it will keep and maintain the Mortgaged Property in good condition, repair and operating condition free from any waste or misuse, ordinary wear and tear excepted, and will comply with all requirements of law, municipal ordinances and regulations, restrictions and covenants affecting the Mortgaged Property and its use, and will promptly repair or restore any buildings, improvements or structures now or hereafter on the Land which may become damaged or destroyed to their condition prior to any such damage or destruction, unless the Mortgagor exercises its option to accelerate repayment of the Note as provided in the Note. The Mortgagor agrees not to acquiesce in any rezoning classification, modification or restriction which will adversely affect the present permitted uses of the Land and the Buildings.

**Section 2.3 Payment of Operating Costs; Prior Mortgages and Liens.** The Mortgagor agrees that it will pay all operating costs and expenses of the Mortgaged Property, keep the Mortgaged Property free from Liens, keep the Mortgaged Property free from any Levy and will pay when due all indebtedness which may be secured by mortgage, lien or charge on the Mortgaged Property, superior to or equal to the lien of this Mortgage, and upon request will exhibit to the Mortgagee satisfactory evidence of such payment and discharge.

**Section 2.4 Payment of Impositions.** The Mortgagor will pay when due and before any penalty and before they become delinquent all Impositions, and will upon demand furnish to the Mortgagee proof of the payment of any such Impositions.

**Section 2.5 Escrow for Taxes and Insurance.** If the Mortgagor shall fail to pay the taxes or shall fail to provide evidence of insurance and payment of insurance premiums as provided in Section 3.1 hereof and if demanded by the Mortgagee to secure the payment of the taxes and assessments referred to herein and the premiums on the insurance referred to herein, the Mortgagor will deposit with the Mortgagee each and every month accompanying each installment from the Mortgagor due under the Note a sum which, in the estimation of the Mortgagee, shall be equal to one-twelfth of the annual taxes, assessments and insurance premiums. Such deposits shall be held by the Mortgagee, free of any liens or claims on the part of creditors of the Mortgagor and as part of the security of the Mortgagee, and shall be used by the Mortgagee to pay current taxes and assessments and insurance premiums on the Mortgaged Property as the same accrue and are payable. If such deposits are insufficient to pay the taxes and assessments and insurance premiums in full as the same become payable, the Mortgagor will deposit with the Mortgagee such additional sum or sums as may be required in order for the Mortgagee to pay such taxes and assessments and insurance premiums in full.

**Section 2.6 Contest of Impositions, Liens and Levies.** The Mortgagor shall not be required to pay, discharge or remove any Imposition, Lien or Levy so long as the Mortgagor shall in good faith contest the same or the validity thereof by appropriate legal proceedings which shall operate to prevent the collection of the Levy, Lien or Imposition so contested and the sale of the Mortgaged Property, or any part thereof to satisfy the same, provided that the Mortgagor shall, prior to the date such Levy, Lien or Imposition is due and payable, have given

such security as may be required by law. Any such contest shall be prosecuted with due diligence and the Mortgagor shall promptly after final determination thereof pay the amount of any such Levy, Lien or Imposition so determined, together with all interest and penalties, which may be payable in connection therewith and further will indemnify and hold harmless the Mortgagee against all losses in connection therewith. Notwithstanding the provisions of this Section, the Mortgagor shall (and if the Mortgagor shall fail so to do, the Mortgagee may, but shall not be required to) pay any such Levy, Lien or Imposition notwithstanding such contest if in the judgment of the Mortgagee's counsel, reasonably exercised, the Mortgaged Property shall be in danger of imminent loss by forfeiture or foreclosure.

**Section 2.7 Protection of Security.** The Mortgagor agrees to promptly notify the Mortgagee of, to take all appropriate steps to tender defense to the appropriate insurer, and, if necessary, to appear in and defend any suit, action or proceeding that affects the Mortgaged Property, or the rights, interest, title to, possession of, or priority of the lien of this Mortgage. If appropriate appearance and defense is not entered, the Mortgagee may elect to appear in or defend any such action or proceeding and the Mortgagor agrees to indemnify and reimburse the Mortgagee from any and all loss, damage, expense or cost arising out of or incurred in connection with any suit, action or proceeding that affects the Mortgaged Property or the rights or interests of the Mortgagee, including costs of evidence of title and reasonable attorneys' fees.

**Section 2.8 Additional Assurances.** The Mortgagor agrees, upon reasonable request by the Mortgagee, to execute and deliver such further instruments, financing statements under the Code and assurances and will do such further acts as may be necessary or proper to carry out more effectively the purposes of this Mortgage, and without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the granting clauses hereof, or intended so to be. The Mortgagor agrees to pay any recording fees, filing fees, stamp taxes or other charges arising out of or incident to the filing or recording of the Mortgage and such further assurances and instruments. Mortgagor authorizes Mortgagee to file financing statements under the Code to enable the Mortgagee to perfect its security interest in the Mortgaged Property.

**Section 2.9 Due on Sale, Etc.** If, except as permitted by Section 2.10 or Section 4.04 hereof and except for leases in the normal course of Mortgagor's business, the Mortgagor sells, mortgages or encumbers or disposes of the Mortgaged Property, or any part thereof, or any interest therein, or agrees so to do (other than as expressly provided herein), or merges or consolidates with another entity, without the written consent of the Mortgagee being first obtained, which consent shall not be unreasonably withheld, then at the sole option of the Mortgagee, the Mortgagee may declare all indebtedness secured hereby due and payable in full and call for payment of the same in full at once. Mortgagee agrees that such consent will not be withheld so long as the value of the secured property is not substantially diminished or impaired as a result of the transaction or event. Consent as to any one transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions.

**Section 2.10 Rights Under Loan Agreement.** The Loan Agreement set forth the covenants and obligations of the Mortgagor, including a provision that the Loan Agreement may not be effectively amended, changed or modified without the written consent of the Mortgagee,



and reference is hereby made to the same for a detailed statement of said covenants and obligations.

### **Section 2.11 Environmental Matters.**

(a) Except as disclosed in writing to Mortgagee, to the Mortgagor's knowledge, there exists no uncorrected violation by the Mortgagor or in respect of the Mortgaged Property of any federal, state or local laws (including statutes, regulations, ordinances or other governmental restrictions and requirements) relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or Hazardous Substances as hereinafter defined (collectively "Environmental Laws"). The term "Hazardous Substances" shall mean any hazardous or toxic wastes, chemicals or other substances, the generation, possession or existence of which is prohibited or governed by any Environmental Laws including, without limitation, hazardous substances, pollutants or contaminants, as defined in Minnesota Statutes Section 115B.02 (collectively "Hazardous Substances"). The Mortgagor is not subject to any judgment, decree, order or citation, or a party to (or threatened with) any litigation or administrative proceeding, which asserts that the Mortgagor (i) has violated any Environmental Laws; (ii) is required to clean up, remove or take remedial or other action with respect to any Hazardous Substances (collectively "Remedial Action"); or (iii) is required to pay all or a portion of the cost of any Remedial Action, as a potentially responsible party. To the Mortgagor's knowledge there are not now, nor after reasonable investigation have there ever been, any Hazardous Substances (or tanks or other facilities for the storage of Hazardous Substances) stored, deposited, recycled or disposed of on, under or at any real estate owned or occupied by the Mortgagor during the periods that the Mortgagor owned or occupied such real estate, which if present on the real estate or in soils or ground water, could require Remedial Action, other than as disclosed to Mortgagee in writing. To the Mortgagor's knowledge, there are no proposed or pending changes in Environmental Laws which would adversely affect the Mortgagor or its businesses, and there are no conditions existing currently or likely to exist while this Mortgage is in effect which would subject the Mortgagor to Remedial Action or other liability. To the Mortgagor's knowledge, the Mortgagor currently complies with and will continue to timely comply with all applicable Environmental Laws; and will provide the Mortgagee, immediately upon receipt, with copies of any correspondence, notice, complaint, order or other document from any source asserting or alleging any circumstance or condition which requires or may require a financial contribution by the Mortgagor or Remedial Action or other response by or on the part of the Mortgagor under Environmental Laws, or which seeks damages or civil, criminal or punitive penalties from the Mortgagor for an alleged violation of Environmental Laws.

(b) The Mortgagor agrees to indemnify and reimburse the Mortgagee, its successors and assigns, for any loss, damage, expense or cost arising out of or incurred by the Mortgagee which is a result of a breach, misstatement of or misrepresentation of the above covenants, representations and warranties, together with all reasonable attorneys' fees incurred in connection with the defense of any action against the Mortgagee arising out of the above. These covenants, representations and warranties are for the benefit of the Mortgagee, and any successor or assign of the Mortgagee, and shall be deemed to survive termination of this Mortgage.

## **ARTICLE III – INSURANCE**

**Section 3.1 Property and Liability Insurance.** The Mortgagor shall obtain or cause to be obtained and keep or cause to be kept in full force and effect during the term of this Mortgage at its cost and expense, and at no expense to the Mortgagee: (a) casualty insurance against loss by fire, lightning and risk customarily covered by standard extended coverage endorsement; (b) broad form boiler and machinery insurance on all equipment and pressure fired vehicles or apparatus customarily covered by such insurance and situated in the Buildings; (c) comprehensive general public liability insurance covering the liability of the Mortgagor against claims for bodily injury, death or property damage occurring on, in, or about the Land and the Buildings; and (d) such other insurance, including, but not limited to, workers' compensation insurance and business interruption insurance, as is customarily carried by prudent owners of comparable property to the Mortgaged Property. All such insurance policies shall be written on forms and with insurance companies reasonably satisfactory to the Mortgagee. The insurance required by subparagraphs (a), (b) and (c) shall name as the insured parties the Mortgagor and the Mortgagee as their interests may appear, shall be in form and amount sufficient to prevent the Mortgagor from becoming a coinsurer of any loss thereunder, shall be in such minimum amounts, with such deductibles, and with such limits as the Mortgagee may reasonably require, and shall bear a satisfactory mortgagee clause in favor of the Mortgagee with loss proceeds under any property policies to be made payable to the Mortgagee. The insurance required by subparagraphs (c) and (d) shall contain policy limits no less than that customarily carried by prudent owners of business comparable to Mortgagor's business. At the request of the Mortgagee, evidence of the payment of current premiums therefor shall be delivered to the Mortgagee. The Mortgagor shall, upon execution of this Mortgage, and within 30 days prior to the expiration of any such policy, deliver to the Mortgagee copies of original policies or certificates of the insurer evidencing such insurance. Each policy shall contain a provision that the insurer will not cancel or modify it without giving written notice to the Mortgagor and the Mortgagee at least 30 days before the cancellation or modification becomes effective. Subject to existing law, in the event of foreclosure of the Mortgage or any acquisition of the Mortgaged Property by the Mortgagee all such policies and any proceeds payable therefrom, whether payable before or after a foreclosure sale, or during the period of redemption, if any, shall become the absolute property of the Mortgagee to be utilized in its discretion. In the event of the foreclosure or the failure to obtain and keep any required insurance, the Mortgagor empowers the Mortgagee to effect insurance upon the Mortgaged Property at the Mortgagor's expense in the amounts and types aforesaid for a period of time covering the time of redemption from foreclosure sale, and if necessary therefor, to comply with any or all inspection reports and insurance recommendations received by Mortgagor from any insurer.

## **ARTICLE IV – UNIFORM COMMERCIAL CODE**

**Section 4.1 Security Agreement.** This Mortgage shall constitute a security agreement as defined in the Code and the Mortgagor hereby grants to the Mortgagee a security interest within the meaning of the Code in favor of the Mortgagee in the Equipment, the Rents, the Awards and the Personal Property, and in all similar property owned by Mortgagor during the term of this Mortgage, whether now owned or hereafter acquired (collectively, the "Collateral"), included in the Mortgaged Property.

**Section 4.2 Fixture Financing Statement.** As to those items of Collateral described in this Mortgage that are, or are to become, fixtures relating to the real estate mortgaged herein, it is intended as to those items that THIS MORTGAGE SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING from the date of its filing in the real estate records of the counties where the Mortgaged Property is situated.

Name and address of Debtor: New Harmony Care Center, Inc.  
7171 Ohms Lane  
Edina, MN 55439

Name and address of Secured Party: Bremer Bank, National Association  
225 South Sixth Street  
Minneapolis, MN 55402

Description of the types (or items) of property covered by this financing statement: All Fixtures now located on the real property described on Exhibit "A" attached hereto.

Description of real estate which all or a part of the Collateral is attached or upon which it is located. See Exhibit "A" attached hereto.

This document covers goods which are or are to become fixtures.

**Section 4.3 Representations and Agreements.** (a) The Mortgagor is and will be the true and lawful owner of the Collateral mentioned in any financing statement, subject to no liens, charges, security interests and encumbrances other than the lien hereof and Permitted Encumbrances; (b) such Collateral is to be used by the Mortgagor solely for business purposes and is installed or being installed upon the Land and the Buildings for Mortgagor's own use; (c) except as permitted under Section 4.4 below, such Collateral will be kept at the Buildings and will not be removed therefrom without the consent of the Mortgagee, may be affixed to the Buildings but will not be removed therefrom without the consent of the Mortgagee, and may be affixed to the Buildings but will not be affixed to any other real estate; (d) unless stated otherwise in this Mortgage, the only persons having any interest in the Collateral are the Mortgagor and the Mortgagee and no financing statement covering any such property and any proceeds thereof is on file in any public office except to the Mortgagee; (e) the remedies of the Mortgagee hereunder are cumulative and separate, and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other rights of the Mortgagee including having such Collateral deemed part of the realty upon any foreclosure thereof; (f) if notice to any party of the intended disposition of the Collateral is required by law in a particular instance, such notice shall be deemed commercially reasonable if given at least 10 days prior to such intended disposition and may be given by advertisement in a newspaper accepted for legal publications either separately or as part of a notice given to foreclose the real property or may be given by private notice if such parties are known to the Mortgagee; (g) the filing of a financing statement pursuant to the Code shall never impair the

stated intention of this Mortgage that all items comprising the Collateral are and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the property mortgaged hereunder irrespective of whether such item is physically attached to the real property or any such item is referred to or reflected in a financing statement; (h) the Mortgagor will on demand deliver all financing statements that may from time to time be required by the Mortgagee to establish and perfect the priority of the Mortgagee's security interest in the Collateral; and (i) the Mortgagor shall give advance written notice of any proposed change in the Mortgagor's name, identity or structure and will execute and deliver to the Mortgagee prior to or concurrently with such change all additional financing statements that the Mortgagee may require to establish and perfect the priority of the Mortgagee's security interest.

**Section 4.4 Replacement of Collateral.** Subject to the provisions of this Section, if the Mortgagor in its sound discretion determine that any item subject to a security interest under this Mortgage has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for the operation of the Mortgaged Property, the Mortgagor may, at its expense, remove and dispose of it and substitute and install other items not necessarily having the same function if such removal and substitution does not impair the operating utility and unity of the Mortgaged Property without first obtaining the consent of the Mortgagee so long as the aggregate cost of replacements in any one year does not exceed \$275,000. The Mortgagor may, at its expense, remove and dispose of an item and substitute and install other items not necessarily having the same function, only if such substituted items become a part of the Mortgaged Property and subject to the lien of the Mortgage, with no change in the priority of such lien. Any amounts received or allowed the Mortgagor upon the sale or other disposition of the removed items of property shall be applied first against the cost of acquisition and installation of the substituted items. Nothing herein contained shall be construed to prevent any tenant, subtenant, secured party, or occupant (other than the Mortgagor) from removing from the Land or Buildings trade fixtures, furniture and equipment installed by it and removable by tenant under its terms of a lease, or the subject of a prior security interest in its favor, on the condition, however, that the tenant, subtenant or secured party shall at its own cost and expense, repair any and all damages to the Mortgaged Property resulting from or caused by the removal thereof.

## **ARTICLE V – APPLICATION OF INSURANCE AND CONDEMNATION AWARDS**

**Section 5.1 Damage or Destruction of the Mortgaged Property.** The Mortgagor will give the Mortgagee prompt notice of any damage to or destruction of the Mortgaged Property. Any expense incurred by the Mortgagee or the Mortgagor in the adjustment and collection of insurance proceeds (including the cost of any independent appraisal of the loss or damage) shall be reimbursed first out of any proceeds. The net proceeds shall be applied to the reduction of the indebtedness hereby secured, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of the Mortgagor so long as an Event of Default has not occurred and is not continuing.

**Section 5.2 Condemnation.** The Mortgagor will give the Mortgagee prompt notice of any action, actual or threatened, in condemnation or eminent domain and hereby assigns, transfers, and sets over to the Mortgagee the net proceeds of any award or claim for damages for all or any part of the Mortgaged Property taken or damaged under the power of eminent domain or condemnation, including any interim award made pending trial or appeal from trial. If in the

judgment of the Mortgagee, reasonably exercised, the Mortgagor is not proceeding in a manner which safeguards the interests of the Mortgagee, the Mortgagee is hereby authorized to intervene in any such action in the name of the Mortgagor and to collect and receive from the condemning authorities and give proper receipts and acquittance for such proceeds. Any expenses incurred by the Mortgagee in intervening in such action or collecting such proceeds shall be reimbursed to the Mortgagee first out of the proceeds. The proceeds or any part thereof shall be applied to the discharge of the indebtedness hereby secured, or to the restoration or repair of the Mortgaged Property, the choice of application to be solely at the discretion of the Mortgagor so long as an Event of Default has not occurred and is not continuing.

**Section 5.3 Disbursement of Insurance and Condemnation Proceeds.** Should any insurance or condemnation proceeds in excess of \$250,000 be applied to the restoration or repair of the Mortgaged Property, the restoration or repair shall be done pursuant to plans and specifications of the Mortgagor as reasonably approved by the Mortgagee. In such case the proceeds shall be held by the Mortgagee for such purposes and will from time to time be disbursed by the Mortgagee to defray the costs of such restoration or repair under such safeguards and controls as the Mortgagee may reasonably require to assure completion in accordance with the approved plans and specifications and free of liens or claims. Any surplus which may remain after payment of all costs of restoration or repair will be applied against the indebtedness secured hereby.

## **ARTICLE VI – ASSIGNMENT OF RENTS AND LEASES**

**Section 6.1 Assignment of Rents and Leases.** The Mortgagor hereby assigns to the Mortgagee, as additional security, all rents, leases and profits now due or which may become due under or by virtue of any lease, license, sublease, or agreement, whether written or verbal, for the use or occupancy of the mortgaged premises, or any part thereof, whether before or after foreclosure or during any redemption period, and the Mortgagee shall have the power irrevocably to manage, control and lease the mortgaged premises and collect such rents, leases and profits. However, this Article VI shall be enforceable by the Mortgagee only during such period of time as an Event of Default shall have occurred and shall be continuing hereunder.

## **ARTICLE VII – RIGHTS OF THE MORTGAGEE**

**Section 7.1 Right to Cure Default.** If the Mortgagor shall fail to comply with any of the covenants or obligations of this Mortgage, the Mortgagee may, but shall not be obligated to, after telephonic or other notice to the Mortgagor and without waiving or releasing the Mortgagor from any obligation in this Mortgage contained, remedy such failure, and the Mortgagor agrees to repay upon demand all sums incurred by the Mortgagee in remedying any such failure, together with interest at the default rate specified in the Note. All such sums, together with interest as aforesaid, shall become indebtedness secured by this Mortgage, but no such advance shall be deemed to relieve the Mortgagor from any failure hereunder. Included in this right to remedy a default, the Mortgagor authorizes and empowers the Mortgagee, at its option, to effect such insurance, to pay unpaid premiums, to pay any Impositions, to cancel and discharge any Levies and Liens, and to enter upon and authorize others to enter upon any and all of the Mortgaged Property to perform any covenant, condition, or term which the Mortgagor shall fail to perform, meet or comply with or for any other purpose in connection with the protection or

preservation of the Mortgagee's security, without becoming thereby liable to the Mortgagor or any person in possession holding under the Mortgagor.

**Section 7.2 No Claim Against the Mortgagee.** Nothing contained in this Mortgage shall constitute any consent or request by the Mortgagee, express or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, nor as giving the Mortgagor or any party in interest with the Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would create any personal liability against the Mortgagee in respect thereof or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Mortgage.

**Section 7.3 Inspection.** The Mortgagor will permit the Mortgagee's authorized representatives to enter the Land and the Buildings at all reasonable times for the purpose of inspecting the same; provided the Mortgagee shall have no duty to make such inspections and shall not incur any liability or obligation for making or not making any such inspections.

**Section 7.4 Waivers, Releases, Resort to Other Security, Etc.** Without affecting the liability of any party liable under any of the Security Documents or performance of any obligation contained herein, and without affecting the rights of the Mortgagee with respect to any security not expressly released in writing, the Mortgagee may, at any time, and without notice to or the consent of the Mortgagor or any party in interest to the Mortgaged Property or any of the Security Documents (a) release any person liable under any of the Security Documents or from performance of any obligation herein, (b) make any agreement extending the time or otherwise altering the terms of the Security Documents or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof, (c) accept any additional security, (d) release or otherwise deal with any property, real or personal, including any or all of the Mortgaged Property, or (e) resort to any security agreements, pledges, contracts of guarantee, or other securities, and exhaust any one or more of said securities and the security hereunder, either concurrently or independently and in such order as it may determine.

**Section 7.5 Rights Cumulative.** Each right, power or remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to the Mortgagee, at law or in equity, or under the Code, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. No delay or omission by the Mortgagee in the exercise of any right, power or remedy arising hereunder or arising otherwise shall impair any such right, power or remedy or the right of the Mortgagee to resort thereto at a later date or be construed to be a waiver of any default under this Mortgage.

## **ARTICLE VIII – EVENTS OF DEFAULT AND REMEDIES**

**Section 8.1 Events of Default.** It shall be an Event of Default under this Mortgage if (a) the Mortgagor shall fail to make any payments due under the Note; (b) an Event of Default

(as defined therein) shall occur under the Note or the Loan Agreement; (c) the Mortgagor shall fail to comply with or perform any of the other terms, conditions or covenants of this Mortgage and such default shall continue for a period of more than 30 days after written notice of default from the Mortgagee to the Mortgagor; (d) any representation or warranty made by the Mortgagor in any financial statements, reports, the Note, the Loan Agreement, the Mortgage and other documents submitted with this Mortgage to the Mortgagee is untrue in any material respect; (e) the Mortgagor shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent, or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay their debts generally as they become due, or if a petition or answer proposing the adjudication of the Mortgagor as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law not be discharged or denied within 90 days after the filing thereof, or a receiver, trustee or liquidator of the Mortgagor, or of the Mortgaged Property, shall be appointed in any proceeding brought against the Mortgagor and shall not be discharged within 90 days after such appointment or if the Mortgagor shall consent to or acquiesce in such appointment; or (f) the Mortgagor shall be dissolved, liquidated or wound up, except pursuant to or in connection with a transfer of the Mortgaged Property permitted under the terms of Section 2.9 of this Mortgage.

With respect to (b) above, if the default can be remedied but not within a period of 30 days after notice and if the Mortgagor has taken all action reasonably possible to remedy such default within such 30-day period, the default shall not become an Event of Default for so long as the Mortgagor shall diligently proceed to remedy such default and in accordance with any directions or limitations of time made by the Mortgagee. The Mortgagor agrees, however, to use its best efforts to remedy with all reasonable dispatch any cause or causes preventing the Mortgagor from carrying out its agreements.

**Section 8.2 Acceleration.** If an Event of Default shall occur, the Mortgagor confers upon the Mortgagee the option of declaring all indebtedness secured hereby, without advance notice to the Mortgagor, immediately due and payable.

**Section 8.3 Mortgagee's Right to Foreclose.** If an Event of Default shall occur, the Mortgagee hereby authorizes and fully empowers the Mortgagee to foreclose this Mortgage by action or advertisement upon written notice thereof to Mortgagor, all in accordance with and in the same manner prescribed by law, and out of the proceeds arising from sale and foreclosure to retain all such sums of money as the Mortgagee shall have expended or advanced pursuant to this Mortgage or pursuant to statute, together with interest thereon as herein provided, and all costs and expenses of such foreclosure, including lawful attorney's fees, with the balance, if any, to be paid to the persons entitled thereto by law.

**Section 8.4 Receiver.** If an Event of Default shall occur, the Mortgagee shall be entitled as a matter of right without notice and without giving bonds and without regard to the solvency or insolvency of the Mortgagor, or waste of the mortgaged premises or adequacy of the security of the mortgaged premises, to apply for the appointment of a receiver in accordance with the statutes and law made and provided for who shall collect the rents, and all other income of any kind; manage the mortgaged premises so to prevent waste; execute leases within or beyond the period of receivership, pay all expenses for normal maintenance of the premises and perform

the terms of this Mortgage and apply the rents, issues and profits in the following order to (a) payment of the reasonable fees of said receiver, (b) application of tenant security deposits as required by Minnesota Statutes Section 504B.178, (c) payment when due of prior or current real estate taxes or special assessments with respect to the mortgaged premises or if required by this Mortgage, payment of the periodic escrow for payment of the taxes or special assessments, (d) the payment when due of premiums for hazard or liability insurance of the type required by this Mortgage or if required by this Mortgage, payment of the periodic escrow for the payment of the premiums, (e) keeping of the covenants required of a lessor or licensor pursuant to Minnesota Statutes Section 504B.161, and (f) to the costs and expenses of the receivership, including reasonable attorney's fees, to the repayment of the Mortgage debt and to the operation, maintenance, upkeep and repair of the mortgaged premises, including payment of taxes on the mortgaged premises and payments of premiums of insurance on the mortgaged premises. The Mortgagor does hereby irrevocably consent to such appointment. Nothing contained in this Mortgage shall be construed as constituting the Mortgagee a mortgagee in possession.

**Section 8.5 Rights Under Uniform Commercial Code and Minnesota Law.** In addition to the rights available to a mortgagee of real property, the Mortgagee shall also have all rights, remedies and recourse available to a secured party under the Code and Minnesota law, including all replevin rights and the right to proceed under the provisions of the Code governing default as to the Rent, the Awards and the Personal Property which may be included in the Mortgaged Property or which may be deemed non-realty in a foreclosure of this Mortgage.

**Section 8.6 Right to Discontinue Proceedings.** In the event the Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under this Mortgage and shall thereafter elect to discontinue or abandon the same for any reason, the Mortgagee shall have the unqualified right to do so and in such event the Mortgagor and the Mortgagee shall be restored to their former positions with respect to the indebtedness secured hereby and this Mortgage, the Mortgaged Property and all the rights, remedies and recourse of the Mortgagee shall continue as if the same had not been invoked.

## ARTICLE IX – MISCELLANEOUS

**Section 9.1 Release of Mortgage.** When all the obligations of the Mortgagor have been performed, including the making of all payments due under the Note, this Mortgage and all assignments herein contained shall be void and this Mortgage shall be automatically released by the Mortgagee at the cost and expense of the Mortgagor, otherwise this Mortgage shall remain in full force and effect.

**Section 9.2 Choice of Law.** This Mortgage is made and executed under the laws of the State of Minnesota and is intended to be governed by the laws of such State.

**Section 9.3 Changes of Ownership.** In the event that the ownership of the Mortgaged Property becomes vested in a person or persons other than the Mortgagor, the Mortgagee may continue to deal with the Mortgagor without any obligation to deal with such successor or successors in interest with reference to this Mortgage and the Note until notified of such vesting. Upon such notification, the Mortgagee may thereafter deal with such successor in place of the Mortgagor without any obligation to thereafter deal with the Mortgagor and without



waiving any liability of the Mortgagor hereunder or under the Note. The Mortgagor shall give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Mortgaged Property but nothing in this Section contained shall constitute the consent of the Mortgagee to any such conveyance, transfer or change or negate any provisions elsewhere in this Mortgage giving the Mortgagee the right to declare a default under this Mortgage. As provided in Section 2.9 hereof, the Mortgagee's consent to conveyances and other events shall not be unreasonably withheld.

**Section 9.4 Successors and Assigns.** This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns, including, without limitation, each and every record owner of the Mortgaged Property or any other person having an interest therein; it shall inure to the benefit of the Mortgagee and its successors and assigns.

**Section 9.5 Unenforceability of Certain Clauses.** The unenforceability of or invalidity of any provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

**Section 9.6 Captions and Headings.** The captions and headings of the various sections of this Mortgage are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

**Section 9.7 Notices.** All notices of an Event of Default hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, with proper address as indicated. All other notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by regular mail, postage prepaid, with proper address as indicated below. The Mortgagor and the Mortgagee may, by written notice given by each other to the others, designate any other address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated by this Mortgage. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

To the Mortgagor:	New Harmony Care Center, Inc. 7171 Ohms Lane Edina, MN 55439 Attention: Chief Financial Officer
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To the Mortgagee	Bremer Bank, National Association 225 South Sixth Street, Suite 200 Minneapolis, MN 55402 Attention: David B. Borden
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**Section 9.8 RESERVED.**

**Section 9.9 Supplements or Amendments to this Mortgage.** This Mortgage may not be supplemented or amended without the written consent of the Mortgagee and the Mortgagor.

IN WITNESS WHEREOF, the Mortgagor and Mortgagee have caused this instrument to be executed as of the date first above written.

NEW HARMONY CARE CENTER, INC.

By \_\_\_\_\_  
Its Chief Financial Officer

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2021, by Kathy Youngquist, the Chief Financial Officer of New Harmony Care Center, Inc., a Minnesota nonprofit corporation, on behalf of said nonprofit corporation.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION**

The land referred to herein is situated in the State of Minnesota, County of Ramsey, and is described as follows:

[TO COME]

## **EXHIBIT B**

### **PERMITTED ENCUMBRANCES**

“Permitted Encumbrances” means, as of any particular time:

- (a) this Mortgage;
- (b) liens and encumbrances on the Land of record at the time of recording of this Mortgage, as described in a pro forma title insurance policy delivered to the Mortgagee;
- (c) liens subordinated to the lien hereof on terms acceptable to the Mortgagee as agreed to in writing by the Mortgagee;
- (d) future purchase money liens on personal property;
- (e) utility, access, and other easements and rights-of-way, restrictions, and exceptions affecting the Land but which do not interfere with reasonable use or improvement of the Land; and
- (f) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Land and as do not in the aggregate, in the opinion of Mortgagee’s counsel, materially impair the property affected thereby for the purposes of which it was acquired or is held by the Mortgagor.

**DISBURSEMENT AGREEMENT**

THIS DISBURSEMENT AGREEMENT, dated as of May 1, 2021, between New Harmony Care Center, Inc., a Minnesota nonprofit corporation (“Borrower”), Bremer Bank, National Association, a national banking association (“Bank”), U.S. Bank National Association, a national banking association (“Trustee”), and Commercial Partners Title, LLC (“Title Company”);

**WITNESSETH:**

WHEREAS, the City of Hampton, Minnesota, a municipal corporation and a political subdivision of the State of Minnesota (“Hampton”), has provided for the issuance of its City of Hampton, Minnesota Senior Housing and Healthcare Revenue Note (New Harmony Project), Series 2021A, in the principal amount of \$10,000,000.00 (the “Hampton Note”) dated as of May \_\_, 2021; and

WHEREAS, by that certain Loan Agreement dated as of May 1, 2021 (the “Hampton Loan Agreement”) between Hampton and the Borrower, Hampton has agreed to lend the proceeds of the Hampton Note to the Borrower to finance the acquisition of land and land improvements and construction, furnishing and equipping of a new senior healthcare and housing facility, including approximately 48 skilled nursing beds, 16 transitional skilled nursing beds, 35 independent apartment units, 36 assisted living apartment units, 14 memory care apartment units, and 12 care suite apartment units, to be located at 1534 County Road C East in the City of Maplewood, Minnesota (the “Project”); and

WHEREAS, the City of Landfall Village, Minnesota, a municipal corporation and a political subdivision of the State of Minnesota (“Landfall Village”), has provided for the issuance of its City of Landfall Village, Minnesota Senior Housing and Healthcare Revenue Note (New Harmony Project), Series 2021B, in the principal amount of \$10,000,000.00 (the “Landfall Village Note”) dated as of May \_\_, 2021; and

WHEREAS, by that certain Loan Agreement dated as of May 1, 2021 (the “Landfall Village Loan Agreement”) between Landfall Village and the Borrower, Landfall Village has agreed to lend the proceeds of the Landfall Village Note to the Borrower to finance the acquisition of land and land improvements and construction, furnishing and equipping of the Project; and

WHEREAS, the City of Falcon Heights, Minnesota, a municipal corporation and a political subdivision of the State of Minnesota (“Falcon Heights”, and with Hampton and Landfall Village, the “Senior Note Issuers”), has provided for the issuance of its City of Falcon Heights, Minnesota Senior Housing and Healthcare Revenue Note (New Harmony Project), Series 2021C, in the principal amount of \$\_\_\_\_\_ (the “Falcon Heights Note” and, with the Hampton Note and the Landfall Village Note, the “Senior Notes”) dated as of May \_\_, 2021; and

WHEREAS, by that certain Loan Agreement dated as of May 1, 2021 (the “Falcon Heights Loan Agreement” and, with the Hampton Loan Agreement and the Landfall Village Loan Agreement, the “Senior Loan Agreements”) between Falcon Heights and the Borrower, Falcon Heights has agreed to lend the proceeds of the Falcon Heights Note to the Borrower to finance the acquisition of land and land improvements and construction, furnishing and equipping of the Project; and

WHEREAS, pursuant to the terms of that certain Loan Agreement dated as of May 1, 2021 (the “Subordinate Loan Agreement” and, with the Senior Loan Agreements, the “Loan Agreements”), between Borrower and the City of Little Canada, Minnesota, a municipal corporation and a political subdivision of the State of Minnesota (“Little Canada”), and that certain Trust Indenture dated as of May 1, 2021, between Little Canada and the Trustee (the “Indenture”), Little Canada has provided for the issuance of its Little Canada, Minnesota Subordinate Senior Housing and Healthcare Revenue Bonds (New Harmony Project) Series 2021D, in the principal amount of \$\_\_\_\_\_ (the “Subordinate Bonds”) to finance the acquisition of land and land improvements and construction, furnishing and equipping of the Project; and

WHEREAS, the Senior Note Issuers have each assigned their respective interests in the Senior Loan Agreements to the Bank pursuant to those certain Pledge Agreements dated as of May 1, 2021; and

WHEREAS, by those certain Mortgages, Security Agreements, Assignments of Leases and Rents and Fixture Financing Statements, each dated as of May 1, 2021 (the “Senior Mortgages”), from the Borrower to the Bank, the Borrower has granted to the Bank a mortgage lien on and security interest in the Mortgaged Property, as defined in the Senior Loan Agreements, in order to secure the obligations of the Borrower to the Bank under the Senior Loan Agreements, including payment of amounts due thereunder; and

WHEREAS, by a Subordinate Construction Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents dated as of May 1, 2021 (the “Subordinate Mortgage”), from the Borrower to the Trustee, the Borrower has granted to the Trustee a mortgage lien on and security interest in the Mortgaged Property, as defined in the Indenture to secure the Borrower’s obligations under the Subordinate Loan Agreement; and

WHEREAS, the Title Company has issued or has agreed to issue to each of the Bank and the Trustee its policies of mortgagee’s title insurance (extended coverage — ALTA form) (the “Title Policies”) covering the real property included in the Mortgaged Property, naming each of the Bank and the Trustee as an insured party, in an amount equal to the initial aggregate principal amount of the Senior Notes and the Subordinate Bonds, respectively; and

WHEREAS, the Loan Agreements provide that the proceeds of the Senior Notes and the Subordinate Bonds shall be used to pay a part or all of the costs to be incurred by the Borrower in connection with the Project; and

WHEREAS, the Title Company has been furnished a copy of the Loan Agreements, the Senior Mortgages and the Subordinate Mortgage, and the Bank, the Trustee and the Borrower have requested the Title Company act as the disbursing agent of money advanced from the Bank or received from the Trustee, as defined below, in accordance with this Disbursement Agreement.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, it is agreed between the parties hereto as follows:

1. All terms used in this Disbursement Agreement with initial letters capitalized but not defined herein have the meaning given such terms in the Loan Agreements unless the context clearly indicates otherwise. In addition, the following terms when used in this Disbursement Agreement have the meanings specified in this Section:

Appraiser means \_\_\_\_\_, its successors and assigns, or any other person retained by the Borrower, and acceptable to the Bank, to serve as appraiser with respect to the Project.

Borrower Equity means \_\_\_\_\_.

Completion Date means on or before \_\_\_\_\_, 202\_.

Construction Contract means any contract by the Borrower with any person providing for construction, equipping or installation of any part of the Project.

Contractor means CBS Construction Services Inc.

Disbursement Date means the date on which a disbursement is made pursuant to a Draw Request, which will be a Business Day not less than ten (10) days after the date on which the Draw Request is received by the Title Company and the Bank.

Draw Request means a written request, substantially in the form attached hereto as Exhibit A, signed in the name of the Borrower and delivered to the Bank, the Trustee and the Title Company.

Inspecting Architect means \_\_\_\_\_.

Loans means collectively the loans evidenced by the Senior Notes, the Subordinate Bonds and the Loan Agreements.

Loan Agreements shall have the meaning ascribed to it in the above Recitals to this Agreement.

Plans shall mean the final working plans for the Project, including drawing, specifications, details and manuals acceptable to the Bank.



Project means the work, material, equipment and services described in Exhibit B attached hereto.

Project Architect means Pope Architects, Inc., or any other person retained by the Borrower, and acceptable to the Bank, to serve as architect with respect to the Project.

Project Costs means the cost of any items of work, material, equipment, and/or services comprising the “Total Project Costs” identified in the Sworn Construction Cost Statement.

Senior Mortgages shall have the meaning ascribed to it in the above Recitals to this Agreement.

Senior Notes shall have the meaning ascribed to it in the above Recitals to this Agreement.

Subcontractors mean any supplier of work or materials to the project under a contract with contractor or under a contract with Owner but subject to the supervision and construction management of Contractor.

Subcontract means any contract to supply work or materials to the Project by a Subcontractor.

Subordinate Bonds shall have the meaning ascribed to it in the above Recitals to this Agreement.

Subordinate Mortgages shall have the meaning ascribed to it in the above Recitals to this Agreement.

Subordination Agreement shall have the meaning ascribed to it in Section 2(v).

Sworn Construction Cost Statement means a statement substantially in the form attached hereto as Exhibit C, duly completed and signed on behalf of the Borrower and the Contractor.

Title Policies means the mortgagee’s policies of title insurance issued by the Title Company with respect to the Senior Mortgages and the Subordinate Mortgage.

2. Before submitting the initial Draw Request, the Borrower shall submit to the Bank and the Title Company the following:

- (a) The Senior Mortgages.
- (b) The Subordinate Mortgage.
- (c) The Pledge Agreements executed by the Senior Note Issuers assigning of all of their right, title and interest in and to the Senior Loan Agreements to the Bank.

(d) A Security Agreement and related financing statements executed by Borrower in favor of the Bank to secure Borrower's obligations under the Senior Loan Agreements.

(e) A Guaranty of Borrower's obligations under the Senior Notes and the Senior Loan Agreements executed and delivered by Elim Care, Inc., a Minnesota nonprofit corporation (the "Guarantor").

(f) The Guaranty Agreement dated as of May 1, 2021, between the Guarantor and Trustee.

(g) A current appraisal of the Mortgaged Property prepared by an appraiser licensed by the State of Minnesota and acceptable to the Bank.

(h) A survey of the Mortgaged Property conducted and certified in accordance with the requirements outlined on **Exhibit D** attached hereto.

(i) Commitments from Title to issue an ALTA-Loan Policy Mortgagee's policy of title insurance which commitments insure the Bank's first mortgage lien position and the Trustee's second mortgage lien position and contains only such exceptions as may be acceptable to the Bank and the Trustee and is in compliance with **Exhibit E** attached hereto.

(j) Letter from the City of Maplewood, Minnesota confirming that the Property has been zoned appropriately for the Project.

(k) Evidence that the Property is not located in a flood plain.

(l) An Assignment of Architect's Agreement and Plans and Specifications.

(m) An Assignment of Construction Documents.

(n) An executed Certificate of Hazardous Waste in the form attached hereto as **Exhibit F**.

(o) Certificate of insurance (ACORD Form 28) evidencing a policy or policies of insurance covering the Borrower's operations and the Project in accordance with the requirements listed on **Exhibit G** attached hereto, such policy to insure against all risks, name the Bank as mortgagee-loss payee on all property policies and an additional insured as to all liability policies.

(p) Certificates of Good Standing for Borrower and Guarantor issued by the Minnesota Secretary of State.

(q) Certificates of Authority in the forms attached hereto as **Exhibits H** and **H-1** for Borrower and Guarantor.

(r) Current financial statements of Borrower and Guarantor in form and substance acceptable to the Bank.

(s) An Opinion of Counsel to the Borrower in the form of **Exhibit I** attached hereto or otherwise in form acceptable to the Bank.

(t) Complete and current UCC and State and Federal Tax Lien Searches on the Borrower and Guarantor in such offices and in such jurisdictions as the Bank may require.

(u) The Subordination and Intercreditor Agreement dated as of May 1, 2021, among the Trustee, the Bank, the Borrower, and the Guarantor (“Subordination Agreement”).

(v) A Sworn Construction Cost Statement for the Project dated as of the date hereof (“Sworn Construction Cost Statement”).

(w) A Project budget in form and substance acceptable to the Bank which reflects that the aggregate amount of the proceeds of the Senior Notes to be disbursed hereunder shall not exceed eighty percent (80%) of the fair market value of the Project and the portion of the Mortgaged Property underlying the Project as established by the appraisal delivered to the Bank and accepted by the Bank pursuant to Section 4(a) of this Agreement (“Project Budget”).

(x) A schedule prepared by the Borrower showing the anticipated disbursement schedule for loan proceeds.

(y) Evidence that the Borrower has acquired all necessary governmental permits, licenses and consents, including all grading, building and other permits, as may be necessary to construct and complete the Project, or will acquire such permits, licenses and consents as soon as practicable after the date of issuance of the Senior Notes and the Subordinate Bonds.

(z) Evidence that all necessary approvals for the construction of the Project have been obtained.

(aa) A copy of all Plans and Specifications for the Project together with evidence of the approval of the City of Maplewood, Minnesota of such Plans and Specifications (“Plans”).

(bb) Copies of all engineering, architectural, construction management and construction contracts and subcontracts (“Contracts”) for the Project.

(cc) Acknowledgments of the Assignment of Architect's Agreement and Plans and Specifications and the Assignment of Construction Documents, executed by the Project Architect and the Contractor, respectively.

3. The Borrower shall provide the Bank such evidence and/or documents as shall be reasonably sufficient to secure from the Title Company priority title insurance over all possible mechanic's and other lien claims, whether or not construction of the Project may have commenced prior to the recording of the Senior Mortgages and the Subordinate Mortgage.

4. The Borrower may obtain an advance of proceeds of the Senior Notes and the Subordinate Bonds for disbursement to the Contractor and Subcontractors only to the extent of the amount of work satisfactorily completed or materials, equipment or services actually incorporated into the Project by Contractor and Subcontractors in accordance with the Construction Contract and any Subcontract, less (as to the Construction Contract and any Subcontract other than one limited to the sale or provision of materials or equipment) a retainage of 5% on contracts only or such greater retainage as is provided for in the Construction Contract or any Subcontract, and the Borrower agrees that all sums requested hereunder for disbursement to Contractor or any Subcontractor shall not exceed that amount. The Borrower shall not obtain any disbursement of funds hereunder for the cost of materials acquired for the Project until such materials have been incorporated into the Project or properly stored on the Project site in a secure fashion or offsite in a secure location confirmed by the Inspecting Architect in a manner reasonably acceptable to the Bank and the Inspecting Architect.

As provided for in the Senior Loan Agreements, the Bank shall advance against each of the Senior Notes on the date hereof, the sum of \$100,000.00 to fund Borrower's costs of issuance or to reimburse Borrower for Project Costs incurred and paid by Borrower through the date this Agreement is executed. Notwithstanding anything to the contrary contained herein and except as provided in this Section 4, no advances shall be made against the Senior Notes until such time as all of the proceeds of the Borrower Equity and the Subordinate Bonds have been advanced to fund costs of issuance and Project Costs.

5. In order to induce the Bank and the Trustee to enter into and execute this Disbursement Agreement, the Borrower represents and warrants to the Bank and the Trustee that on the date hereof, there exists no "Event of Default" under the Loan Agreements, the Senior Mortgages or the Subordinate Mortgage. From and after the funding of the advance made pursuant to the initial Draw Request hereunder, the Borrower represents and warrants to the Bank and the Trustee as follows, each representation and warranty being true and correct on the date of each Draw Request and on each Disbursement Date following the initial advance:

(a) The Borrower has obtained or will obtain from each governmental authority all licenses, permits, authorizations, consents and approvals necessary for the construction of the Project, and all such licenses, permits, authorizations, consents and approvals obtained to the date hereof are in full force and effect.

(b) To the best of its knowledge, there exists no "Event of Default" under the Loan Agreements, the Senior Mortgages or the Subordinate Mortgage.

(c) To the best of its knowledge, there exists no material default under the Construction Contract or any Subcontract.

6. The Borrower shall deliver to the Bank revised, sworn statements of estimated costs of the Project required by paragraph 4 hereof, showing changes in or variations from the original Sworn Construction Cost Statement, involving amounts of \$50,000.00 or more as soon as such changes are known to the Borrower. The Borrower shall furnish the Bank a copy of all changes in the Plans and the Construction Contract. The Borrower shall not make or consent to any change in the Plans or the Construction Contract without the prior written consent of the Bank if such change would in any material way alter the design or structure of the Project or increase or decrease the total Project Costs by \$50,000.00 or more for any single change or \$250,000.00 or more for the aggregate of all changes not previously consented to.

7. Whenever the Borrower desires to obtain an advance of proceeds from the Senior Notes or the Subordinate Bonds to pay any item of Project Costs, the Borrower shall submit to the Bank and the Trustee, the Inspecting Architect and the Title Company, a completed and signed Draw Request. Draw Requests shall be submitted no more than once each month. Borrower shall simultaneously submit to the Bank and the Title Company a waiver of mechanic's lien and/or materialman's lien, executed by the Contractor, covering liens for all work done and materials supplied for which a disbursement was made pursuant to the previous Draw Request (except that the final Draw Request shall be accompanied by lien waivers for all work done and material supplied for which disbursement is required), in the form required by the Title Company, and a similar waiver of mechanic's lien and/or materialman's lien, executed by each Subcontractor covering liens for all work done and materials supplied for which a disbursement was made pursuant to the previous Draw Request (except that the final Draw Request shall be accompanied by lien waivers for all work done and material supplied for which disbursement is required). Such waivers shall be submitted in each case unless the Bank determines that the Contractor's or Subcontractor's claim would not give rise to such a lien. Each Draw Request shall also be accompanied by a certificate of the Project Architect and the Inspecting Architect, if required by the Bank, in form reasonably acceptable to the Bank and the Title Company, to the effect that the Contractor and any Subcontractor who is to receive any disbursement from the advance has satisfactorily completed the work or supplied the materials for which such disbursement is requested. Inspecting Architect may make such inspections and prepare such reports, at Borrower's expense, that it deems necessary to support its analysis and determinations hereunder, which reports may only be relied on by the Bank.

The Title Company shall give the Bank immediate notice by email if any lien is disclosed (other than one expressly listed in the Title Policy). If any such lien or other matter which jeopardized the Bank's or the Trustee's security interest in the Property is disclosed or is in any other manner discovered by the Title Company, the Title Company and the Bank and the Trustee shall refrain from making or approving further disbursements until the Title Company has determined and notified the Bank and Trustee that such lien or other matter has been satisfied of record or otherwise appropriately dealt with. Except as may be otherwise provided in the Loan Agreements, and except as the Bank and the Title Company may determine necessary to preserve the lien status of the Senior Mortgages or the Subordinate Mortgage, no further

advances of proceeds of the Senior Notes or the Subordinate Bonds shall be made if at any time an Event of Default has occurred and is continuing under the respective Loan Agreements or the Senior Mortgages or the Subordinate Mortgage.

The Bank may decline to authorize an advance of proceeds from the Senior Notes and the Trustee may decline to authorize an advance of proceeds from the Subordinate Bonds unless the Borrower provides the Bank, the Trustee and the Title Company evidence that each of the Loans on each Disbursement Date is “in balance”, i.e., that all remaining unpaid Project Costs do not exceed the aggregate remaining to be advanced from proceeds of the Senior Notes and the Subordinate Bonds plus cash or cash equivalents which the Borrower has deposited with the Bank for use in payment of Project Costs prior to the disbursement of any additional advances against the Senior Notes and the Subordinate Bonds. If at any time prior to completion of the Project, the amount remaining to be advanced against the Note and the Bonds appears to Bank, the Trustee or to Title Company to be insufficient to pay for completion of the Project, the Borrower shall deposit with Bank within ten (10) days after the demand therefor, the amount of money which Bank, in its reasonable discretion, determines is needed to cover such insufficiency.

The Bank and the Trustee shall have no obligation to fund any Draw Request unless there are sufficient funds available to be drawn directly under the Senior Notes and the Subordinate Bonds. On each Disbursement Date, if all the terms and conditions hereof have been complied with by the Borrower, as determined by the Bank (or the Trustee as to advances of proceeds of the Bonds) and the Title Company, the Bank or the Trustee, as appropriate (so long as there is any amount remaining to be advanced from proceeds of the Senior Notes and the Subordinate Bonds) shall, directly advance to the Title Company, in a manner reasonably satisfactory to the Title Company, the amount of the requested disbursement. The Title Company shall, as promptly as possible thereafter, and if the Title Company has not received from the Bank or the Trustee notice that an Event of Default under the Loan Agreements or the Senior Mortgages or the Subordinate Mortgage has occurred and is continuing, disburse the funds so received from the Bank or the Trustee by delivering to the Contractor and Sub-Contractors the checks made payable to the payee named in the Draw Request for the amounts set forth in such Draw Request. The parties acknowledge the Title Company shall not be responsible for creating, furnishing or reporting any IRS 1099 notices or filings for any payments it disburses under this Agreement for the parties.

Prior to the final disbursement, the Borrower shall submit to the Bank and the Title Company:

(a) certificates of use and occupancy as issued by the municipality in which the Project is located;

(b) a certificate of substantial completion executed by an officer of the Borrower, stating that to the best of such officer’s knowledge the Project has been completed substantially in accordance with the plans and specifications, that all Project Costs have been paid (except for those costs for punch list items to be funded from the final draw request), and that no Event of Default or event which with the giving of notice

or passage of time, or both, would become an Event of Default under the Loan Agreements, has occurred and is continuing;

(c) a final, certified “as built” survey of the Property, reflecting completion of the Project in compliance with all setback and other requirements and showing no encroachment of any kind;

(d) a written statement of the Appraiser, addressed to the Bank and the Trustee, to the effect that, based on an inspection of the completed Project, the Appraiser is not aware of any change with respect to the Project (other than market conditions) which would cause such Appraiser to reduce the appraised value of the Project from the appraised value contained in the earlier appraisal furnished by the Appraiser to the Bank and the Trustee; and

(e) written statements of the Project Architect and the Inspecting Architect, if required by the Bank or the Trustee, confirming that the Project has been completed in accordance with the Plans.

The Borrower shall complete the Project in a good and workmanlike manner in accordance with the Plans on or before the Completion Date.

8. The provisions of this Disbursement Agreement requiring submission of the lien waivers specified in Paragraph 9, and the required retainage specified in Paragraph 4, shall not apply with respect to funds to be disbursed for the items listed below, which may be disbursed in full upon submission of a Draw Request listing such items and the following special documentation, if any, to the Bank, the Trustee and to the Title Company:

<u>ITEM</u>	<u>SPECIAL DOCUMENTATION</u>
Commitment Fee	Closing Statement
Fees of attorneys and Project Architect	Closing Statement
Title Insurance Premium	Closing Statement
Cost of Issuance and other indirect (nonconstruction) items	Closing Statement

9. The Title Company shall keep records showing the date of each disbursement, the names of the persons to whom disbursements were made, and the amount of each disbursement, which records may be inspected by any of the other parties hereto. The Title Company shall retain all mechanic’s lien waivers received by it pursuant to this Disbursement Agreement for at least two (2) years. If requested by the Bank or the Trustee to do so, the Title Company shall deliver a copy of all such lien waivers to the Bank or the Trustee.

10. If the Title Company determines, in its reasonable judgment, that proper documentation to support a given disbursement, as required by this Disbursement Agreement, has not been furnished, the Title Company shall withhold payment of all such portion of such disbursement as shall not be so supported by proper documentation, and shall promptly notify the Borrower and the Bank and the Trustee (to the extent such draw is related to Bond proceeds) by telephone and then in writing of the discrepancy in or omission of such documentation. Until such time as such discrepancy or omission is corrected to the reasonable satisfaction of the Title Company, it shall withhold such amount. If such discrepancy or omission is not corrected within ten (10) days after notice of the discrepancy being given to the Borrower and the Bank and the Trustee, the Title Company shall return any such withheld funds to the Bank or the Trustee, as appropriate. Such returned funds shall remain available for reimbursement under this Disbursement Agreement, if the requirements thereof and hereof with respect thereto are later met.

11. The Borrower shall be responsible for making inspections of the Project during the course of construction, and shall determine to its own satisfaction that the work done or materials, equipment, or services supplied to which a disbursement is to be made out of each disbursement have been properly done or supplied in accordance with the Construction Contract. The Title Company and the Bank and the Trustee may, but shall not be required to, conduct any inspection of the Project.

12. Any one or more of the following events shall constitute an Event of Default:

(a) Payment. Borrower shall fail to make any payment on either of the Senior Notes and the Subordinate Bonds within ten (10) business days from the date when due; or

(b) Other Covenants or Agreements Herein. Borrower shall default in the due performance or observance of any material term, covenant or agreement contained in this Agreement, the Senior Mortgages, the Subordinate Mortgage or in any other documents or agreement delivered pursuant hereto or in connection herewith and such default shall continue for a period of thirty (30) days after written notice thereof shall have been given by Bank or the Trustee to Borrower; or

(c) Insolvency. Borrower shall (i) become insolvent under state or federal law or unable to pay its debts generally as they mature, (ii) make a general assignment for the benefit of the creditors, (iii) admit in writing its inability to pay its debts generally as they mature, (iv) file a petition in bankruptcy or a petition or answer seeking a reorganization, arrangement with creditors or other similar relief under the Federal bankruptcy laws or under any other applicable law of the United States of America or any State thereof, (v) consent to the appointment of a trustee or receiver for Borrower for a substantial part of its property, (vi) be adjudicated a bankrupt or an involuntary petition in bankruptcy, (vii) take any corporate action for the purpose of effecting or consenting to any of the foregoing, have an order, judgment or decree entered appointing, without Borrower's consent for a substantial part of its property, or



approving a petition filed against Borrower seeking a reorganization, arrangement with creditors or other similar relief under the Federal bankruptcy laws or under any other applicable law of the United States of America or any State hereof, which order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of entry; or

(d) Representations and Warranties. If any representation or warranty contained in this Agreement, the Senior Mortgages, the Subordinate Mortgage, or any other document or any letter or certificate furnished or to be furnished to the Bank or the Trustee by the Borrower proves to be materially false as of the date the Agreement or such documents is executed or at the time such letter or certificate is delivered to Bank; or

(e) Judgments. Judgments against Borrower for the uninsured payment of money totaling in excess of \$200,000.00 shall be outstanding for a period of sixty (60) days without a stay of execution; or

(f) Ownership. Borrower shall, without prior written consent of the Bank and the Trustee, sell, lease or transfer or agree to sell, lease or transfer all or any part of the Mortgaged Property or interest therein; or, the legal, beneficial or equitable ownership of the Borrower shall be changed by sale, lease, conveyance, transfer, assignment or encumbrance; or

(g) Delay in Project. The Project is abandoned or shall be unreasonably delayed or be discontinued for a period of thirty (30) consecutive calendar days following written notice to the Borrower by the Bank or the Trustee, in each instance for reasons other than acts of God, fire, storm, strikes, blackouts, labor difficulties, riots, inability to obtain materials, equipment or labor, governmental restrictions, acts of terrorism or any similar cause over which the Borrower is unable to exercise control; or

(h) Default Under Loan Agreements. An Event of Default occurs under any of the Loan Agreements, Senior Mortgages or Subordinate Mortgage.

Upon the occurrence of an Event of Default and subject to any restrictions on the Trustee's actions provided for in the Subordination Agreement, Bank or Trustee may, at its option and without notice: (a) refuse to advance against the Senior Notes or the Subordinate Bonds; (b) accelerate amounts outstanding on the Senior Notes and the Subordinate Bonds and demand their immediate payment in full; (c) foreclose its mortgage lien on the Mortgaged Property or take such other actions available under the terms of this Agreement, the Senior Mortgages, the Subordinate Mortgage and the documents and agreements delivered pursuant hereto or in connection herewith; or (d) take such other actions-as otherwise available in equity or at law. All remedies of the Bank and the Trustee shall be cumulative.

13. It is expressly understood and agreed that neither the Bank, the Trustee nor the Title Company assumes any liability or responsibility for the satisfactory completion of the

Project, for the adequacy of the funds to finance the Project, for inspections during construction of, for any acts on the part of the Borrower, the Contractor or any subcontractor to be performed in the construction of the Project.

14. The Borrower shall pay all title insurance (including any endorsement premium per disbursement, if requested) and disbursing charges as they are determined, including title search update fees. Borrower shall pay to Title an administrative fee of \$[500.00] (or more in the event of a non-routine draw, which may be considered non-routine because of unresolved liens, insufficient project or lien waiver documentation, disputes between parties, etc.) per disbursement, which along with any title search update and endorsement fees, are due and payable at the time of the disbursement of funds, or as may be billed at the time of the disbursement.

15. The Borrower agrees to indemnify Title Company against all losses, claims, damages, liability, and expenses, including, without limitation, costs of investigation and legal counsel fees which may be imposed on or incurred by Title Company in connection with the performance of its duties under this Agreement, including without limitation, any litigation arising from this Agreement or involving the subject matter of this Agreement. Title Company may conclusively rely upon and shall be protected in acting upon any document believed by Title Company to be genuine and to have been signed or presented by the proper parties, consistent with reasonable due diligence on Title Company's part.

16. Any certificate, documentation or notice required or permitted to be given by any party hereto to any other party hereto under the terms of this Disbursement Agreement shall be deemed to have been given on the date the same is personally delivered or is deposited in the United States mail, certified, return receipt requested, postage prepaid, addressed to the party to which the certificate, documentation, or notice is to be given at the address set forth opposite its name below, or to any other address specified in a notice given by such party to the others not less than ten (10) days prior to the effective date of the address change.

17. This Disbursement Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

BORROWER

NEW HARMONY CARE CENTER, INC.

By \_\_\_\_\_  
Its Chief Financial Officer

[Signature Page to Disbursement Agreement – New Harmony Care Center Project]

BANK

BREMER BANK, NATIONAL  
ASSOCIATION

By \_\_\_\_\_  
Its Senior Vice President

[Signature Page to Disbursement Agreement – New Harmony Care Center Project]

TRUSTEE

U.S. BANK NATIONAL ASSOCIATION

By \_\_\_\_\_  
Its Vice President

[Signature Page to Disbursement Agreement – New Harmony Care Center Project]

TITLE COMPANY

COMMERCIAL PARTNERS TITLE, LLC

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

## **EXHIBITS**

- A. Draw Request
- B. Project Description
- C. Sworn Construction Cost Statement
- D. Survey Requirements
- E. Title Insurance Requirements
- F. Certificate of Hazardous Waste
- G. Insurance Requirements
- H. Certificate of Authority — Borrower
- I. Form of Opinion of Counsel to Borrower and Guarantor

**EXHIBIT A  
DRAW REQUEST**

**DRAW REQUEST NO. \_\_\_\_\_**

Commercial Partners Title, LLC, as Title Company  
Bremer Bank, National Association, as Bank  
U.S. Bank National Association, as Trustee

The undersigned being an authorized representative of New Harmony Care Center, Inc. (the “Borrower”), does hereby certify pursuant to Section 4 of the Disbursement Agreement, dated as of May 1, 2021 (the “Disbursement Agreement”), between the Borrower and the above addressees, as follows:

(1) The amount and nature and the name and address of the payee of each item of Project Costs to be paid or reimbursed to be paid to the person or persons indicated on Exhibit A attached hereto.

(2) Each item of cost for which payment or reimbursement is requested is or was necessary in connection with the Project, qualifies as an item of Project Costs under the Loan Agreements, and, if for construction or equipment of the Project, was made or incurred in accordance with the Plans currently in effect for the Project.

(3) There has not been filed with or served upon the Borrower any notice of any lien, right to a lien, or attachment upon or claim affecting the right of any such Person to receive payment of the amount stated in this Request that has not been released or will not be released simultaneously with the payment of such obligation, except for liens arising from indebtedness then being diligently contested in good faith by the Borrower.

(4) No item of Project Costs requested to be paid or reimbursed by this Request has formed the basis for any previous payment from the [Bank/Borrower Equity/Project Fund].

(5) The balance remaining in the [Project] Fund and the balance of available proceeds of the Borrower Equity and the Senior Notes, after disbursement of money therefrom in accordance with this Request, will be sufficient to pay the remaining Project Costs in accordance with the Plans currently in effect.

(6) No “Event of Default” by the Borrower under the Loan Agreements or Disbursement Agreement has occurred that has not been cured.

(7) All representations and warranties made by the Borrower in the Loan Agreements and Disbursement Agreement are true and correct on and as of the date of this Request with the same effect as if made on this date.

(8) Attached hereto to the Disbursement Agreement are the Architect’s certification and lien waivers required pursuant to Section 7 of the Disbursement Agreement.

(9) This request is for disbursement of \$\_\_\_\_\_ [proceeds of the Senior Notes from the Bank] [from the \_\_\_\_\_ Fund established under the Indenture from the Trustee] [from Borrower Equity].



You are hereby requested to [disburse from Borrower Equity][disburse from the Project Fund][advance of Senior Note proceeds from the Bank] the amounts shown on Exhibit A hereto, less the holdback described in Section 4 of the Disbursement Agreement, and to make payment to the Persons entitled to receipt thereof as shown on Exhibit A attached hereto.

Dated: \_\_\_\_\_

**NEW HARMONY CARE CENTER, INC., a  
Minnesota nonprofit corporation**

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

**EXHIBIT B**  
**PROJECT DESCRIPTION**

The construction, equipping and furnishing of a new senior healthcare and housing facility, including approximately 48 skilled nursing beds, 16 transitional skilled nursing beds, 35 independent apartment units, 36 assisted living apartment units, 14 memory care apartment units, and 12 care suite apartment units, to be located at 1534 County Road C East in the City of Maplewood, Minnesota.

**EXHIBIT C**  
**SWORN CONSTRUCTION COST STATEMENT**

**EXHIBIT D**  
**SURVEY REQUIREMENTS**

The undersigned hereby certifies to Bremer Bank, National Association (the “Lender”), U.S. Bank National Association (the “Trustee”), New Harmony Care Center, Inc., a Minnesota nonprofit corporation (the “Borrower”), and Commercial Partners Title, LLC (the “Title Company”), that this is a true and correct representation of a survey of the above-described real property showing:

1. The complete and correct legal description of the land as shown on the title insurance commitment or preliminary title report. [Note: It must be possible to trace the legal description of the land on the survey by following the bearings and dimensions around the boundaries of the land.]
2. The location of all recorded easements and of all unrecorded easements ascertainable by an inspection of the land, which benefit or burden the land. [Note: All recorded easements are to be identified by a document recording number or other document reference.]
3. All areas affected by any recorded restrictions or access limitations. [Note: All such areas are to be identified by a document recording number or other document reference.]
4. The location of all adjoining streets, roads, highways and alleys, with names, rights-of-way widths and distances from the land noted. If none adjoin the land, then the location of the nearest public street, road or highway and its distance from the land.
5. The location of public access to the land and of all appurtenant access easements, entrance drives and curb cuts.
6. A directional indicator showing North.
7. The street address of any existing improvements.
8. The dimensions of the land and the locations of existing improvements as measured in both directions from property lines.
9. The perimeter dimensions of existing improvements and the proposed locations of contemplated improvements.
10. Interior lot lines, if any.
11. All applicable municipal building setback lines.

12. The location of existing connections and onsite utility and service lines for natural gas, electricity, water, and sanitary and storm sewers.
13. The area of the land.
14. Any portion of the land which is located in a flood plain or in any other flood hazard or flood danger area as designated by any governmental authority claiming jurisdiction over the land.
15. A certification of surveyor as provided below.

I hereby certify to Bremer Bank, National Association, U.S. Bank National Association, New Harmony Care Center, Inc., and Commercial Partners Title, LLC. This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Table A Items 1, 2, 3, 4 (in square feet or acres), 6(a), 6(b), 8, 9, 11, 13, 16, 17, 18, and 19, and if buildings are located on the land, Table A Items 7(a), 7(b)(1), 7(b)(2), 7(c), 10(a), and 10(b) of the Table A, and in addition as Table A Item 21 the following: 21(a) All areas affected by any recorded restrictions or access limitations [Note: All such areas are to be identified by a document recording number or other document reference]; 21(b) The locations of existing improvements as measured on each side to the nearest property line; 21(c) The proposed locations of contemplated improvements; 21(d) Interior lot lines, if any; **[applicable for As-Built Survey]** 21(e) Location of all buildings and improvements, as built, as measured on each side to the nearest property line; 21(f) All entrances to and exits from each building; and 21(g) All water retention areas and drainage water receptacles. The field work was completed on \_\_\_\_\_, 20\_\_\_\_.

Date of Plat or Map: \_\_\_\_\_, 20 \_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 [LICENSED SURVEYOR'S SIGNATURE]  
 (Seal) [NAME OF SURVEYOR]  
 Registration Number: \_\_\_\_\_

**EXHIBIT E**  
**TITLE INSURANCE REQUIREMENTS**

The title insurance policy issued in connection with the commitment delivered pursuant to the Disbursement Agreement shall include the following endorsements:

1. ALTA 3.1 Zoning (completed building) or ALTA 3.0 Zoning (under construction);
2. Arbitration (deletion);
3. ALTA Form 9 - Restrictions, Encroachments, Minerals;
4. ALTA Form 8.1 - Environmental Protection Lien;
5. Survey;
6. Access;
7. Location (Commercial);
8. Tax Identification Number;
9. Contiguity;
10. Usury;
11. Utility Facility; and
12. Variable Rate (if applicable)

**EXHIBIT F**  
**CERTIFICATE OF HAZARDOUS WASTE**

TO: Bremer Bank, National Association  
225 South Sixth Street, Suite 200  
Minneapolis, MN 55402

RE: \$ \_\_\_\_\_ Mortgage Loan

BORROWER: New Harmony Care Center, Inc.

PREMISES: 1534 County Road C East, Maplewood, Minnesota 55109

The undersigned, the duly elected and acting Chief Financial Officer of New Harmony Care Center, Inc., a Minnesota nonprofit corporation (hereinafter referred to as the “Borrower” hereby certifies to Bremer Bank, National Association, a national banking association (hereinafter referred to as the “Lender”) that to its actual knowledge and except as disclosed in written reports by third party engineers delivered to Lender:

1. Any terms mentioned in the following subsections which are defined in state or federal statutes and/or regulations promulgated in relation thereto shall have the meaning subscribed to such terms and said statutes and regulations. The state and federal statutes referred to include, without limitation, (1) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. Sections 9601-9657 (1983); (2) the 1986 Superfund Amendments and Reauthorization Act (SARA), codified as a part of 42 U.S.C. Section 9601 et seq. (Supp. 1988); (3) the 1976 Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6901-6987 (1983); (4) legislation and regulations governing underground storage tanks (UST), including applicable federal and state laws; and (5) state and federal laws creating various liens for clean-up costs, including applicable provisions of SARA and comparable Minnesota laws.

2. None of the real property described in Exhibit “A” attached hereto and made a part hereof and the improvements thereon (herein together called the “Premises”), has ever been used by previous owners and/or operators or Borrower to generate, manufacture, refine, transport, treat, store, handle or dispose of “Toxic Material”, “Hazardous Substances”, “Solid Waste” or “Hazardous Wastes”, and Borrower and Guarantor do not intend to use any of their real property, including, but not limited to Premises, for such purposes.

3. The Premises have not ever contained, through the action or inaction of previous owners and/or operators or Borrower or the Guarantor, either asbestos (except as disclosed to Lender), ureaformaldehyde foam insulation, PCB or other toxic materials, whether used in construction or stored on the Premises.

4. Borrower has not received a summons, citation, directive, letter or other communication, written or oral, from any agency or department of Ramsey County, Minnesota or in the U.S. Government concerning any intentional or unintentional action or omission on Borrower's part which resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of "Toxic Material" "Hazardous Substances", "Solid Waste" or "Hazardous Waste" into waters or onto lands of the State of Minnesota, or into waters outside the jurisdiction of the State of Minnesota where damage may have resulted to the lands, waters, fish, shellfish, wildlife, flora, air or other resources owned, managed, held in trust or otherwise controlled by the State of Minnesota.

5. Borrower shall not cause or permit to exist, as a result of any intentional or unintentional act or omission on its part, a releasing, spilling, leaking, pumping, emitting, pouring, emptying or dumping of a "Toxic Material", "Hazardous Substance", "Solid Waste" or "Hazardous Waste" into waters or onto lands of the State of Minnesota or into waters outside the jurisdiction to the State of Minnesota where damage may result to the lands, waters, fish, shellfish, wildlife, flora, air and other resources owned, managed, held in trust or otherwise controlled by the State of Minnesota, unless said release, spill, leak, etc. is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal or state government authorities.

6. The Premises do not now nor have they ever contained: (a) any underground storage tanks of any size or description; (b) or any "wells" of any depth or description; or (c) any private septic or sewage system.

7. Borrower hereby agrees to defend, indemnify and hold harmless Lender, its directors, officers, employees, agents, successors and assigns from and against any and all losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including, without limitation, attorneys' fees and expenses) which Lender may incur as a direct or indirect consequence of the use, generation, manufacture, storage, disposal, threatened disposal, transportation or presence of "Toxic Material", "Hazardous Substances", "Solid Waste" or "Hazardous Wastes" in, on, under or about the Premises or improvements thereto. Borrower shall immediately pay to Lender upon demand any amounts owing under this indemnity, together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Senior Notes (as hereinafter defined). Borrower's duty and obligations to defend, indemnify and hold harmless Lender shall survive the cancellation of the Note and the release, conveyance or partial conveyance of the Senior Mortgages (as hereinafter defined) to the extent the condition existed prior to Borrower being dispossessed of the premises following foreclosure.

This Certificate is executed in order to induce the Lender to make a Loan to the Borrower up to the principal sum of \_\_\_\_\_ and 00/100ths Dollars (\$\_\_\_\_\_) as evidenced by that certain City of Hampton, Minnesota Senior Housing and Healthcare Revenue Note (New Harmony Project), Series 2021A, in the principal amount of \$10,000,000.00 (the "Hampton Note"), that certain City of Landfall Village, Minnesota Senior Housing and Healthcare Revenue Note (New Harmony Project), Series 2021B, in the principal amount of \$10,000,000.00 (the "Landfall Village Note"), and that certain City of Falcon Heights, Minnesota Senior Housing and Healthcare Revenue Note (New Harmony Project), Series



2021C, in the principal amount of \$\_\_\_\_\_ (the “Falcon Heights Note” and, with the Hampton Note and the Landfall Village Note, the “Senior Notes”), such Senior Notes secured by those certain Mortgages, Security Agreements, Assignments of Rents and Leases and Fixture Financing Statements of even date herewith made by Borrower in favor of the Lender, creating a first priority mortgage lien upon the Premises. Borrower is fully aware that Lender is relying on this certification in making the loan described above and Borrower hereby agrees to indemnify, defend and hold Lender harmless against any loss that its suffers, including, but not limited to, reasonable attorneys’ fees, as a result of any inaccuracy in any statements herein certified.

Dated as of the \_\_\_\_ day of May, 2021.

New Harmony Care Center, Inc.

By \_\_\_\_\_  
Chief Financial Officer

**EXHIBIT G**  
**INSURANCE REQUIREMENTS**

1. Borrower shall obtain, maintain and keep in full force and effect during the term of the loan evidenced by the Senior Notes, the following policies of insurance with respect to the real property covered by the Senior Mortgages (“mortgaged premises”):

(a) During the period of construction, Borrower shall cause the Project general contractor to obtain and maintain in full force and effect worker’s compensation coverage as required by law.

(b) Builder’s risk insurance, for any building under construction located on the mortgaged premises, written on the so-called “Builder’s Risk Completed Value Basis”, in an amount equal to the total construction costs for the Project, and with coverage available on the so-called “all risk”, non-reporting form of policy.

(c) Insurance against loss or damage by fire, lightning, vandalism and malicious mischief and other perils covered by a policy of “all risk” property insurance, in an amount not less than the full replacement cost of the improvements constituting part of the mortgaged premises, including the cost of debris removal.

(d) Broad form boiler and machinery insurance, if applicable, on all equipment and objects customarily covered by such insurance and providing for full repair and replacement cost coverage.

(e) Comprehensive general public liability insurance against claims for bodily injury, death and property damage occurring at the mortgaged premises, such insurance to provide coverage of at least \$1,000,000.00 with respect to any single claim and \$3,000,000.00 in the aggregate unless those limits are no longer commercially available is determined by an insurance consultant selected by the Borrower and approved by the Bank in which case the highest limits as are commercially available shall be required.

(f) If any portion of the mortgaged premises is in a “flood hazard area” as designated by Federal insurance Administration, flood insurance in the amount of the full replacement cost of the mortgaged premises.

(g) Loss of Rents Insurance in an amount not less than 100% of Rental Value of the Project for the period necessary to repair the Project. “Rental Value” shall include:

i. The total projected gross rental income from tenant occupancy of the Project as set forth in the Budget;

- ii. The amount of all charges which are the legal obligation of tenants and which would otherwise be the obligation of the Borrower; and
- iii. The fair rental value of any portion of the Project which is occupied by Borrower.

2. Borrower will, at its sole cost and expense, from time to time when the Bank shall so request, provide the Bank with evidence of the full replacement cost of the mortgaged premises in a form acceptable to the Bank.

3. All hazard and casualty insurance policies maintained by the Borrower pursuant to the foregoing provisions shall:

- (a) provide that any losses payable thereunder shall (pursuant to the standard first mortgage clause in favor of, and acceptable to the Bank, to be attached to each such policy) be payable to the Bank and its assigns;
- (b) include effective waivers by the insurer of all claims for insurance premiums against the Bank;
- (c) provide that any losses shall be payable notwithstanding (i) any foreclosure or other proceedings or notice of sale relating to the mortgaged premises, (ii) any waiver of subrogation rights by the insured, or (iii) any change in the title to or ownership of any of the mortgaged premises as long as there remains an insurable interest for named insured or other protected persons;
- (d) be written in amounts sufficient to prevent the Borrower from becoming a co-insurer under said policies; and
- (e) provide the Bank with a thirty (30) day written notice in the event of cancellation or termination of such insurance or any changes to the policy that would affect the Bank's interest.
- (f) shall waive contribution from any other insurance carried by the Bank in the event of loss.

4. All liability insurance policies maintained by the Borrower pursuant to the foregoing provisions shall name the Bank as an additional insured and shall waive contribution from any other insurance carried by the Bank in the event of loss. All liability insurance shall also require the insurer provide the Bank with a thirty (30) day written notice in the event of cancellation or termination of such insurance or any changes to the policy that would affect the Bank's interest.

5. All required insurance shall be evidenced by a written Evidence of Property Insurance - ACORD Form 28 issued by the insurer reflecting the above requirements.

**EXHIBIT H**  
**CERTIFICATE OF AUTHORITY**  
**OF NEW HARMONY CARE CENTER, INC.**

I, Kathy L. Youngquist, do hereby certify as follows:

1. I am the Chief Financial Officer of New Harmony Care Center, Inc., a nonprofit corporation duly organized and existing under the laws of the State of Minnesota (hereinafter called “this Corporation”).

2. The Articles of Incorporation attached hereto as Exhibit 1 and the Bylaws attached hereto as Exhibit 2 are, respectively, true, complete and correct copies of this Corporation’s Articles of Incorporation, duly filed with the Secretary of State of the State of Minnesota, and the Bylaws of this Corporation, which Articles and Bylaws have been duly adopted by this Corporation and are presently in full force and effect.

3. The following is a true, complete and correct copy of resolutions duly adopted by the Board of Directors of this Corporation, and said resolutions are now in full force and effect:

See attached Resolutions

IN WITNESS WHEREOF, I hereunto subscribed my name as of the \_\_\_ day of May,  
2021.

NEW HARMONY CARE CENTER, INC.

By \_\_\_\_\_  
Its Chief Financial Officer

**EXHIBIT H-1  
CERTIFICATE OF AUTHORITY  
OF ELIM CARE, INC.**

I, Kathy L. Youngquist, do hereby certify as follows:

1. I am the Chief Financial Officer of Elim Care, Inc., a nonprofit corporation duly organized and existing under the laws of the State of Minnesota (hereinafter called “this Corporation”).
2. The Articles of Incorporation attached hereto as Exhibit 1 and the Bylaws attached hereto as Exhibit 2 are, respectively, true, complete and correct copies of this Corporation’s Articles of Incorporation, duly filed with the Secretary of State of the State of Minnesota, and the Bylaws of this Corporation, which Articles and Bylaws have been duly adopted by this Corporation and are presently in full force and effect.
3. The following is a true, complete and correct copy of resolutions duly adopted by the Board of Directors of this Corporation, and said resolutions are now in full force and effect:

See attached Resolutions

IN WITNESS WHEREOF, I hereunto subscribed my name as of the \_\_\_ day of May,  
2021.

ELIM CARE, INC.

By \_\_\_\_\_  
Its Chief Financial Officer

**EXHIBIT I  
OPINION OF COUNSEL**

[ON BORROWER'S COUNSEL'S LETTERHEAD]

[TO COME]



**GUARANTY**

WHEREAS, New Harmony Care Center, Inc., a Minnesota nonprofit corporation (the “**Debtor**”), desires or may desire at some time or from time to time to obtain loans or other financial accommodations from, or engage in other transactions with Bremer Bank, National Association, a national banking association (hereinafter called the “**Creditor**”); and

WHEREAS, the undersigned has a direct and substantial economic interest in Debtor and expects to derive direct and substantial benefits from any loans and financial accommodations resulting in the creation of indebtedness of Debtor to Creditor; and

WHEREAS, the Creditor has refused to provide such loans or other financial accommodations to Debtor unless and until the undersigned agrees to guaranty the obligations of Debtor to the Creditor;

NOW, THEREFORE in consideration of the above premises and to induce the Creditor to hereafter extend credit to the Debtor, and for other consideration, the undersigned does hereby unconditionally guarantee the prompt payment to the Creditor (at 225 South Sixth Street, Suite 200, Minneapolis, Minnesota 55402) when due, whether at the maturity date or dates specified therein or theretofore upon acceleration of maturity pursuant to the provisions thereof, Debtor's now existing or hereafter arising obligations under (a) that certain Loan Agreement of even date herewith by and among the Debtor and the City of Hampton, Minnesota, as assigned to Creditor pursuant to that certain Pledge Agreement dated of even date herewith (the “**Hampton Loan Agreement**”); (b) that certain \$10,000,000 City of Hampton, Minnesota Senior Housing and Healthcare Revenue Note (New Harmony Project), Series 2021A dated as of May \_\_, 2021 issued pursuant to the Hampton Loan Agreement (the “**Hampton Note**”); (c) that certain Loan Agreement of even date herewith by and among the Debtor and the City of Landfall Village, Minnesota, as assigned to Creditor pursuant to that certain Pledge Agreement dated of even date herewith (the “**Landfall Village Loan Agreement**”); (d) that certain \$10,000,000 City of Landfall Village, Minnesota Senior Housing and Healthcare Revenue Note (New Harmony Project), Series 2021B dated as of May \_\_, 2021 issued pursuant to the Landfall Village Loan Agreement (the “**Landfall Village Note**”); (e) that certain Loan Agreement of even date herewith by and among the Debtor and the City of Falcon Heights, Minnesota, as assigned to Creditor pursuant to that certain Pledge Agreement dated of even date herewith (the “**Falcon Heights Loan Agreement**” and, with the Hampton Loan Agreement and the Landfall Village Loan Agreement, the “**Loan Agreements**”); (f) that certain \$\_\_\_\_\_ City of Falcon Heights, Minnesota Senior Housing and Healthcare Revenue Note (New Harmony Project), Series 2021C dated as of May \_\_, 2021 issued pursuant to the Falcon Heights Loan Agreement (the “**Falcon Heights Note**” and, with the Hampton Note and the Landfall Village Note, the “**Notes**”); and (g) any renewals or extensions of or amendments to any of the foregoing (all of such obligations and liabilities being hereinafter called “**Guaranteed Obligations**”) together with any and all expenses of and incidental to collection, including attorneys' fees.

This guaranty is an absolute and completed one and shall be a continuing one and no notice of any Guaranteed Obligations or of any renewal, compromise or extension of any thereof or of any modification in the terms of the same need be given to the undersigned, who hereby

expressly waives presentment, demand, notice of nonpayment, protest, and notice of protest on any and all forms of such Guaranteed Obligations and also notice of acceptance of this guaranty.

The undersigned hereby:

(a) Consents that the Creditor may without affecting or impairing the liability of the undersigned hereunder take any one or more of the following actions:

(i) Forward or deliver any or all collateral and security placed with it by the Debtor or the undersigned, directly to the Debtor for collection and remittance or for credit, or to collect the same in any manner;

(ii) Exchange, release or surrender to the Debtor or to any guarantor, pledgor, or grantor any collateral and security, or waive, release or subordinate any collateral and security, in whole or in part, now or hereafter held as collateral and security for the Guaranteed Obligations;

(iii) Waive or delay the exercise of any of its rights or remedies against the Debtor or any other person or entity;

(iv) Release the Debtor or any other person or entity;

(v) Renew, extend, or modify the terms of the Guaranteed Obligations or any other obligation of Debtor to Creditor or any instrument or agreement evidencing the same; or

(vi) Apply payments by the Debtor, the undersigned, or any other person or entity, to any of the obligations of Debtor to the Creditor in such amounts and proportions as the Creditor may deem advisable whether the same shall be due or not;

(b) Further consents that the liability of the undersigned hereunder shall not be affected or impaired:

(i) by any failure, neglect or omission on the part of the Creditor to realize upon any Guaranteed Obligations or upon any collateral or security for any or all Guaranteed Obligations;

(ii) by the taking by the Creditor of any other guaranty or guaranties to secure the Guaranteed Obligations;

(iii) by the non-existence from time to time of any Guaranteed Obligations from the Debtor to the Creditor;

(iv) by the taking by the Creditor of collateral or security of any kind; or

(v) by any act or failure to act whatsoever (except payment), which but for this provision might or could in law or in equity act to release or reduce the undersigned's liabilities hereunder.

(c) Waives all notices whatsoever with respect to this guaranty or with respect to any document or instrument evidencing or related to the Guaranteed Obligations, including, but without limitation, notice of:

(i) The Creditor's acceptance hereof or its intention to act, or its action, in reliance hereon;

(ii) The present existence or future incurring of any obligations of Debtor to the Creditor or any alteration in the terms or amounts thereof or any change therein;

(iii) Any default by the Debtor or any surety, pledgor, grantor of security, or guarantor under any agreement between Debtor and the Creditor; and

(iv) The obtaining or release of any guaranty or surety agreement (in addition to this guaranty), pledge, assignment, or other security for the Guaranteed Obligations.

The undersigned acknowledges that this guaranty is in effect and binding as to the undersigned without reference to whether it is signed by any other person or persons, or any other entity or entities, and agrees that possession of this instrument of guaranty by the Creditor shall be conclusive evidence of due delivery hereof by the undersigned. The undersigned acknowledges that the undersigned's liability upon this guaranty shall be terminated only upon payment of the Guaranteed Obligations, regardless of the source of payment, provided however, that the undersigned's liability hereon shall continue as to: (a) Guaranteed Obligations then existing in the event of a partial payment; and (b) as to Guaranteed Obligations thereafter contracted pursuant to any then existing commitment on the part of the Creditor; and (c) as to any Guaranteed Obligations collected by Creditor from the Debtor which are required to be disgorged by a court or other tribunal having jurisdiction over such matters. As to any portion of the Guaranteed Obligations the undersigned will not, without the Creditor's consent, collect from the Debtor the claim, if any (by subrogation or otherwise), acquired through payment by any of the undersigned of a part of the Guaranteed Obligations regardless of whether or not such Guaranteed Obligations have been paid and satisfied in full and any commitments therefor have been terminated.

This guaranty shall be construed and interpreted in accordance with and governed by the laws of the State of Minnesota in which state it shall be performed by the undersigned. The undersigned consents to the jurisdiction of the state and federal courts located in the State of Minnesota, waives any arguments that venue in such forums is not convenient and agrees that any litigation initiated by the undersigned will be venued in such forums.

The provisions of this guaranty are severable, and in any action or proceeding involving any state corporate law, or any state or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of the undersigned hereunder would otherwise be held or determined to be void, invalid or

unenforceable on account of the amount of the liability of the undersigned under this guaranty, then notwithstanding any other provision of this guaranty to the contrary, the amount of such liability shall, without any further action by the undersigned, the Creditor or any other person, be automatically limited and reduced to the highest amount which is valid and enforceable as determined in such action or proceeding.

This guaranty shall be binding upon the undersigned and upon the legal representatives, successors and assigns of the undersigned, and shall inure to the benefit of the Creditor and its successors and assigns. In case the Creditor at any time transfers to any transferee any of the Guaranteed Obligations then existing, the right to require the undersigned to pay the same may be assigned to the transferee by, but will not vest in such transferee in the absence of, an express written assignment thereof made by the Creditor either at or after the time of the transfer of any of the Guaranteed Obligations. No such assignment will impair the Creditor's right hereunder to look to the undersigned for payment of untransferred Guaranteed Obligations to the extent that they may not be required to answer to the assignee up to the full limit of their liability hereunder.

The Creditor agrees to release this Guaranty and terminate the undersigned's obligations hereunder at such time as:

1. No Event of Default has occurred or is continuing under the Loan Agreements, the Notes or that certain Disbursing Agreement dated of even date herewith between U.S. Bank National Association, the Debtor, the Creditor, and Commercial Partners Title, LLC (“**Disbursing Agreement**”) and no event has occurred which with time, notice or both would become such an Event of Default; and
2. The Project (as defined in the Loan Agreements) is complete and is open and operating; and
3. Debtor shall, for not less than three (3) consecutive Fiscal Years ending on and after December 31, 2022, maintain an Adjusted Debt Service Coverage Ratio of not less than 1.20 to 1. For purposes hereof:

(a) The term “**Adjusted Debt Service Coverage Ratio**” shall mean for any specified period, the ratio of Income Available for Debt Service for such period to Annual Debt Service for such period. The ratio shall be calculated on the basis of the audited financial statements of the Debtor for such Fiscal Year.

(b) The term “**Annual Debt Service**” shall mean with respect to any Fiscal Year the sum of (i) the principal of Indebtedness due and payable in such Fiscal Year, and (ii) the interest accrued or to accrue on Indebtedness during such Fiscal Year.

(c) The term “**Corporation Certificate**” shall mean a written certificate signed in the name of the Debtor by its Chair, CEO/President,

Chief Financial Officer, Secretary or Treasurer, and delivered to the Creditor.

(d) The term “**Fiscal Year**” shall mean the period beginning on January 1 of each year and ending on December 31 of such year, or such other period of twelve (12) consecutive months as may be specified by a Corporation Certificate as the fiscal year of the Debtor.

(e) The term “**Income Available for Debt Service**” shall mean operating income (or loss) of the Debtor for a specified period plus all interest income, interest expense, depreciation, amortization, unrealized losses and equity contributions, less distributions.

(f) The term “**Indebtedness**” shall mean without duplication, (i) all indebtedness of the Debtor, whether or not represented by bonds, debentures, the Notes or other securities, for the repayment of money borrowed, including without limitation, the Guaranteed Obligations, (ii) all indebtedness of the Debtor created or arising under a conditional sale, capitalized lease, or other title retention agreement relating to acquisition of property or assets by the Debtor, (iii) all guaranties (except guaranties of the obligations of Affiliates), endorsements, assumptions and other contingent obligations of the Debtor in respect of, or to purchase or otherwise acquire, indebtedness of others and (iv) all indebtedness secured by any mortgage, pledge or lien existing on property owned by the Debtor, subject to such mortgage, pledge or lien, whether or not the indebtedness secured thereby shall have been assumed by the Debtor.

(g) The term “**Affiliates**” shall mean any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Debtor. For the purposes of this definition, “control” means the power to direct the management and policies, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

Dated as of this 1<sup>st</sup> day of May, 2021

Elim Care, Inc.

By \_\_\_\_\_  
Chief Financial Officer

**SUBORDINATION AND INTERCREDITOR AGREEMENT**

THIS AGREEMENT is made as of this 1<sup>st</sup> day of May, 2021, by and among U.S. Bank National Association, a national banking association, not in its individual capacity but solely as Trustee (the “Trustee”) for the Subordinate Bonds (as defined herein) under the Trust Indenture dated as of May 1, 2021 by and between the City of Little Canada, Minnesota and the Trustee (the “Indenture”), New Harmony Care Center, Inc., a Minnesota nonprofit corporation (“Borrower”), Elim Care, Inc., a Minnesota nonprofit corporation (“Guarantor”), and Bremer Bank, National Association, a national banking association (“Lender”), as purchaser of the Senior Notes (defined herein).

**RECITALS:**

WHEREAS, Borrower has requested that the Lender extend credit to the Borrower pursuant to that certain Loan Agreement between the Borrower and the City of Hampton, Minnesota (“Hampton”), dated as of May 1, 2021, as assigned to the Lender pursuant to that certain Pledge Agreement dated as of May 1, 2021 (the “Hampton Loan Agreement”), and secured by that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement dated as of May 1, 2021 from Borrower to the Lender (the “Hampton Mortgage”) covering the real property legally described on **Exhibit A** attached hereto (the “Mortgaged Property”); and

WHEREAS, Borrower has requested that the Lender extend credit to the Borrower pursuant to that certain Loan Agreement between the Borrower and the City of Landfall Village, Minnesota (“Landfall Village”), dated as of May 1, 2021, as assigned to the Lender pursuant to that certain Pledge Agreement dated as of May 1, 2021 (the “Landfall Village Loan Agreement”), and secured by that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement dated as of May 1, 2021 from Borrower to the Lender (the “Landfall Village Mortgage”) covering the Mortgaged Property; and

WHEREAS, Borrower has requested that the Lender extend credit to the Borrower pursuant to that certain Loan Agreement between the Borrower and the City of Falcon Heights, Minnesota (“Falcon Heights”), dated as of May 1, 2021, as assigned to the Lender pursuant to that certain Pledge Agreement dated as of May 1, 2021 (the “Falcon Heights Loan Agreement” and, with the Hampton Loan Agreement and the Landfall Village Loan Agreement, the “Lender Loan Agreements”), and secured by that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement dated as of May 1, 2021

from Borrower to the Lender (the “Falcon Heights Mortgage” and, with the Hampton Mortgage and the Landfall Village Mortgage, the “Lender Mortgages”) covering the real property legally described on the Mortgaged Property; and

WHEREAS, the Guarantor has guaranteed the Borrower’s obligations under the Lender Loan Agreements and the notes issued pursuant thereto (the “Senior Notes”) pursuant to the terms of that certain Guaranty dated as of May 1, 2021, issued by Guarantor to Lender (“Lender Guaranty”); and

WHEREAS, the Senior Notes are further secured by the certain Security Agreement, dated as of May 1, 2021 (the “Lender Security Agreement”) from the Borrower to the Lender; and

WHEREAS, Borrower has also requested Little Canada issue its revenue bonds (the “Subordinate Bonds”) to provide the funds to be loaned to the Borrower pursuant to that certain Loan Agreement dated as of May 1, 2021, between the Borrower and Little Canada, as assigned and pledged to the Trustee by Little Canada pursuant to the terms of the Indenture (“Trustee Loan Documents”), secured by that certain Subordinate Construction Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents from the Borrower to the Trustee (“Trustee Mortgage”);

WHEREAS, the Guarantor has guaranteed the Borrower’s obligations under the Trustee Loan Documents pursuant to the terms of that certain Guaranty dated as of May 1, 2021, issued by Guarantor to Trustee (“Trustee Guaranty”); and

WHEREAS, the Borrower has entered into an Assignment of Construction Documents, dated as of May 1, 2021, and an Assignment of Architect’s Agreement, dated as of May 1, 2021 (collectively, the “Contract Assignments”) to further secure the Borrower’s obligations with respect to the Lender Loan Agreements and the Trustee Loan Documents; and

WHEREAS, Lender, as purchaser of and holder of each of the Senior Notes, requires a parity position on the Mortgaged Property (as defined in the Lender Mortgages) and that the lien of the Lender Mortgages as security for the Senior Notes will be on a parity basis; and

WHEREAS, Lender has agreed to extend credit on the condition that the Trustee subordinate all of Borrower’s obligations to the Trustee and all security therefor for Borrower’s obligations to the Lender and all security therefor on the terms and conditions provided herein; and

NOW, THEREFORE, in consideration of the above premises and to induce the Lender to extend credit to the Borrower, it is hereby agreed as follows:

1. As of the date of this Agreement, the Lender is the purchaser of and holder of all of the Notes, and for purposes of this Agreement (in particular paragraphs 2-6 below), the term “Senior Noteholders” (as defined below) refers to the Lender.
2. The liens described in the Lender Mortgages as security for the Senior Notes are considered to be in parity, and the holders of the Senior Notes (individually, a “Senior Noteholder” and collectively the “Senior Noteholders”) are entitled to equal priority and creditor status, in accordance with each Senior Noteholder’s Pro Rata Allocation (as defined herein). If on any payment date with respect to the Senior Notes the Borrower is unable to pay its obligations in full,



the Borrower shall divide and distribute its available moneys to the Senior Noteholders in accordance with each Senior Noteholder's Pro Rata Allocation. If any Senior Noteholder receives a payment in excess of its Pro Rata Allocation, such Senior Noteholder shall remit to the other Senior Noteholders an amount sufficient to maintain the respective Pro Rata Allocations. Nothing herein shall be construed to relieve the Borrower of its obligations to the full extent thereof on any payment date, and the intention of this paragraph is only to provide for a means of payment allocation for the Senior Noteholders' benefit only.

3. With respect to any Senior Noteholder or Senior Note, "Pro Rata Allocation" means, as of any date, the quotient, expressed in a percentage, calculated by dividing: (i) the outstanding principal of said Senior Note by (ii) the total outstanding principal amount of all of the Senior Notes. Accrued interest on the Senior Notes shall not be treated as principal. When computing the Pro Rata Allocation of a Senior Note, the outstanding principal amount in the numerator shall not exceed the original principal amount of the Senior Note, it being the intent of the Senior Noteholders that any amount in excess of the original amount of any of the Senior Notes will not be covered by this Agreement unless prior written consent is obtained from the other Senior Noteholders.

4. The Senior Noteholders agree that any prepayment under the Lender Documents made by the Borrower shall be applied to the Senior Notes in accordance with their Pro Rata Allocations.

5. The Senior Noteholders shall each be named as a mortgagee or insured, as applicable, on certain insurance, maintained by the Borrower, as set forth in the Lender Loan Agreements, the Lender Mortgages, and other documents relating to the Senior Notes (collectively, the "Lender Documents"). All insurance and condemnation proceeds shall be distributed to the Senior Noteholders in accordance with each Senior Noteholder's Pro Rata Allocation to the extent such insurance and condemnation proceeds are to be distributed to the Purchasers under the Lender Documents and not otherwise made available to the Borrower under the Lender Documents.

6. No action with respect to the Lender Mortgages may be brought by any of the Senior Noteholders unless all of the Senior Noteholders (a) are named as joint beneficiaries and (b) consent to such action. The Senior Noteholders agree to cooperate with and assist each other in the sale or foreclosure of the Project pursuant to the Lender Mortgages or in the exercise of any other right or remedy, and the Senior Noteholders agree to execute and deliver all consents, notices, documents, demands, instruments, and the like of any nature whatsoever in order to permit the sale or foreclosure of the Project under the Lender Mortgages or the exercise of any other right or remedy.

The Senior Noteholders may jointly bid in the amount owed under the Lender Mortgages at any sale initiated by the Senior Noteholders. Nothing contained in this Agreement shall be construed to prevent any affiliate of the Senior Noteholders from bidding at any sale initiated by the Purchasers.

7. "Trustee's Claim" means all of Borrower's now existing or hereafter arising indebtedness and liabilities to Trustee, whether direct or indirect, absolute or contingent, joint or several, whether as maker, endorser, guarantor, surety or otherwise, under the Trustee Loan Documents, as well as all notes or instruments evidencing the same, the Trustee Mortgage, and the Contract Assignments.

8. "Lender's Claim" means all of Borrower's now existing or hereafter arising indebtedness and liabilities to the Lender, whether direct or indirect, absolute or contingent, joint or several, whether as maker, endorser, guarantor, surety or otherwise, under the Lender Loan Agreements, the Lender Mortgages, the Lender Security Agreement, the Contract Assignments, as well as the notes or instruments evidencing the same.

9. The Trustee and the Borrower hereby subordinate the Trustee's Claim to the Lender's Claim, and agree that Lender's Claim shall be paid in full before any payment may be made on the Trustee's Claim, except that the scheduled payments on Trustee's Claim as specified on **Schedule I** attached hereto may be paid by Borrower to Trustee and received by Trustee from Borrower as long as, but only in the event that, no default then exists in Lender's Claim and no such default will have occurred or will occur as a result of making such payments. To assure performance of Borrower's obligations hereunder, Trustee hereby assigns and grants to the Lender a security interest in the Trustee's Claim and all payments as may now or hereafter become due thereunder. Except as permitted hereunder, until Lender's Claim has been paid in full and Lender has no further obligation to make advances to Borrower, the Trustee agrees not to accelerate the Trustee's Claim or foreclose, seek appointment of a receiver or otherwise enforce or apply any security now or hereafter existing or to sue upon or collect or receive payment of, and the Borrower agrees not to pay the Trustee's Claim. Notwithstanding the foregoing or anything to the contrary contained herein, the Guarantor may pay to Trustee and Trustee may collect from Guarantor, directly or through formal collection proceedings, payments then due and payable under the Trustee's Claim as reflected on Schedule I hereto provided that both before and after giving effect to any such payment by or collection from the Guarantor, Guarantor is not in default under any of its covenants or obligations to Lender or any other creditors of Guarantor.

10. In any insolvency, receivership, bankruptcy, dissolution, liquidation or reorganization proceeding, or in any other proceeding, whether voluntary or involuntary, by or against the Borrower under any bankruptcy or insolvency law or laws relating to the relief of debtors, to compositions, extensions or readjustment of indebtedness, the Lender's Claim shall be paid in full before any payment is made to the Trustee on the Trustee's Claim, whether such payment is in kind or in cash. Until Lender's Claim has been paid in full and Lender has no further obligation to make advances to Borrower, the Trustee and the Borrower agree that the Lender may collect the Trustee's Claim directly from the trustee in such proceeding. The Trustee agrees to furnish all assignments, powers or other documents requested by the Lender to facilitate such direct collection by the Lender. The Lender may file a claim in any such proceeding on the Trustee's behalf or may compel the Trustee to file such claim provided the Trustee is indemnified as provided in the Trustee Loan Documents and in no event shall the Lender waive, forgive, or cancel all or any part of the Trustee's Claim. In any such proceeding or at any meeting of creditors, the Trustee hereby grants to the Lender an irrevocable proxy to vote the Trustee's Claim and agrees to execute all further documents requested by the Lender to facilitate exercise of this proxy.

11. Except for payments permitted under paragraph 3 above and reserves and other funds held by the Trustee under the Trustee Loan Documents funded by Borrower as a condition to issuance of the Subordinate Bonds pursuant to the Trustee Loan Documents, the Trustee agrees to pay over to the Lender on account of the Lender's Claim any monies or funds that may be received by the Trustee from the Borrower, or for or on behalf of the Borrower in respect of the Trustee's Claim, at any time when the Lender's Claim exists. The Trustee further agrees not to sell, assign, transfer, or endorse the Trustee's Claim, no matter how evidenced, to any person or entity except subject to the terms and conditions of this Agreement, and not to join in any petition of bankruptcy or any assignment for the

benefit of creditors of the Borrower, or any agreements among Borrower and creditors, without the prior written consent of the Lender.

12. The Borrower and the Trustee agree that any existing evidence of the Trustee's Claim or any subsequent evidence of the Trustee's Claim shall, at Lender's written request, contain or be stamped with a statement referring to the existence of this Agreement. Trustee and Borrower agree that they will not amend, extend or otherwise modify the terms of any documents, instruments or agreements constituting, evidencing or securing the Trustee's Claim without the prior written consent of the Lender.

13. The Agreement and the obligations of the Borrower or Guarantor and the Trustee and the rights and privileges of the Lender hereunder shall continue until payment in full of the Lender's Claim, notwithstanding any action or nonaction of the Lender with respect thereto, or any collateral therefor, or any guarantees thereof. Trustee shall have the right, pursuant to Bondholder direction as provided in the Trustee Loan Documents, but is not obligated to pay all or any part of the Lender's Claim at any time.

14. The Lender shall have uncontrolled power and discretion, without notice to the Trustee and without affecting the subordination provisions of this Agreement, to deal in any manner with the Lender's Claim and any security and guarantees therefor including, but not by way of limitation, amendment, waiver, release, surrender, extension, renewal, acceleration, compromise or substitution. The Trustee hereby waives and agrees not to assert against the Lender any rights which a guarantor or surety could exercise; but nothing in this Agreement shall constitute the Trustee a guarantor or surety.

15. The insolvency or bankruptcy of the Borrower or Guarantor shall not affect this Agreement and the same shall remain in full force and effect. Subject to the prior rights and interests, if any, of third parties, the Lender covenants to account for and pay over to the Trustee any excess thereof in its hands when the Lender's Claim shall have been paid in full.

16. This Agreement shall extend to and bind the respective successors, assigns, and administrators of the parties hereto and the covenants of the Trustee, the Borrower and the Guarantor respecting subordination of the claims of the Trustee in favor of the Lender shall extend to, include, and be enforceable by any transferee or endorsee of the Lender or the Lender's Claim. Notwithstanding the above, Trustee agrees not to assign the Trustee's Claim or to amend or modify the same without the prior written consent of the Lender.

17. If the Borrower or the Guarantor or the Trustee violates any of the provisions of this Agreement, or if any subordinated indebtedness is involuntarily accelerated, the Lender may elect by a notice in writing delivered to the Borrower, Guarantor and the Trustee to cause Lender's Claim to become immediately due and payable. The obligation of the Borrower, Guarantor and the Trustee hereunder shall continue irrespective of, and the Borrower, Guarantor and the Trustee hereby waive, so far as the law permits, any existing or any future statute of limitations applicable thereto or applicable to the enforcement of indebtedness and liability of the Borrower or Guarantor, and any collateral therefor or guarantees thereof.

18. The words "claim" and "indebtedness" are used herein in their most comprehensive sense and include any and all advances, debts, obligations, and liabilities of the Borrower heretofore, now, or hereafter made, incurred, or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated,

determined or undetermined, and whether the Borrower or Guarantor may be liable individually or jointly with others, or as principal or as surety or guarantor.

19. If any of Trustee’s Claim is paid to or received by Lender and after Lender’s Claim has been paid in full, Trustee shall be subrogated to all of the Lender’s rights against Borrower.

20. The Trustee Mortgage, together with any other now existing or hereafter arising pledge, lien, assignment, security interest or other encumbrance granted or made by Borrower or Guarantor in favor of the Trustee whether perfected or unperfected (hereinafter “Trustee’s Security Interest”) shall at all times be subject, junior and subordinate to the Lender Mortgages, the Lender Security Agreement, together with any other now existing or hereafter arising pledge, lien, assignment, security interest or other encumbrance granted or made by Borrower or Guarantor in favor of Lender, whether perfected or unperfected (“Lender’s Security interest”) and the priority of the Lender’s Security Interest over the Trustee’s Security Interest shall be effective irrespective of: (a) the fact of or the timing of any filing, recording or other method of perfecting such interests; or (b) any contrary priority established pursuant to applicable statutes or regulations.

21. This Agreement shall be governed by the laws of the State of Minnesota. Each of the parties hereto consent to the jurisdiction of the state and federal courts located in Hennepin County in the State of Minnesota, agree that venue in such forums is not inconvenient and agrees that any action concerning this Agreement shall be venued in such forums.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Agreement has been executed this 1<sup>St</sup> day of May, 2021.

BORROWER:

NEW HARMONY CARE CENTER, INC.

By \_\_\_\_\_  
Its Chief Financial Officer

STATE OF MINNESOTA )  
 )  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Kathy L. Youngquist, the Chief Financial Officer of New Harmony Care Center, Inc., a Minnesota nonprofit corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

GUARANTOR:

ELIM CARE, INC.

By \_\_\_\_\_  
Its Chief Financial Officer

STATE OF MINNESOTA )  
  )  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Kathy L. Youngquist, the Chief Financial Officer of Elim Care, Inc., a Minnesota nonprofit corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public







EXHIBIT A  
Legal Description

**Schedule 1  
Payments**

**EXTRACT OF MINUTES OF A MEETING OF THE  
CITY COUNCIL OF THE CITY OF FALCON HEIGHTS, MINNESOTA**

HELD: MARCH 10, 2021

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Falcon Heights, Minnesota was duly held in the City of Falcon Heights, Minnesota, on Wednesday, March 10, 2021, at 7:00 P.M.

The following members were present:

and the following were absent:

During said meeting \_\_\_\_\_ introduced the following resolution and moved its adoption:

**CITY OF FALCON HEIGHTS  
COUNCIL RESOLUTION**

February 10, 2021

No. 21-13

**RESOLUTION APPROVING THE ISSUANCE AND SALE OF A  
SENIOR HOUSING AND HEALTHCARE REVENUE NOTE, SERIES 2021C AND  
AUTHORIZING THE EXECUTION OF DOCUMENTS RELATING THERETO  
(NEW HARMONY PROJECT)**

WHEREAS,

(a) Minnesota Statutes, Chapter 462C, as amended (the "Act"), particularly Section 462C.05, subdivision 7, authorizes cities to issue revenue obligations to finance or refinance a program for the purposes of planning, administering, making, or purchasing loans with respect to a combination of a multifamily housing development and health care facility as defined in Minnesota Statutes, Section 469.153;

(b) The City Council of the City of Falcon Heights, Minnesota (the "City") has received from New Harmony Care Center, Inc. (the "Borrower"), a Minnesota nonprofit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), the sole member of which is Elim Care, Inc. ("Elim"), a Minnesota nonprofit corporation, the sole member of which is Cassia ("Cassia"), a Minnesota nonprofit corporation, a proposal that the City, along with the

City of Hampton, Minnesota (“Hampton”), the City of Landfall Village, Minnesota (“Landfall Village”), and the City of Little Canada, Minnesota (“Little Canada” and, together with the City, Hampton, and Landfall Village, the “Issuers”), undertake a program to finance the Project (as defined below) through the issuance of revenue notes, revenue bonds, or other obligations, in one or more series pursuant to the Act and in connection therewith the following described notes are to be issued: (i) City of Hampton, Minnesota Senior Housing and Healthcare Revenue Note (New Harmony Project), Series 2021A (the “Hampton Note”), (ii) City of Landfall Village, Minnesota Senior Housing and Healthcare Revenue Note (New Harmony Project), Series 2021B (the “Landfall Village Note”), (iii) City of Falcon Heights, Minnesota Senior Housing and Healthcare Revenue Note (New Harmony Project), Series 2021C (the “Falcon Heights Note” and, together with the Hampton Note and the Landfall Village Note, the “Senior Notes”), and (iv) City of Little Canada, Minnesota Subordinate Senior Housing And Healthcare Revenue Bonds (New Harmony Project) , Series 2021D (the “Subordinate Bonds” and, together with the Senior Notes, the “Series 2021 Obligations”), with the Senior Notes to be issued in an aggregate principal amount not to exceed \$28,000,000 and the Subordinate Bonds to be issued in an aggregate principal amount not to exceed \$8,000,000;

(c) The City desires to facilitate the selective development of the community, retain and improve the tax base and help to provide the range of services and employment opportunities required by the population, including senior housing and healthcare facilities; and the Project will assist the City in achieving those objectives and will enhance the image and reputation of the community;

(d) The Project to be financed by the Series 2021 Obligations consists of (i) financing the acquisition, construction, and equipping of a new senior healthcare and housing facility, including approximately 48 skilled nursing beds, 16 transitional skilled nursing beds, 35 independent apartment units, 36 assisted living apartment units, 14 memory care apartment units, and 12 care suite apartment units (the “Facility”), to be located at 1534 County Road C East in the City of Maplewood, Minnesota (the “Host City”); (ii) funding any required reserve funds; and (iii) paying all or a portion of the costs of issuance (collectively, the “Project”). The Facility will be owned and operated by the Borrower;

(e) The City has been advised by representatives of the Borrower that, with the aid of municipal financing, and its resulting lower borrowing cost, the Project is economically more feasible;

(f) Based on representations of the Borrower and due inquiry by the City, no public official of the City has either a direct or indirect financial interest in the Project nor will any public official either directly or indirectly benefit financially from the Project; and

(g) In connection with the issuance of the Series 2021 Obligations, it is proposed that the Issuers and the Host City enter into a Joint Powers Agreement (the “Joint Powers Agreement”) pursuant to Minnesota Statutes, Section 471.59, a proposed form of which has been presented to the City Council in connection with its consideration of this Resolution, and is currently on file in the offices of the City Administrator;

(h) The Series 2021 Obligations, as and when issued, will not constitute a charge, lien, or encumbrance upon any property of the Issuers or the Host City, and will not be a charge against the general credit or taxing powers of the Issuers or the Host City;

(i) A public hearing on the Project was held on March 10, 2021, after notice was published and materials made available for public inspection at the City Hall, all as required by the Act and Section 147(f) of the Code, at which public hearing all those appearing who desired to speak were heard and written comments were accepted.

BE IT RESOLVED by the City Council of the City as follows:

**SECTION 1. LEGAL AUTHORIZATION AND FINDINGS.**

1.1 Findings. The City hereby finds, determines and declares as follows:

(a) The City is a municipal corporation and a political subdivision of the State of Minnesota and is authorized under the Act to assist the Project and to issue and sell the Falcon Heights Note, as hereinafter defined, for the purpose, in the manner and upon the terms and conditions set forth in the Act and in this Resolution.

(b) The issuance and sale of the Falcon Heights Note by the City, pursuant to the Act, is in the best interest of the City, and the City hereby determines to issue the Falcon Heights Note and to sell the Falcon Heights Note to Bremer Bank, National Association, a national banking association, or another banking institution with one or more locations in Minnesota (the “Lender”), as provided in an Agreement to Purchase (the “Purchase Agreement”) to be entered into between the Borrower, the City, and the Lender. A draft of the Purchase Agreement has been submitted to the City Council. The City will loan the proceeds of the Falcon Heights Note (the “Loan”) to the Borrower in order to finance the Project.

(c) Pursuant to a Loan Agreement (the “Loan Agreement”) to be entered into between the City and the Borrower, the Borrower has agreed to repay the Falcon Heights Note in specified amounts and at specified times sufficient to pay in full when due the principal of, premium, if any, and interest on the Falcon Heights Note. In addition, the Loan Agreement contains provisions relating to the maintenance and operation of the Project, indemnification, insurance, and other

agreements and covenants which are required or permitted by the Act and which the City and the Borrower deem necessary or desirable for the financing of the Project. A draft of the Loan Agreement has been submitted to the City Council.

(d) Pursuant to a Pledge Agreement (the "Pledge Agreement") to be entered into between the City and the Lender, the City has pledged and granted a security interest in all of its rights, title, and interest in the Loan Agreement to the Lender (except for certain rights of indemnification and to reimbursement for certain costs and expenses). A draft of the Pledge Agreement has been submitted to the City Council.

(e) Pursuant to a Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Financing Statement (the "Mortgage") to be executed by the Borrower in favor of the Lender, the Borrower has secured payment of amounts due under the Loan Agreement and Falcon Heights Note by granting to the Lender a mortgage and security interest in the property described therein. A draft of the Mortgage has been submitted to the City Council. The City is not a party to the Mortgage.

(f) Pursuant to a Subordination and Intercreditor Agreement (the "Subordination Agreement") to be executed by the trustee for the Subordinate Bonds and the Lender, as purchaser of the Senior Notes, the liens held by the Lender as security for each of the Senior Notes are considered to be in parity with each other and the trustee for the Subordinate Bonds has agreed to subordinate all of the Borrower's obligations to the trustee and all security therefor to the rights of the Lender. A draft of the Subordination Agreement has been submitted to the City Council. The City is not a party to the Subordination Agreement.

(g) Pursuant to a Guaranty Agreement (the "Guaranty") to be executed by Elim, as guarantor (the "Guarantor"), in favor of the Lender, the Guarantor will guaranty repayment of the Senior Notes and amounts due by the Borrower under the related loan agreements (including the Loan Agreement). A draft of the Guaranty has been submitted to the City Council. The City is not a party to the Guaranty.

(h) Pursuant to a Disbursement Agreement (the "Disbursement Agreement") to be entered into between the Lender, the trustee for the Subordinate Bonds, a disbursing agent named therein, and the Borrower, the proceeds of the Series 2021 Obligations will be disbursed to or on behalf of the Borrower for the Project. A draft of the Disbursing Agreement has been submitted to the City Council. The City is not a party to the Disbursing Agreement.

(i) A copy of the proposed form of Joint Powers Agreement has been presented to the City Council in connection with its consideration of this Resolution, and has been submitted to the City Council.

(j) The Falcon Heights Note will be a special, limited obligation of the City. The Falcon Heights Note shall not be payable from or charged upon any funds other than the revenues pledged to the payment thereof, nor shall the City be subject to any liability thereon. No holder of the Falcon Heights Note shall ever have the right to compel any exercise of the taxing power of the City to pay the Falcon Heights Note or the interest thereon, nor to enforce payment thereof against any property of the City. The Falcon Heights Note shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation.

(k) Nothing in this resolution or the documents prepared pursuant hereto shall authorize the expenditure of any municipal funds on the Project other than the revenues derived from the Project or otherwise granted to the City for this purpose. The Falcon Heights Note shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property or funds of the City except the revenue and proceeds pledged to the payment thereof, nor shall the City be subject to any liability thereon. The holder of the Falcon Heights Note shall never have the right to compel any exercise of the taxing power of the City to pay the outstanding principal on the Falcon Heights Note or the interest thereon, or to enforce payment thereon against any property of the City, except such property as may be expressly pledged for the security of the Falcon Heights Note. The Falcon Heights Note shall recite in substance that the Falcon Heights Note, including the interest thereon, is payable solely from the revenue derived from the Project and pledged to the payment thereof.

(l) On the basis of information available to the City it appears, and the City hereby finds, that the Project constitutes properties, real and personal, used or useful in connection with a multifamily housing and healthcare facility for the elderly within the meaning of the Act; that the Project furthers the purposes stated in the Act; that the availability of the financing under the Act and the willingness of the City to furnish such financing will be a substantial inducement to the Borrower to undertake the Project, and that the effect of the Project, if undertaken, will be to assist in the prevention of the emergence of blighted and marginal land, to help prevent chronic unemployment, to help the surrounding area retain and eventually improve the tax base, to provide the range of service and employment opportunities required by the population, to help prevent the movement of talented and educated persons out of the state and to areas within the State where their services may not be as effectively used, and to promote more intensive development and use of land within the City and surrounding communities, and to provide available adequate senior housing and healthcare facilities to residents of the State at a reasonable cost.

(m) It is desirable, feasible, and consistent with the objects and purposes of the Act to issue the Falcon Heights Note for the purpose of financing the costs of the Project.

## **SECTION 2. THE FALCON HEIGHTS NOTE.**

2.1 Authorized Amount and Form of Falcon Heights Note. The Falcon Heights Note is hereby approved and shall be issued pursuant to this Resolution in substantially the form submitted to the City Council with such appropriate variations, omissions and insertions as are necessary and appropriate and are permitted or required by this Resolution, and in accordance with the further provisions hereof; and the total aggregate principal amount of the Falcon Heights Note that may be outstanding hereunder is expressly limited to \$8,000,000, unless a duplicate Note is issued pursuant to Section 2.7. The Falcon Heights Note shall bear interest at a variable rate as set forth therein.

2.2 The Falcon Heights Note. The Falcon Heights Note shall be dated as of the date of delivery to the Lender and shall be payable at the times and in the manner, shall bear interest at the rate, and shall be subject to such other terms and conditions as are set forth therein.

2.3 Execution. The Falcon Heights Note shall be executed on behalf of the City by the signatures of its Mayor and the City Administrator and shall be sealed with the seal of the City; provided that the seal may be intentionally omitted as provided by law. In case any officer whose signature shall appear on the Falcon Heights Note shall cease to be such officer before the delivery of the Falcon Heights Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if had remained in office until delivery. In the event of the absence or disability of the Mayor or the City Administrator such officers of the City as, in the opinion of the City Attorney, may act in their behalf, shall without further act or authorization of the City Council execute and deliver the Falcon Heights Note.

2.4 Delivery of Initial Note. Before delivery of the Falcon Heights Note there shall be filed with the Lender (except to the extent waived by the Lender) the following items:

- (1) an executed copy of each of the following documents:
  - (a) the Purchase Agreement;
  - (b) the Loan Agreement;
  - (c) the Pledge Agreement;
  - (d) the Mortgage;



- (e) the Guaranty;
- (f) the Disbursement Agreement;
- (g) the Joint Powers Agreement; and
- (h) the Subordination Agreement;

(2) an opinion of Counsel for the Borrower and Guarantor as prescribed by the Lender and Bond Counsel;

(3) the opinion of Bond Counsel as to the validity and tax exempt status of the Falcon Heights Note;

(4) 501(c)(3) determination letters from the Internal Revenue Service evidencing that the Borrower is exempt from income taxation under Section 501(c)(3) of the Code; and

(5) such other documents and opinions as Bond Counsel may reasonably require for purposes of rendering its opinion required in subsection (3) above or that the Lender may reasonably require for the closing.

2.5 Disposition of Proceeds of the Falcon Heights Note. Upon delivery of the Falcon Heights Note to Lender, the Lender shall, on behalf of the City, disburse the proceeds of the Falcon Heights Note for payment of Project Costs in accordance with the terms of the Loan Agreement and the Disbursement Agreement.

2.6 Registration of Transfer. The City will cause to be kept at the office of the City Administrator a Note Register in which, subject to such reasonable regulations as it may prescribe, the City shall provide for the registration of transfers of ownership of the Falcon Heights Note. The Falcon Heights Note shall be initially registered in the name of the Lender and shall be transferable upon the Note Register by the Lender in person or by its agent duly authorized in writing, upon surrender of the Note together with a written instrument of transfer satisfactory to the City Administrator, duly executed by the Lender or its duly authorized agent. The following form of assignment shall be sufficient for said purpose.

For value received \_\_\_\_\_ hereby sells, assigns and transfers unto \_\_\_\_\_ the within Note of the City of Falcon Heights, Minnesota, and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer said Note on the books of said City with full power of substitution in the premises. The undersigned certifies that the transfer is made in accordance with the provisions of Section 2.9 of the Resolution authorizing the issuance of the Note.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Registered Owner

Upon such transfer the City Administrator shall note the date of registration and the name and address of the new Lender in the applicable Note Register and in the registration blank appearing on the Note.

2.7 Mutilated, Lost or Destroyed Note. In case the Falcon Heights Note issued hereunder shall become mutilated or be destroyed or lost, the City shall, if not then prohibited by law, cause to be executed and delivered, a new Note of like outstanding principal amount, number and tenor in exchange and substitution for and upon cancellation of such mutilated Note, or in lieu of and in substitution for such Note destroyed or lost, upon the Lender's paying the reasonable expenses and charges of the City in connection therewith, and in the case of a Note destroyed or lost, the filing with the City of evidence satisfactory to the City with indemnity satisfactory to it. If the mutilated, destroyed or lost Note has already matured or been called for redemption in accordance with its terms it shall not be necessary to issue a new Note prior to payment.

2.8 Ownership of Falcon Heights Note. The City may deem and treat the person in whose name the Falcon Heights Note is last registered in the Note Register and by notation on the Falcon Heights Note whether or not such Note shall be overdue, as the absolute owner of such Note for the purpose of receiving payment of or on account of the Principal Balance, redemption price or interest and for all other purposes whatsoever, and the City shall not be affected by any notice to the contrary.

2.9 Limitation on Note Transfers. The Falcon Heights Note will be issued to an "accredited investor" and without registration under state or other securities laws, pursuant to an exemption for such issuance; and accordingly the Falcon Heights Note may not be assigned or transferred in whole or part, nor may a participation interest in the Falcon Heights Note be given pursuant to any participation agreement, except to another "accredited investor" or "financial institution" in accordance with an applicable exemption from such registration requirements and with full and accurate disclosure of all material facts to the prospective purchaser(s) or transferee(s).

2.10 Issuance of a New Note. Subject to the provisions of Section 2.9, the City shall, at the request and expense of the Lender, issue a new note, in aggregate outstanding principal amount equal to that of the Falcon Heights Note surrendered, and of like tenor except as to number, principal amount, and the amount of the periodic installments payable thereunder, and registered in the name of the Lender or such transferee as may be designated by the Lender.

### **SECTION 3. GENERAL COVENANTS.**

3.1 Payment of Principal and Interest. The City covenants that it will promptly pay or cause to be paid the principal of and interest on the Falcon Heights Note at the place, on the dates, solely from the source and in the manner provided herein and in the Falcon Heights Note. The principal and interest are payable solely from and secured by revenues and proceeds derived from the Loan Agreement, the Pledge Agreement and the Mortgage, which revenues and proceeds are hereby specifically pledged to the payment thereof in the manner and to the extent specified in the Falcon Heights Note, the Loan Agreement, the Pledge Agreement and the Mortgage; and nothing in the Falcon Heights Note or in this Resolution shall be considered as assigning, pledging or otherwise encumbering any other funds or assets of the City.

3.2 Performance of and Authority for Covenants. The City covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Resolution, the Loan Agreement, and the Falcon Heights Note executed, authenticated and delivered hereunder and in all proceedings of the City Council pertaining thereto; that it is duly authorized under the Constitution and laws of the State of Minnesota including particularly and without limitation the Act, to issue the Falcon Heights Note authorized hereby, pledge the revenues and assign the Loan Agreement in the manner and to the extent set forth in this Resolution, the Falcon Heights Note, the Loan Agreement, the Pledge Agreement, and the Mortgage; that all action on its part for the issuance of the Falcon Heights Note and for the execution and delivery thereof has been duly and effectively taken; and that the Falcon Heights Note in the hands of the Lender is and will be a valid and enforceable special limited obligation of the City according to the terms thereof.

3.3 Enforcement and Performance of Covenants. The City agrees to enforce all covenants and obligations of the Borrower under the Loan Agreement, upon request of the Lender and being indemnified to the satisfaction of the City for all expenses and claims arising therefrom, and to perform all covenants and other provisions pertaining to the City contained in the Falcon Heights Note and the Loan Agreement and subject to Section 3.4.

3.4 Nature of Security. Notwithstanding anything contained in the Falcon Heights Note, the Loan Agreement, the Pledge Agreement, the Mortgage, or any other document referred to in Section 2.4 to the contrary, under the provisions of the Act the Falcon Heights Note may not be payable from or be a charge upon any funds of the City other than the revenues and proceeds pledged to the payment thereof, nor shall the City be subject to any liability thereon, nor shall the Falcon Heights Note otherwise contribute or give rise to a pecuniary liability of the City or, to the extent permitted by law, any of the City's officers, employees and agents. No holder of the Falcon Heights Note shall ever have the right to compel any exercise of the taxing power of the City to pay the Falcon Heights Note or the interest thereon, or to enforce payment thereof against any property of the City other than the revenues pledged under the Pledge Agreement; and the Falcon Heights Note shall not constitute a charge, lien or encumbrance, legal or

equitable, upon any property of the City; and the Falcon Heights Note shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation; but nothing in the Act impairs the rights of the Lender to enforce the covenants made for the security thereof as provided in this Resolution, the Loan Agreement, the Pledge Agreement, and the Mortgage, and in the Act, and by authority of the Act the City has made the covenants and agreements herein for the benefit of the Lender; provided that in any event, the agreement of the City to perform or enforce the covenants and other provisions contained in the Falcon Heights Note, the Loan Agreement, the Pledge Agreement, and the Mortgage, shall be subject at all times to the availability of revenues under the Loan Agreement sufficient to pay all costs of such performance or the enforcement thereof, and the City shall not be subject to any personal or pecuniary liability thereon.

3.5 Qualified Tax Exempt Obligation. In order to qualify the Falcon Heights Note as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Code, the City hereby makes the following factual statements and representations;

(a) the Falcon Heights Note is not treated as a “private activity bond” under Section 265(b)(3) of the Code;

(b) the City hereby designates the Falcon Heights Note as a qualified tax-exempt obligation for purposes of Section 265(b)(3) of the Code;

(c) the reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii) of Section 265(b)(3)(C) of the Code) which will be issued by the City (and all entities whose obligations will be aggregated with those of the City) during the calendar year 2021 will not exceed \$10,000,000;

(d) not more than \$10,000,000 of obligations issued by the City during the calendar year 2021 have been designated for purposes of Section 265(b)(3) of the Code; and

(e) the aggregate face amount of the Falcon Heights Note does not exceed \$10,000,000.

#### **SECTION 4. MISCELLANEOUS.**

4.1 Severability. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or

paragraphs in this Resolution contained shall not affect the remaining portions of this Resolution or any part thereof.

4.2 Authentication of Transcript. The officers of the City are directed to furnish to Bond Counsel certified copies of this Resolution and all documents referred to herein, and affidavits or certificates as to all other matters which are reasonably necessary to evidence the validity of the Falcon Heights Note. All such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute recitals of the City as to the correctness of all statements contained therein.

4.3 Authorization to Execute Agreements. The forms of the proposed Joint Powers Agreement, Purchase Agreement, Loan Agreement, and the Pledge Agreement are hereby approved in substantially the form presented to the City Council, together with such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by Bond Counsel prior to the execution of the documents. The Mayor and the City Administrator of the City are authorized to execute the Purchase Agreement, Joint Powers Agreement, the Loan Agreement, the Pledge Agreement, and such other documents as Bond Counsel consider appropriate in connection with the issuance of the Falcon Heights Note, in the name of and on behalf of the City. In the event of the absence or disability of the Mayor or the City Administrator such officers of the City as, in the opinion of the City Attorney, may act on their behalf, shall without further act or authorization of the City Council do all things and execute all instruments and documents required to be done or executed by such absent or disabled officers. The execution of any instrument by the appropriate officer or officers of the City herein authorized may be by electronic signature if such an option is available and shall be conclusive evidence of the approval of such documents in accordance with the terms hereof. For purposes of this paragraph: (i) "electronic signature" means a manually signed original signature, an electronic image of a handwritten signature, or a digital signature provided by DocuSign, Adobe Sign, or any other electronic signature provider acceptable to the parties, which in each case is transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a PDF (i.e. portable document format) or other replicating image attached to an electronic mail or internet message.

4.4 Housing Program. The City Council hereby approves the housing program with respect to the Project, in the form attached hereto as Exhibit A.

Adopted by the City Council of the City of Falcon Heights, Minnesota, this 10th day of March, 2021.

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

and the following voted against same:

-----

Moved by:

Approved by: \_\_\_\_\_  
Randall C. Gustafson  
Mayor

GUSTAFSON     \_\_\_   In Favor  
MIAZGA  
ANDREWS     \_\_\_   Against  
LEEHY  
WEHYEE

Attested by: \_\_\_\_\_  
Sack Thongvanh  
City Administrator

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 duly called and held on the date therein indicated, insofar as such minutes relate to a resolution authorizing the issuance of a revenue note.

WITNESS my hand this \_\_\_\_ day of \_\_\_\_\_, 2021.

---

City Administrator

EXHIBIT A

CITY OF HAMPTON, MINNESOTA  
CITY OF LANDFALL VILLAGE, MINNESOTA  
CITY OF FALCON HEIGHTS, MINNESOTA  
CITY OF LITTLE CANADA, MINNESOTA

HOUSING FINANCE PROGRAM  
NEW HARMONY PROJECT

This housing finance program is undertaken by the City of Hampton, Minnesota, the City of Landfall Village, Minnesota, the City of Falcon Heights, Minnesota, and the City of Little Canada, Minnesota, with or without the assistance of another Minnesota municipality and pursuant to a joint powers agreement (collectively, the “Cities”), for a Project, hereinafter described, to be located within the City of Maplewood, Minnesota (the “Host City”). The Project will be financed, in part, by the issuance of one or more series of revenue notes or other obligations (the “Notes”) and one or more series of subordinate bonds or other obligations (the “Bonds” and, together with the Notes, the “Obligations”) pursuant to Minnesota Statutes, Chapter 462C, as amended (the “Act”), by the Cities and in accordance with separate loan agreements (the “Loan Agreements”) between each of the Cities and New Harmony Care Center, Inc. (the “Borrower”), a Minnesota nonprofit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), the sole member of which is Elim Care, Inc., a Minnesota nonprofit corporation and an organization described in Section 501(c)(3) of the Code, the sole member of which is Cassia, a Minnesota nonprofit corporation and an organization described in Section 501(c)(3) of the Code.

The project will consist of (i) financing the acquisition, construction, and equipping of a new senior healthcare and housing facility, including approximately 48 skilled nursing beds, 16 transitional skilled nursing beds, 35 independent apartment units, 36 assisted living apartment units, 14 memory care apartment units, and 12 care suite apartment units, to be located at 1534 County Road C East (the “New Harmony Facilities”) in the Host City, (ii) funding any required reserve funds, and (iii) paying all or a portion of the costs of issuance (collectively, the “Project”). The New Harmony Facilities are and will be owned and operated by the Borrower.

The New Harmony Facilities were designed and are intended for residency solely by elderly and disabled persons, and consequently, no income limits apply under the Act or other state law. The New Harmony Facilities consist of the following beds and units:



Skilled Nursing:

<u>Number of Beds</u>	<u>Square Footage</u>	<u>Estimated Rents/Fees</u>
48	381-690 ft	Varies based on each resident's acuity

<u>Number of Beds</u>	<u>Square Footage</u>	<u>Estimated Rents/Fees</u>
16	381-621 ft	Varies based on each resident's acuity

Independent:

<u>Types of Units</u>	<u>Square Footage</u>	<u>Estimated Rents/Fees</u>
1 BR/1 BA (18 units)	714 ft	\$2,350
1 BR + den/1 BA (11 units)	724-770 ft	\$2,550
2 BR/1-2 BA (6 units)	997-1,248 ft	\$3,350

Assisted Living:

<u>Types of Units</u>	<u>Square Footage</u>	<u>Estimated Rents/Fees</u>
Studio (20 units)	419-490 ft	\$3,500
1 BR /1 BA (16 units)	701-714 ft	\$4,250

Memory Care:

<u>Types of Units</u>	<u>Square Footage</u>	<u>Estimated Rents/Fees</u>
Studio (13 units)	419-464 ft	\$6,400
Studio (1 unit)	570 ft	\$6,500

Care Suites

<u>Types of Units</u>	<u>Square Footage</u>	<u>Estimated Rents/Fees</u>
Studio (12 units)	419-598 ft	\$6,500

The Cities will issue the Obligations in one or more series of tax-exempt and/or taxable obligations to finance the Project in an aggregate principal amount of Obligations not to exceed \$36,000,000, with the principal amounts of Notes to be issued by the City of Hampton, Minnesota and the City of Landfall Village, Minnesota each expected not to exceed \$10,000,000, the principal amount of Notes to be issued by the City of Falcon Heights, Minnesota expected not to exceed \$8,000,000, and the aggregate principal amount of Bonds to be issued by the City of Little Canada, Minnesota expected not to exceed \$8,000,000. The Borrower will be required, pursuant to the Loan Agreements, to make payments sufficient to pay when due the principal of, premium, if any, and interest on the Obligations. The Obligations may be structured so as to take advantage of whatever means are available or necessary and are permitted by law to enhance the security for and marketability of the Obligations. Substantially all of the net proceeds of the Obligations (the initial principal amount thereof, less amounts deposited in reasonably required reserves or paid out as costs of issuance of the Obligations) will be used to pay the costs of the Project, including any functionally related and subordinate facilities.

Because the Borrower is an organization described in Section 501(c)(3) of the Code, no allocation of authority to issue tax-exempt bonds is required pursuant to Minnesota Statutes, Chapter 474A. The Obligations will be issued pursuant to Section 462C.05, subdivision 7 of the Act because the New Harmony Facilities will consist of a combined multifamily housing development and health care facility as defined in Minnesota Statutes, Section 469.153, and will be payable primarily from revenues of the New Harmony Facilities. The multifamily housing development is designed and used for rental occupancy primarily by the elderly.

Issuance of the Obligations is anticipated to occur in the spring of 2021.

The Project will be carried out in accordance with applicable land use and development restrictions, and any new construction is subject to applicable state and local building codes. The Project is not inconsistent with any Housing Plan adopted by the Cities under Minnesota Statutes, Chapter 462C. The Borrower will be required to operate the New Harmony Facilities in accordance with state and local anti-discrimination laws and ordinances.

The Cities have adequate existing capacity to administer, monitor, and supervise the Project, although the Cities have reserved the right to contract with other public agencies or private parties for these purposes.

The costs of the Project and the program of financing the Project, including specifically the costs of the Cities, generally will be paid or reimbursed by the Borrower.

Adopted by the City of Falcon Heights, \_\_\_\_\_, 2021

Adopted by the City of Landfall Village, \_\_\_\_\_, 2021

Adopted by the City of Hampton, \_\_\_\_\_, 2021

Adopted by the City of Little Canada, \_\_\_\_\_, 2021

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## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	March 10, 2021
<b>Agenda Item</b>	Public Hearing E2
<b>Attachment</b>	Documents
<b>Submitted By</b>	Sack Thongvanh, City Administrator

<b>Item</b>	Approving the Tax Increment Financing Agreement between the City of Falcon Heights and BUHL Investors representing the Amber Union Project.
<b>Description</b>	<p>The City of Falcon Heights approved the 2040 Comprehensive Plan in January of 2020. The Comprehensive Plan is the guiding document for all planning and development related activity in the city. According to the 2040 Comprehensive Plan, II. Housing – Future Housing Needs – Fiscal Device, the city can use fiscal devices such as revenue bonds, tax increment, financing, or tax abatement to ease the construction and availability of affordable housing. The 2040 Comprehensive Plan specifically calls for the appropriate use of TIF for the development of rental and ownership housing units that are affordable at 50% AMI or below.</p> <p>The Amber Union Development was approved as a Planned Unit Development, Ordinance 19-07, containing both residential and commercial uses on one parcel, on October of 2019. The zoning conditions are specific to the proposed project of 128 affordable housing units and commercial retail space located on the western most building. The approved project does not add significantly to the footprint of the existing buildings but does include significant modification and rehabilitation to the interior of both structures. The redevelopment of this property is in conformance with the 2040 Comprehensive Plan for housing redevelopment.</p> <p>The City of Falcon Heights Planning Department, as required by State Statute 469.126, has review the proposed project and determined that the Development Program Modification and the Tax Increment Finance (TIF) Plan is in accordance with the City of Falcon Heights’ 2040 Comprehensive Plan as it relates to affordable housing and economic development as illustrated above.</p>
<b>Budget Impact</b>	The City will continue to receive tax revenue from the development less the increment increase from the development of the property.

<b>Attachment(s)</b>	<ul style="list-style-type: none"> <li>• Amber Union TIF Plan</li> <li>• Amber Union Development Agreement</li> <li>• Resolution 2021-14 Approving the Modification District No. 1 to Establishing Tax Increment Financing District No. 1-4, approving the TIF Plan, authorizing an Interfund Loan and authorizing execution of Development Agreement</li> </ul>
<b>Action(s) Requested</b>	<p>Motion by Council to approve the attached resolution, TIF Plan, authorizing an Interfund Loan and authorizing execution of a Development Agreement. Council authorize the Mayor and City Administrator to execute all necessary documents.</p>



**MODIFICATION TO THE  
DEVELOPMENT PROGRAM**  
Development District No. 1

- AND -

**TAX INCREMENT FINANCING PLAN**  
Establishment of Tax Increment Financing District No. 1-4  
(a housing district)

City of Falcon Heights, Ramsey County, Minnesota

Public Hearing: March 10, 2021

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# Modification to the Development Program for Development District No. 1

## Foreword

The following text represents a Modification to the Development Program for Development District No. 1. This modification represents a continuation of the goals and objectives set forth in the Development Program for Development District No. 1. Generally, the substantive changes include the establishment of Tax Increment Financing District No. 1-4.

For further information, a review of the Development Program for Development District No. 1, is recommended. It is available from the City Administrator at the City of Falcon Heights. Other relevant information is contained in the Tax Increment Financing Plans for the Tax Increment Financing Districts located within Development District No. 1.

# Tax Increment Financing Plan for Tax Increment Financing District No. 1-4

## Foreword

The City of Falcon Heights (the "City"), staff and consultants have prepared the following information to expedite the Establishment of Tax Increment Financing District No. 1-4 (the "District"), a housing tax increment financing district, located in Development District No. 1.

## Statutory Authority

Within the City, there exist areas where public involvement is necessary to cause development or redevelopment to occur. To this end, the City has certain statutory powers pursuant to *Minnesota Statutes ("M.S."), Sections 469.124 - 469.133*, inclusive, as amended, and *M.S., Sections 469.174 to 469.1794*, inclusive, as amended (the "Tax Increment Financing Act" or "TIF Act"), to assist in financing public costs related to this project.

This section contains the Tax Increment Financing Plan (the "TIF Plan") for the District. Other relevant information is contained in the Modification to the Development Program for Development District No. 1.

## Statement of Objectives

The District currently consists of one parcel of land and adjacent roads and internal rights-of-way. The District is being created to facilitate the proposed renovation of the historic TIES office building into 125-unit below market-rate affordable apartments at 100% at 50% AMI residential rental project to be known as Amber Union Apartments. The proposed location of the project is on the southwest corner of Snelling Avenue and Larpenteur Avenue in the City. The project is predominately multifamily residential with a small amount of retail. The City has not entered into an agreement but has designated Buhl GTA, LP as developer at the time of preparation of this TIF Plan. Development is anticipated to begin in 2021. This TIF Plan is expected to achieve many of the objectives outlined in the Development Program for Development District No. 1.

Tax increment generated by the TIF District will be utilized to assist the project by reimbursing a portion of the developer's land acquisition, site improvements and other qualified costs of the housing project. Any preliminary expenses incurred by the City prior to receipt of tax increment may be funded by an interfund loan. The project has been designed to meet the affordable housing needs of the City and provide opportunity for the City to offer a wider range of housing options to its citizens. The developer has indicated that the project is not feasible and will not proceed without tax increment assistance. It is the intent of the City to grant the developer up to thirteen years of tax increment assistance.

The activities contemplated in the Modification to the Development Program and the TIF Plan do not preclude the undertaking of other qualified development or redevelopment activities. These activities are anticipated to occur over the life of Development District No. 1 and the District.

## Development Program Overview

Pursuant to the Development Program and authorizing state statutes, the City is authorized to undertake the following activities in the District:

1. Property to be Acquired - Selected property located within the District is currently owned by the Developer. Any remaining property located within the District may be acquired by the City and is further described in this TIF Plan.
2. Relocation - Relocation services, to the extent required by law, are available pursuant to *M.S., Chapter 117* and other relevant state and federal laws.
3. Upon approval of a developer's plan relating to the project and completion of the necessary legal requirements, the City may sell to a developer selected properties that it may acquire within the District or may lease land or facilities to a developer.
4. The City may perform or provide for some or all necessary acquisition, construction, relocation, demolition, and required utilities and public street work within the District.

## Description of Property in the District and Property to be Acquired

The District encompasses all property and adjacent rights-of-way and abutting roadways identified by the parcels listed below.

Parcel number	Address	Owner
212923110030	1667 N Snelling Ave	BUHL GTA LP

Please also see the map in Appendix A for further information on the location of the District.

The City may acquire any parcel within the District including interior and adjacent street rights of way. Any properties identified for acquisition will be acquired by the City only in order to accomplish one or more of the following: storm sewer improvements; provide land for needed public streets, utilities and facilities; carry out land acquisition, site improvements, clearance and/or development to accomplish the uses and objectives set forth in this plan. The City may acquire property by gift, dedication, condemnation or direct purchase from willing sellers in order to achieve the objectives of this TIF Plan. Such acquisitions will be undertaken only when there is assurance of funding to finance the acquisition and related costs.

The City currently does not own the property to be included in the District.

## Classification of the District

The City, in determining the need to create a tax increment financing district in accordance with *M.S., Sections 469.174 to 469.1794*, as amended, inclusive, finds that the District, to be established, is a housing district pursuant to *M.S., Section 469.174, Subd. 11 and M.S., Section 469.1761*.

- The District consists of one parcel
- The development will consist of 125 units of multi-family rental housing
- 100% of the units will be occupied by persons with incomes less than 50% of median income
- No more that 20 percent of the square footage of the building that is receiving assistance from tax increment consists of commercial, retail or other non-residential uses.

Pursuant to *M.S., Section 469.176, Subd. 7*, the District does not contain any parcel or part of a parcel that qualified under the provisions of *M.S., Sections 273.111, 273.112, or 273.114* or *Chapter 473H* for taxes payable in any of the five calendar years before the filing of the request for certification of the District.

## Duration and First Year of Tax Increment of the District

Pursuant to *M.S., Section 469.175, Subd. 1, and Section 469.176, Subd. 1*, the duration and first year of tax increment of the District must be indicated within the TIF Plan. Pursuant to *M.S., Section 469.176, Subd. 1b.*, the duration of the District will be 25 years after receipt of the first increment by the City (a total of 26 years of tax increment). The City elects to receive the first tax increment in 2023, which is no later than four years following the year of approval of the District.

Thus, it is estimated that the District, including any modifications of the TIF Plan for subsequent phases or other changes, would terminate after 2048, or when the TIF Plan is satisfied. The City reserves the right to decertify the District prior to the legally required date.

## Original Tax Capacity, Tax Rate and Estimated Captured Net Tax Capacity Value/Increment and Notification of Prior Planned Improvements

Pursuant to *M.S., Section 469.174, Subd. 7 and M.S., Section 469.177, Subd. 1*, the Original Net Tax Capacity (ONTC) as certified for the District will be based on the market values placed on the property by the assessor in 2020 for taxes payable 2021.

Pursuant to *M.S., Section 469.177, Subds. 1 and 2*, the County Auditor shall certify in each year (beginning in the payment year 2023) the amount by which the original value has increased or decreased as a result of:

1. Change in tax exempt status of property;
2. Reduction or enlargement of the geographic boundaries of the district;
3. Change due to adjustments, negotiated or court-ordered abatements;
4. Change in the use of the property and classification;
5. Change in state law governing class rates; or
6. Change in previously issued building permits.

In any year in which the current Net Tax Capacity (NTC) value of the District declines below the ONTC, no value will be captured and no tax increment will be payable to the City.

The original local tax rate for the District will be the local tax rate for taxes payable 2021, assuming the request for certification is made before June 30, 2021). The ONTC and the Original Local Tax Rate for the District appear in the table below.

Pursuant to *M.S., Section 469.174 Subd. 4 and M.S., Section 469.177, Subd. 1, 2, and 4*, the estimated Captured Net Tax Capacity (CTC) of the District, within Development District No. 1, upon completion of the projects within the District, will annually approximate tax increment revenues as shown in the table below. The City requests 100 percent of the available increase in tax capacity for repayment of its obligations and current expenditures, beginning in the tax year payable 2023. The Project Tax Capacity (PTC) listed is an estimate of values when the projects within the District are completed.

<b>Project Tax Capacity</b>	
Project estimated Tax Capacity upon completion	339,540
Original estimated Net Tax Capacity	25,328
Fiscal Disparities	0
<b>Estimated Captured Tax Capacity</b>	<b>314,212</b>
Original Local Tax Rate	125.4280% Pay 2021 est.
<b>Estimated Annual Tax Increment</b>	<b>\$394,110</b>
Percent Retained by the City	100%

Note: Tax capacity includes a 3.0% inflation factor for the duration of the District. The tax capacity included in this chart is the estimated tax capacity of the District in year 25. The tax capacity of the District in year one is estimated to be \$83,516.

Pursuant to *M.S., Section 469.177, Subd. 4*, the City shall, after a due and diligent search, accompany its request for certification to the County Auditor or its notice of the District enlargement pursuant to *M.S., Section 469.175, Subd. 4*, with a listing of all properties within the District or area of enlargement for which building permits have been issued during the eighteen (18) months immediately preceding approval of the TIF Plan by the municipality pursuant to *M.S., Section 469.175, Subd. 3*. The County Auditor shall increase the original net tax capacity of the District by the net tax capacity of improvements for which a building permit was issued.

The City is reviewing the area to be included in the District to determine if any building permits have been issued during the 18 months immediately preceding approval of the TIF Plan by the City.

## Sources of Revenue/Bonds to be Issued

The total estimated tax increment revenues for the District are shown in the table below:

<b>SOURCES</b>	
Tax Increment	\$ 6,892,248
Interest	689,225
<b>TOTAL</b>	<b>\$ 7,581,473</b>

The costs outlined in the Uses of Funds will be financed primarily through the annual collection of tax increments. The City reserves the right to incur bonds or other indebtedness as a result of the TIF Plan. As presently proposed, the projects within the District will be financed by pay-as-you-go notes. Any refunding amounts will be deemed a budgeted cost without a formal TIF Plan Modification. This provision does not obligate the City to incur debt. The City will issue bonds or incur other debt only upon the determination that such action is in the best interest of the City.

The City may issue bonds (as defined in the TIF Act) secured in whole or in part with tax increments from the District in a maximum principal amount of \$7,581,473. Such bonds may be in the form of pay-as-you-go notes, revenue bonds or notes, general obligation bonds, or interfund loans. This estimate of total bonded indebtedness is a cumulative statement of authority under this TIF Plan as of the date of approval.

## Uses of Funds

Currently under consideration for the District is a proposal to facilitate the proposed renovation of the historic TIES office building into 125-unit below market-rate affordable apartments at 100% at 50% AMI residential rental project. The City has determined that it will be necessary to provide assistance to the project(s) for certain District costs, as described.

The City has studied the feasibility of the development or redevelopment of property in and around the District. To facilitate the establishment and development or redevelopment of the District, this TIF Plan authorizes the use of tax increment financing to pay for the cost of certain eligible expenses. The estimate of public costs and uses of funds associated with the District is outlined in the following table.

<b>USES</b>	
Land/Building Acquisition	\$ 4,658,000
Site Improvements/Preparation	500,000
Affordable Housing	1,000,000
Utilities	500,000
Other Qualifying Improvements	<b>234,248</b>
Administrative Costs (up to 10%)	689,225
<b>PROJECT COSTS TOTAL</b>	<b>\$ 7,581,473</b>
Interest	-
<b>PROJECT AND INTEREST COSTS TOTAL</b>	<b>\$ 7,581,473</b>

The total project cost, including financing costs (interest) listed in the table above does not exceed the total projected tax increments for the District as shown in the Sources of Revenue section.

Estimated costs associated with the District are subject to change among categories without a modification to this TIF Plan. The cost of all activities to be considered for tax increment financing will not exceed, without formal modification, the budget above pursuant to the applicable statutory requirements. The City may expend funds for qualified housing activities outside of the District boundaries.

## Fiscal Disparities Election

Pursuant to *M.S., Section 469.177, Subd. 3*, the City may elect one of two methods to calculate fiscal disparities.

**The City will choose to calculate fiscal disparities by clause b (inside) but it will not have an effect because the project is used for housing.**

## Estimated Impact on Other Taxing Jurisdictions

The estimated impact on other taxing jurisdictions assumes that the redevelopment contemplated by the TIF Plan would occur without the creation of the District. However, the City has determined that such development or redevelopment would not occur "but for" tax increment financing and that, therefore, the fiscal impact on other taxing jurisdictions is \$0. The estimated fiscal impact of the District would be as follows if the "but for" test was not met:

Impact on Tax Base			
Entity	Preliminary 2020/Pay 2021 Total Net Tax Capacity	Estimated Captured Tax Capacity (CTC) upon completion	Percent of CTC to Entity Total
Ramsey County	610,630,063	314,213	<b>0.0515%</b>
City of Falcon Heights	5,129,981	314,213	<b>6.1250%</b>
ISD 623 (Roseville Area Schools)	77,273,488	314,213	<b>0.4066%</b>

Impact on Tax Rates				
Entity	Pay 2021 Prelim. Extension Rate	Percent of Total	CTC	Potential Taxes
Ramsey County	47.7080%	38.04%	314,213	<b>\$ 149,905</b>
City of Falcon Heights	37.9220%	30.23%	314,213	<b>119,156</b>
ISD 623 (Roseville Area Schools)	31.2220%	24.89%	314,213	<b>98,103</b>
Other	8.5760%	6.84%	314,213	<b>26,947</b>
	<b>125.4280%</b>	<b>100.00%</b>		<b>\$ 394,111</b>

The estimates listed above display the captured tax capacity when all construction is completed. The tax rate used for calculations is the Preliminary Pay 2021 rate. The total net capacity for the entities listed above are based on Preliminary Pay 2021 figures. The District will be certified under the Pay 2021 rates, which were unavailable at the time this TIF Plan was prepared.

Pursuant to *M.S. Section 469.175 Subd. 2(b)*:

- (1) Estimate of total tax increment. It is estimated that the total amount of tax increment that will be generated over the life of the District is \$6,892,248;



- (2) Probable impact of the District on city provided services and ability to issue debt. An impact of the District on police protection is expected. With any addition of new residents or businesses, police-calls for service will be increased. New developments add an increase in traffic, and additional overall demands to the call load. The City does not expect that the proposed development, in and of itself, will necessitate new capital investment in vehicles or facilities.

The probable impact of the District on fire protection is not expected to be significant. Typically, new buildings generate few calls, if any, and are of superior construction. The existing buildings, which will be eliminated by the new development, have public safety concerns that include several unprotected old buildings with issues such as access, hydrant locations, and converted structures. The City does not expect that the proposed development, in and of itself, will necessitate new capital investment in vehicles or facilities.

The impact of the District on public infrastructure is expected to be minimal. The development is not expected to significantly impact any traffic movements in the area. The current infrastructure for sanitary sewer, storm sewer and water will be able to handle the additional volume generated from the proposed development. Based on the development plans, there are no additional costs associated with street maintenance, sweeping, plowing, lighting and sidewalks. The development in the District is expected to contribute to Metropolitan Council's sanitary sewer (SAC) and St. Paul Regional Water System's water (WAC) connection fees. The City administers these fees which are not known at this time.

The probable impact of any District general obligation tax increment bonds on the ability to issue debt for general fund purposes is expected to be minimal. It is not anticipated that there will be any general obligation debt issued in relation to this project, therefore there will be no impact on the City's ability to issue future debt or on the City's debt limit.

- (3) Estimated amount of tax increment attributable to school district levies. It is estimated that the amount of tax increments over the life of the District that would be attributable to school district levies, assuming the school district's share of the total local tax rate for all taxing jurisdictions remained the same, is \$1,715,644;
- (4) Estimated amount of tax increment attributable to county levies. It is estimated that the amount of tax increments over the life of the District that would be attributable to county levies, assuming the county's share of the total local tax rate for all taxing jurisdictions remained the same, is \$2,621,547;
- (5) Additional information requested by the county or school district. The City is not aware of any standard questions in a county or school district written policy regarding tax increment districts and impact on county or school district services. The county or school district must request additional information pursuant to *M.S. Section 469.175 Subd. 2(b)* within 15 days after receipt of the tax increment financing plan.

No requests for additional information from the county or school district regarding the proposed development for the District have been received.

## Supporting Documentation

Pursuant to *M.S. Section 469.175, Subd. 1 (a), clause 7* the TIF Plan must contain identification and description of studies and analyses used to make the determination set forth in *M.S. Section 469.175, Subd. 3, clause (b)(2)* and the findings are required in the resolution approving the District.

- (i) In making said determination, reliance has been placed upon (1) written representation made by the developer to such effects, (2) review of the developer's proforma; and (3) City staff awareness of the feasibility of developing the project site within the District, which is further outlined in the City Council resolution approving the establishment of the TIF District and Appendix C. On January 12, 2021, the City received bonding authority for residential rental projects on behalf of the developer for 100 percent low income housing tax credits to assist in financing the project. The developer has stated that due to the reduced rental income received from a 50 percent AMI project, they needed to request assistance from the City through the creation of a housing TIF District.
- (ii) A comparative analysis of estimated market value both with and without establishment of the TIF District and the use of tax increments has been performed. Such analysis is included with the cashflow in Appendix B and indicates that the increase in estimated market value of the proposed development (less the indicated subtractions) exceeds the estimated market value of the site absent the establishment of the TIF District and the use of tax increments.

## Administration of the District

Administration of the District will be handled by the City Administrator.

**Appendix A: Map of Development District No. 1 and the TIF District**

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**Appendix B: Estimated Cash Flow for the District**

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## Amber Union Apartments Multifamily Housing Development - Buhl GTA, LP w/Inflation

City of Falcon Heights, Minnesota (Historic TIES Building)

Proposed Renovation of Existing Office Building to 125-Unit Below Market-Rate Affordable Apartments (100% at 50% AMI Residential Rental Project)



### ASSUMPTIONS AND RATES

<b>DistrictType:</b>	<b>Housing</b>
<b>District Name/Number:</b>	<b>1-4</b>
<b>County District #:</b>	<b>TBD</b>
<b>First Year Construction or Inflation on Value</b>	<b>2021</b>
<b>Existing District - Specify No. Years Remaining</b>	
Inflation Rate - Every Year:	<b>3.00%</b>
Interest Rate:	<b>4.00%</b>
Present Value Date:	<b>1-Aug-22</b>
First Period Ending	<b>1-Feb-23</b>
Tax Year District was Certified:	<b>Pay 2021</b>
Cashflow Assumes First Tax Increment For Development:	<b>2023</b>
Years of Tax Increment	<b>26</b>
Assumes Last Year of Tax Increment	<b>2048</b>
Fiscal Disparities Election [Outside (A), Inside (B), or NA]	<b>NA</b>
Incremental or Total Fiscal Disparities	
Fiscal Disparities Contribution Ratio	28.9038% Pay 2021 est.
Fiscal Disparities Metro-Wide Tax Rate	139.5040% Pay 2021 est.
Maximum/Frozen Local Tax Rate:	125.428% Pay 2021 est.
Current Local Tax Rate: (Use lesser of Current or Max.)	125.428% Pay 2021 est.
State-wide Tax Rate (Comm./Ind. only used for total taxes)	36.0000% Pay 2021 est.
Market Value Tax Rate (Used for total taxes)	0.16867% Pay 2021 est.

Tax Rates		
Exempt Class Rate (Exempt)		0.00%
Commercial Industrial Preferred Class Rate (C/I Pref.)		
First \$150,000		1.50%
Over \$150,000		2.00%
Commercial Industrial Class Rate (C/I)		2.00%
Rental Housing Class Rate (Rental)		1.25%
Affordable Rental Housing Class Rate (Aff. Rental)		
First \$174,000		0.75%
Over \$174,000		0.25%
Non-Homestead Residential (Non-H Res. 1 Unit)		
First \$500,000		1.00%
Over \$500,000		1.25%
Homestead Residential Class Rate (Hmstd. Res.)		
First \$500,000		1.00%
Over \$500,000		1.25%
Agricultural Non-Homestead		1.00%

### BASE VALUE INFORMATION (Original Tax Capacity)

Map ID	PID	Owner	Address	Land Market Value	Building Market Value	Total Market Value	Percentage Of Value Used for District	Original Market Value	Tax Year Original Market Value	Property Tax Class	Current Original Tax Capacity	Class After Conversion	After Conversion Orig. Tax Cap.	Area/Phase
1	212923110030	BUHL GTA LP	1667 N Snelling Ave	1,951,800	1,425,200	3,377,000	100%	3,377,000	Pay 2021	Rental	42,213	Aff. Rental	25,328	1
				<b>1,951,800</b>	<b>1,425,200</b>	<b>3,377,000</b>		<b>3,377,000</b>			<b>42,213</b>		<b>25,328</b>	

**Note:**

1. Base values are for pay 2021 based upon review of County Assessor letter to Developer on May 20, 2020 and County website on December 10, 2020.
2. Located in ISD #623 and Capital Region Watershed District.

**Amber Union Apartments Multifamily Housing Development - Buhl GTA, LP w/Inflation**  
**City of Falcon Heights, Minnesota (Historic TIES Building)**  
**Proposed Renovation of Existing Office Building to 125-Unit Below Market-Rate Affordable Apartments (100% at 50% AMI Residential Rental Project)**



PROJECT INFORMATION (Project Tax Capacity)													
Area/Phase	New Use	Estimated Market Value Per Sq. Ft./Unit	Taxable Market Value Per Sq. Ft./Unit	Total Sq. Ft./Units	Total Taxable Market Value	Property Tax Class	Project Tax Capacity	Project Tax Capacity/Unit	Percentage Completed 2021	Percentage Completed 2022	Percentage Completed 2023	Percentage Completed 2024	First Year Full Taxes Payable
1	Apartments	186,500	186,500	125	23,312,500	Aff. Rental	167,031	1,336	50%	100%	100%	100%	2024
<b>TOTAL</b>					<b>23,312,500</b>		<b>167,031</b>						
Subtotal Residential				125	23,312,500		167,031						
Subtotal Commercial/Ind.				0	0		0						

**Note:**

1. Market values are based upon estimates from Developer's appraiser. Must be confirmed by County Assessor.
2. A more conservative estimate from similar comparable apartments is between a \$170,000 to \$180,000 TMV per unit.

TAX CALCULATIONS									
New Use	Total Tax Capacity	Fiscal Disparities Tax Capacity	Local Tax Capacity	Local Property Taxes	Fiscal Disparities Taxes	State-wide Property Taxes	Market Value Taxes	Total Taxes	Taxes Per Sq. Ft./Unit
Apartments	167,031	0	167,031	209,504	0	0	28,173	237,677	1,901.42
<b>TOTAL</b>	<b>167,031</b>	<b>0</b>	<b>167,031</b>	<b>209,504</b>	<b>0</b>	<b>0</b>	<b>28,173</b>	<b>237,677</b>	

**Note:**

1. Taxes and tax increment will vary significantly from year to year depending upon values, rates, state law, fiscal disparities and other factors which cannot be predicted.

WHAT IS EXCLUDED FROM TIF?	
Total Property Taxes	237,677
less State-wide Taxes	0
less Fiscal Disp. Adj.	0
less Market Value Taxes	(28,173)
less Base Value Taxes	(31,768)
<b>Annual Gross TIF</b>	<b>177,736</b>



### Amber Union Apartments Multifamily Housing Development - Buhl GTA, LP w/Inflation City of Falcon Heights, Minnesota (Historic TIES Building)

Proposed Renovation of Existing Office Building to 125-Unit Below Market-Rate Affordable Apartments (100% at 50% AMI Residential Rental Project)

TAX INCREMENT CASH FLOW														
% of OTC	Project Tax Capacity	Original Tax Capacity	Fiscal Disparities -	Captured Tax Capacity	Local Tax Rate	Annual Gross Tax Increment	Semi-Annual Gross Tax Increment	State Auditor 0.36%	Admin. at 10%	Semi-Annual Net Tax Increment	Semi-Annual Present Value	PERIOD ENDING Yrs.	Tax Year	Payment Date
														02/01/23
100%	83,516	(25,328)	-	58,188	125.428%	72,984	36,492	(131)	(3,636)	32,725	31,454	0.5	2023	08/01/23
							36,492	(131)	(3,636)	32,725	62,291	1	2023	02/01/24
100%	167,031	(25,328)	-	141,704	125.428%	177,736	88,868	(320)	(8,855)	79,693	135,915	1.5	2024	08/01/24
							88,868	(320)	(8,855)	79,693	208,096	2	2024	02/01/25
100%	172,042	(25,328)	-	146,715	125.428%	184,021	92,011	(331)	(9,168)	82,511	281,364	2.5	2025	08/01/25
							92,011	(331)	(9,168)	82,511	353,195	3	2025	02/01/26
100%	177,203	(25,328)	-	151,876	125.428%	190,495	95,247	(343)	(9,490)	85,414	426,095	3.5	2026	08/01/26
							95,247	(343)	(9,490)	85,414	497,566	4	2026	02/01/27
100%	182,520	(25,328)	-	157,192	125.428%	197,163	98,581	(355)	(9,823)	88,404	570,088	4.5	2027	08/01/27
							98,581	(355)	(9,823)	88,404	641,188	5	2027	02/01/28
100%	187,995	(25,328)	-	162,668	125.428%	204,031	102,015	(367)	(10,165)	91,483	713,322	5.5	2028	08/01/28
							102,015	(367)	(10,165)	91,483	784,042	6	2028	02/01/29
100%	193,635	(25,328)	-	168,307	125.428%	211,105	105,552	(380)	(10,517)	94,655	855,778	6.5	2029	08/01/29
							105,552	(380)	(10,517)	94,655	926,108	7	2029	02/01/30
100%	199,444	(25,328)	-	174,117	125.428%	218,391	109,195	(393)	(10,880)	97,922	997,439	7.5	2030	08/01/30
							109,195	(393)	(10,880)	97,922	1,067,372	8	2030	02/01/31
100%	205,427	(25,328)	-	180,100	125.428%	225,896	112,948	(407)	(11,254)	101,287	1,138,289	8.5	2031	08/01/31
							112,948	(407)	(11,254)	101,287	1,207,815	9	2031	02/01/32
100%	211,590	(25,328)	-	186,263	125.428%	233,626	116,813	(421)	(11,639)	104,753	1,278,311	9.5	2032	08/01/32
							116,813	(421)	(11,639)	104,753	1,347,425	10	2032	02/01/33
100%	217,938	(25,328)	-	192,610	125.428%	241,587	120,794	(435)	(12,036)	108,323	1,417,492	10.5	2033	08/01/33
							120,794	(435)	(12,036)	108,323	1,486,186	11	2033	02/01/34
100%	224,476	(25,328)	-	199,149	125.428%	249,788	124,894	(450)	(12,444)	112,000	1,555,819	11.5	2034	08/01/34
							124,894	(450)	(12,444)	112,000	1,624,086	12	2034	02/01/35
100%	231,210	(25,328)	-	205,883	125.428%	258,235	129,117	(465)	(12,865)	115,787	1,693,278	12.5	2035	08/01/35
							129,117	(465)	(12,865)	115,787	1,761,114	13	2035	02/01/36
100%	238,147	(25,328)	-	212,819	125.428%	266,935	133,467	(480)	(13,299)	119,688	1,829,859	13.5	2036	08/01/36
							133,467	(480)	(13,299)	119,688	1,897,257	14	2036	02/01/37
100%	245,291	(25,328)	-	219,964	125.428%	275,896	137,948	(497)	(13,745)	123,706	1,965,552	14.5	2037	08/01/37
							137,948	(497)	(13,745)	123,706	2,032,507	15	2037	02/01/38
100%	252,650	(25,328)	-	227,322	125.428%	285,126	142,563	(513)	(14,205)	127,845	2,100,346	15.5	2038	08/01/38
							142,563	(513)	(14,205)	127,845	2,166,854	16	2038	02/01/39
100%	260,229	(25,328)	-	234,902	125.428%	294,633	147,316	(530)	(14,679)	132,107	2,234,233	16.5	2039	08/01/39
							147,316	(530)	(14,679)	132,107	2,300,290	17	2039	02/01/40
100%	268,036	(25,328)	-	242,709	125.428%	304,425	152,212	(548)	(15,166)	136,498	2,367,205	17.5	2040	08/01/40
							152,212	(548)	(15,166)	136,498	2,432,807	18	2040	02/01/41
100%	276,077	(25,328)	-	250,750	125.428%	314,510	157,255	(566)	(15,669)	141,020	2,499,254	18.5	2041	08/01/41
							157,255	(566)	(15,669)	141,020	2,564,398	19	2041	02/01/42
100%	284,360	(25,328)	-	259,032	125.428%	324,899	162,449	(585)	(16,186)	145,678	2,630,374	19.5	2042	08/01/42
							162,449	(585)	(16,186)	145,678	2,695,057	20	2042	02/01/43
100%	292,890	(25,328)	-	267,563	125.428%	335,599	167,799	(604)	(16,720)	150,476	2,760,559	20.5	2043	08/01/43
							167,799	(604)	(16,720)	150,476	2,824,778	21	2043	02/01/44
100%	301,677	(25,328)	-	276,350	125.428%	346,620	173,310	(624)	(17,269)	155,417	2,889,804	21.5	2044	08/01/44
							173,310	(624)	(17,269)	155,417	2,953,556	22	2044	02/01/45
100%	310,727	(25,328)	-	285,400	125.428%	357,971	178,986	(644)	(17,834)	160,507	3,018,105	22.5	2045	08/01/45
							178,986	(644)	(17,834)	160,507	3,081,388	23	2045	02/01/46
100%	320,049	(25,328)	-	294,722	125.428%	369,663	184,832	(665)	(18,417)	165,750	3,145,456	23.5	2046	08/01/46
							184,832	(665)	(18,417)	165,750	3,208,268	24	2046	02/01/47
100%	329,651	(25,328)	-	304,323	125.428%	381,706	190,853	(687)	(19,017)	171,150	3,271,855	24.5	2047	08/01/47
							190,853	(687)	(19,017)	171,150	3,334,195	25	2047	02/01/48
100%	339,540	(25,328)	-	314,213	125.428%	394,111	197,055	(709)	(19,635)	176,711	3,397,299	25.5	2048	08/01/48
							197,055	(709)	(19,635)	176,711	3,459,165	26	2048	02/01/49
<b>Total</b>							<b>6,917,150</b>	<b>(24,902)</b>	<b>(689,225)</b>	<b>6,203,023</b>				
Present Value From 08/01/2022							<b>3,857,404</b>	<b>(13,887)</b>	<b>(384,352)</b>	<b>3,459,165</b>				
Present Value Rate							<b>4.00%</b>							

## Appendix C: Findings Including But/For Qualifications

The reasons and facts supporting the findings for the adoption of the Tax Increment Financing Plan for Tax Increment Financing District No. 1-4, as required pursuant to Minnesota Statutes, Section 469.175, Subdivision 3 are as follows:

1. *Finding that Tax Increment Financing District No. 1-4 is a housing district as defined in M.S., Section 469.174, Subd. 11.*

Tax Increment Financing District No. 1-4 consists of one parcel. The development will consist of the proposed renovation of the historic TIES office building into 125-unit below market-rate affordable apartments at 100% at 50% AMI residential rental project., all or a portion of which will receive tax increment assistance and will meet income restrictions described in *M.S. 469.1761*. At least 100 percent of the units receiving assistance will have incomes at or below 50 percent of area median income.

2. *Finding that the proposed development, in the opinion of the City Council, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future.*

*The proposed development, in the opinion of the City, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future:* This finding is supported by the fact that the development proposed in this plan is a housing district that meets the City's objectives for development and redevelopment. The cost of land acquisition, site and public improvements and utilities makes this housing development infeasible without City assistance. Due to decreased rental income from affordable units, there is insufficient cash flow to provide a sufficient rate of return, pay operating expenses, and service the debt. This leaves a gap in the funding for the project and makes this housing development feasible only through assistance, in part, from tax increment financing. The developer was asked for and provided a letter and a proforma as justification that the developer would not have gone forward without tax increment assistance.

*The increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in market value estimated to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of the TIF District permitted by the TIF Plan:* This finding is justified on the grounds that the cost of land acquisition, site and public improvements, utilities and construction of affordable housing add to the total development cost. Historically, the costs of site and public improvements as well as reduced rents required for affordable workforce housing in the City have made development infeasible without tax increment assistance. The City reasonably determines that no other development of similar scope is anticipated on this site without substantially similar assistance being provided to the development.

3. *Finding that the TIF Plan for Tax Increment Financing District No. 1-4 conforms to the general plan for the development or redevelopment of the municipality as a whole.*

The City Council reviewed the TIF Plan on March 10, 2021 and found that the TIF Plan conforms to the general development plan of the City.

4. *Finding that the TIF Plan for Tax Increment Financing District No. 1-4 will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the development or redevelopment of Development District No. 1 by private enterprise.*

Through the implementation of the TIF Plan, the City will provide an impetus for residential development, which is desirable or necessary for increased population and an increased need for life-cycle housing within the City.

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF FALCON HEIGHTS, MINNESOTA

AND

BUHL GTA, LP

This document drafted by:

TAFT STETTINIUS & HOLLISTER LLP  
2200 IDS Center  
80 South 8th Street  
Minneapolis, Minnesota 55402

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## DEVELOPMENT AGREEMENT

THIS AGREEMENT, made as of the 1st day of March, 2021, by and between the City of Falcon Heights, Minnesota (the "City"), a municipal corporation organized and existing under the laws of the State of Minnesota and Buhl GTA, LP, a Minnesota limited partnership (the "Developer"),

WITNESSETH:

WHEREAS, pursuant to Minnesota Statutes, Section 469.124 through 469.133, the City has heretofore established Development District No. 1 (the "Development District") and has adopted a development program therefor (the "Development Program"); and

WHEREAS, pursuant to the provisions of Minnesota Statutes, Section 469.174 through 469.1794, as amended (hereinafter, the "Tax Increment Act"), the City has created, within the Development District, Tax Increment Financing District No. 1-4 (the "Tax Increment District") and has adopted a tax increment financing plan therefor (the "Tax Increment Plan") which provides for the use of tax increment financing in connection with certain development within the Development District; and

WHEREAS, in order to achieve the objectives of the Development Program and particularly to make the land in the Development District available for development by private enterprise in conformance with the Development Program, the City has determined to assist the Developer with the financing of certain costs of a Project (as hereinafter defined) to be constructed within the Tax Increment District as more particularly set forth in this Agreement; and

WHEREAS, the City believes that the development and construction of the Project, and fulfillment of this Agreement are vital and are in the best interests of the City, the health, safety, morals and welfare of residents of the City, and in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the requirements of the Business Subsidy Law, Minnesota Statutes, Section 116J.993 through 116J.995, do not apply to this Agreement pursuant to an exemption for housing.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:



ARTICLE I  
DEFINITIONS

Section 1.1 Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Agreement, as the same may be from time to time modified, amended or supplemented;

Business Day means any day except a Saturday, Sunday or a legal holiday or a day on which banking institutions in the City are authorized by law or executive order to close;

City means the City of Falcon Heights, Minnesota;

Compliance Certificate means the Compliance Certificate in substantially the form attached hereto as Exhibit D;

County means Ramsey County, Minnesota;

Developer means Buhl GTA, LP, its successors and assigns;

Development District means the real property described in the Development Program;

Development Program means the development program approved in connection with the Development District;

Development Property means the real property described in Exhibit A attached to this Agreement;

Event of Default means any of the events described in Section 4.1 hereof;

Legal and Administrative Expenses means the fees and expenses incurred by the City in connection review and analysis of the development proposed under this Agreement with the adoption and administration of the Tax Increment Financing Plan and establishment of the Tax Increment District, the preparation of this Agreement and the issuance of the TIF Note including, but not limited to, attorney and municipal advisor fees and expenses;

Note Payment Date means August 1, 2023, and each February 1 and August 1 of each year thereafter to and including February 1, 2036; provided, that if any such Note Payment Date should not be a Business Day, the Note Payment Date shall be the next succeeding Business Day;

Prime Rate means the rate of interest from time to time publicly announced by U.S. Bank National Association in St. Paul, Minnesota, as its "prime rate" or "reference rate" or any successor rate, which rate shall change as and when that rate or successor rate changes;

Project means a 125-unit multi-family rental housing project to be located on the Development Property;

Site Improvements means the site improvements undertaken or to be undertaken on the Development Property, more particularly described on Exhibit C attached hereto;

State means the State of Minnesota;

Tax Increments means 95% of the tax increments derived from the Development Property which have been received by the City in accordance with the provisions of Minnesota Statutes, Section 469.177;

Tax Increment Act means Minnesota Statutes, Sections 469.174 through 469.1794, as amended;

Tax Increment District means Tax Increment Financing District No. 1-4 located within the Development District, a description of which is set forth in the Tax Increment Financing Plan, which was qualified as a housing district under the Tax Increment Act;

Tax Increment Financing Plan means the tax increment financing plan approved for the Tax Increment District by the City Council on September 17, 2020, and any future amendments thereto;

Termination Date means the earlier of (i) February 1, 2036, (ii) the date the TIF Note is paid in full, (iii) the date on which the Tax Increment District expires or is otherwise terminated, or (iv) the date this Agreement is terminated or rescinded in accordance with its terms;

TIF Note means the Tax Increment Revenue Note (Buhl GTA, LP Project) to be executed by the City and delivered to the Developer pursuant to Article III hereof, the form of which is attached hereto as Exhibit B; and

Unavoidable Delays means delays, outside the control of the party claiming its occurrence, which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays, or acts of any federal, state or local governmental unit (other than the City) which directly result in delays.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the City. The City makes the following representations and warranties:

(1) The City is a municipal corporation and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) Based on the representation of the Developer set forth in Section 3.4 below, the Tax Increment District is a "housing district" within the meaning of Minnesota Statutes, Section 469.174, Subdivision 11, and was created, adopted and approved in accordance with the terms of the Tax Increment Act.

(3) The development contemplated by this Agreement is in conformance with the development objectives set forth in the Development Program.

(4) To finance certain costs within the Tax Increment District, the City proposes, subject to the further provisions of this Agreement, to apply Tax Increments to reimburse the Developer for a portion of the costs of the acquisition of the Development Property and the construction of the Site Improvements incurred in connection with the Project as further provided in this Agreement.

(5) The City makes no representation or warranty, either expressed or implied, as to the Development Property or its condition or the soil conditions thereon, or that the Development Property shall be suitable for the Developer's purposes or needs.

Section 2.2 Representations and Warranties of the Developer. The Developer makes the following representations and warranties:

(1) The Developer is a Minnesota limited partnership and has the power and authority to enter into this Agreement and to perform its obligations hereunder, and doing so will not violate its articles of organization, member control agreement or operating agreement, or the laws of the State and by proper action has authorized the execution and delivery of this Agreement.

(2) The Developer shall cause the Project to be constructed in accordance with the terms of this Agreement, the Development Program, and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations).

(3) The construction of the Project would not be undertaken by the Developer, and in the opinion of the Developer would not be economically feasible within the reasonably foreseeable future, without the assistance and benefit to the Developer provided for in this Agreement.

(4) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(5) The Developer will cooperate fully with the City with respect to any litigation commenced with respect to the Project.

(6) The Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety or nuisance problems which may arise in connection with the construction and operation of the Project.

(7) Construction shall begin by April 1, 2021, and the construction of the Project will be substantially completed by December 31, 2022, subject to Unavoidable Delays.

(8) The Developer will use its best efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and has met or will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.

(9) The Developer acknowledges that Tax Increment projections contained in the Tax Increment Financing Plan are estimates only and the Developer acknowledges that it shall place no reliance on the amount of projected Tax Increments and the sufficiency of such Tax Increments to reimburse the Developer for a portion of the costs of the acquisition of the Development Property and the construction of the Site Improvements as provided in Article III.

## ARTICLE III

### UNDERTAKINGS BY DEVELOPER AND CITY

Section 3.1 Development Property and Site Improvements. The parties agree that the acquisition of the Development Property and the Site Improvements to be constructed by the Developer are essential to the successful completion of the Project. The costs of acquiring the Development Property and the construction of Site Improvements shall be paid by the Developer. The City shall reimburse the Developer for the lesser of (a) \$1,565,037, or (b) the actual costs of acquisition of the Development Property and construction of Site Improvements actually incurred and paid by the Developer (the "Reimbursement Amount"), as further provided in Section 3.3 hereof.

Section 3.2 Limitations on Undertaking of the City. Notwithstanding the provisions of Section 3.1, the City shall have no obligation to the Developer under this Agreement to reimburse the Developer for the costs identified in Section 3.1, if the City, at the time or times such payment is to be made, is entitled under Section 4.2 to exercise any of the remedies set forth therein as a result of an Event of Default which has not been cured.

Section 3.3 Reimbursement: TIF Note. The City shall reimburse the payments made by the Developer under Section 3.1 for costs of the acquisition of the Development Property and the construction of the Site Improvements through the issuance of the City's TIF Note in substantially the form attached to this Agreement as Exhibit B, subject to the following conditions:

(1) The TIF Note shall be dated, issued and delivered when the Developer shall have (i) demonstrated in writing to the reasonable satisfaction of the City that the construction of the Project has been completed and that the Developer has incurred and paid all costs of acquisition of the Development Property, as described in and limited by Section 3.1, and (ii) shall have submitted paid invoices for the costs of construction of the Site Improvements and a settlement statement or other evidence of payment of the costs of the Development Property in an amount not less than the Reimbursement Amount.

(2) The unpaid principal amount of the TIF Note shall bear simple non-compounding interest from the date of issuance of the TIF Note, at 4.00% per annum. Interest shall be computed on the basis of a 360 day year consisting of twelve (12) 30-day months.

(3) The principal amount of the TIF Note and the interest thereon shall be payable solely from the Tax Increments.

(4) The payment dates of the TIF Note shall be the Note Payment Dates. On each Note Payment Date and subject to the provisions of the TIF Note, the City shall pay, against the principal and interest outstanding on the TIF Note, the Tax Increments received by the City during the preceding six (6) months. All such payments shall be applied first to accrued interest and then to reduce the principal of the TIF Note.

(5) The TIF Note shall be a special and limited obligation of the City and not a general obligation of the City, and only Tax Increments shall be used to pay the principal and

interest on the TIF Note. If, on any Note Payment Date, the Tax Increments for the payment of the accrued and unpaid interest on the TIF Note are insufficient for such purposes, the difference shall be carried forward, without interest accruing thereon, and shall be paid if and to the extent that on a future Note Payment Date there are Tax Increments in excess of the amounts needed to pay the accrued interest then due on the TIF Note.

(6) The City's obligation to make payments on the TIF Note on any Note Payment Date or any date thereafter shall be conditioned upon the requirements that: (A) there shall not at that time be an Event of Default that has occurred and is continuing under this Agreement and (B) this Agreement shall not have been rescinded pursuant to Section 4.2.

(7) The TIF Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit B. In the event of any conflict between the terms of the TIF Note and the terms of this Section 3.3, the terms of the TIF Note shall govern. The issuance of the TIF Note pursuant and subject to the terms of this Agreement, and the taking by the City of such additional actions as bond counsel for the TIF Note may require in connection therewith, are hereby authorized and approved by the City.

#### Section 3.4 Compliance with Low and Moderate Income Requirements.

(1) The City and the Developer understand and agree that the Tax Increment District will constitute a "housing district" under Section 469.174, Subd. 11 of the Tax Increment Act. Accordingly, in compliance with Section 469.1761, Subd. 3 of the Tax Increment Act, the Developer agrees that the Project must satisfy, or be treated as satisfying, the income requirements for a qualified residential rental project as defined in Section 142(d) of the Internal Revenue Code. The parties further agree that no more than 20% of the square footage of the Project may consist of commercial, retail, or other nonresidential uses. The Developer must meet the above requirements as follows:

(A) 100% of the residential units in the Project must be occupied or available for occupancy by persons whose incomes do not exceed 50% of the County median income; and

(B) The limits described in clause (A) must be satisfied through the Termination Date. Income for occupants of units described in clause (A) shall be adjusted for family size in accordance with Section 142(d) of the Internal Revenue Code and related regulations.

(2) On or before each January 1 and July 1, commencing on July 1, 2023, the Developer or an agent of the Developer must deliver or cause to be delivered to the City a Compliance Certificate executed by the Developer covering the preceding six (6) months together with written evidence satisfactory to the City of compliance with the covenants in this Section. This evidence must include a statement of the household income of each qualifying renter, a written determination that each qualifying renter's household income falls within the qualifying limits of this Section (and Section 142(d) of the Internal Revenue Code), and certification that the income documentation is correct and accurate (and that the determination of qualification was made in compliance with Section 142(d) of the Internal Revenue Code). The

City may review, upon request, all documentation supporting the Developer submissions and statements. In determining compliance with this Section, the Developer must use the County median incomes for the year in which the payment is due on the TIF Note, as promulgated by the Minnesota Housing Finance Agency based on the area median incomes established by the United States Department of Housing and Urban Development.

Section 3.5 Real Property Taxes. Prior to the Termination Date, the Developer shall pay all real property taxes payable with respect to all and any parts of the Development Property acquired and owned by it until the Developer's obligations have been assumed by any other person pursuant to the provisions of this Agreement.

The Developer agrees that prior to the Termination Date:

(1) It will not seek administrative review or judicial review of the applicability of any tax statute relating to the ad valorem property taxation of real property contained on the Development Property determined by any tax official to be applicable to the Project or the Developer or raise the inapplicability of any such tax statute as a defense in any proceedings with respect to the Development Property, including delinquent tax proceedings; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax;

(2) It will not seek administrative review or judicial review of the constitutionality of any tax statute relating to the taxation of real property contained on the Development Property determined by any tax official to be applicable to the Project or the Developer or raise the unconstitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings with respect to the Development Property; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax;

(3) It will not seek any tax deferral or abatement, either presently or prospectively authorized under Minnesota Statutes, Section 469.1813, or any other State or federal law, of the ad valorem property taxation of the Development Property between the date of execution of this Agreement and the Termination Date.

(4) The Developer will not seek a reduction in the market value as determined by the Ramsey County Assessor of the Project or other facilities that it constructs on the Development Property, pursuant to the provisions of this Agreement.

Section 3.6 Legal and Administrative Expenses. The Developer has deposited \$\_\_\_\_\_ with the City to pay actual out of pocket Legal and Administrative Expenses and any excess will be returned to the Developer after payment of all Legal and Administrative Expenses. If the City determines the deposit to be inadequate, the Developer shall provide additional funds in the amount requested by the City in writing.

## ARTICLE IV

### EVENTS OF DEFAULT

Section 4.1 Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean whenever it is used in this Agreement any one or more of the following events:

(1) Failure by the Developer to timely pay any ad valorem real property taxes and special assessments levied against the Development Property and all public utility or other City payments due and owing with respect to the Development Property.

(2) Failure by the Developer to cause the construction of the Project to be completed pursuant to the terms, conditions and limitations of this Agreement.

(3) Failure of the Developer to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

(4) The holder of any mortgage on the Development Property or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents.

(5) If the Developer shall:

(A) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law; or

(B) make an assignment for the benefit of its creditors; or

(C) admit in writing its inability to pay its debts generally as they become due; or

(D) be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or a receiver, liquidator or trustee of the Developer, or of the Project, or part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be discharged within sixty (60) days after such appointment, or if the Developer, shall consent to or acquiesce in such appointment.

Section 4.2 Remedies on Default. Whenever any Event of Default referred to in Section 4.1 occurs and is continuing, the City, as specified below, may take any one or more of the following actions after the giving of thirty (30) days' written notice to the Developer, but only if the Event of Default has not been cured within said thirty (30) days:



(1) The City may suspend its performance under this Agreement and the TIF Note until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement.

(2) The City may cancel and rescind the Agreement and the TIF Note.

(3) The City may take any action, including legal or administrative action, in law or equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 4.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 4.4 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 4.5 Agreement to Pay Attorney's Fees and Expenses. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

Section 4.6 Indemnification of City.

(1) The Developer (a) releases the City and its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees (collectively, the "Indemnified Parties") from, (b) covenants and agrees that the Indemnified Parties shall not be liable for, and (c) agrees to indemnify and hold harmless the Indemnified Parties against, any claim, cause of action, suit or liability for loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project or on the Development Property.

(2) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the City

in this Agreement or to any actions undertaken by the City which are not contemplated by this Agreement but shall, in any event and without regard to any fault on the part of the City, apply to any pecuniary loss or penalty (including interest thereon from the date the loss is incurred or penalty is paid by the City at a rate equal to the Prime Rate) as a result of the Developer operating the Project so that the Tax Increment District does not qualify or ceases to qualify as a "housing district" under Section 469.174, Subdivision 11, of the Act or to violate limitations as to the use of Tax Increments as set forth in Section 469.176, Subdivision 4d.

(3) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City.

## ARTICLE V

### ADDITIONAL PROVISIONS

Section 5.1 Restrictions on Use. The Developer agrees for itself, its successors and assigns and every successor in interest to the Development Property, or any part thereof, that during the term of this Agreement the Developer and such successors and assigns shall operate, or cause to be operated, the Project as a multi-family rental housing project and shall devote the Development Property to, and in accordance with, the uses specified in this Agreement.

Section 5.2 Conflicts of Interest. No member of the governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, the Development Property or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer or successors or on any obligations under the terms of this Agreement.

Section 5.3 Titles of Articles and Sections. Any titles of the several parts, articles and sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 5.4 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- (1) in the case of the Developer is addressed to or delivered personally to:

Buhl GTA, LP  
Attention: Peter Deanovic  
5100 Eden Avenue, Suite 317  
Edina, MN 55436

- (2) in the case of the City is addressed to or delivered personally to the City at:

City of Falcon Heights, Minnesota  
Attention: City Administrator  
2077 Larpenteur Avenue West  
Falcon Heights, MN 55113

with a copy to:

Taft Stettinius & Hollister LLP  
Attention: Mary Ippel  
2200 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this Section.

Section 5.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 5.6 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State.

Section 5.7 Expiration. This Agreement shall expire on the Termination Date.

Section 5.8 Provisions Surviving Rescission or Expiration. Sections 4.5 and 4.6 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section 5.9 Transfer of Project; Assignability of Agreement and TIF Note. The Developer shall not transfer the Project or assign this Agreement and the TIF Note without obtaining the prior consent of the City, which shall not be unreasonably withheld or conditioned.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and on its behalf and the Developer has caused this Agreement to be duly executed on its behalf, on or as of the date first above written.

CITY OF FALCON HEIGHTS, MINNESOTA

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its City Administrator

This is a signature page to the Development Agreement by and between the City of Falcon Heights, Minnesota and Buhl GTA, LP.

BUHL GTA, LP

By \_\_\_\_\_  
Name \_\_\_\_\_  
Its \_\_\_\_\_

This is a signature page to the Development Agreement by and between the City of Falcon Heights, Minnesota and Buhl GTA, LP.

EXHIBIT A

DESCRIPTION OF DEVELOPMENT PROPERTY

Property located in the City of Falcon Heights, Ramsey County, Minnesota with the following parcel identification number:

212923110030

EXHIBIT B

FORM OF TIF NOTE

No. R-1

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF RAMSEY  
CITY OF FALCON HEIGHTS

TAX INCREMENT REVENUE NOTE  
(BUHL GTA, LP PROJECT)

The City of Falcon Heights, Minnesota (the "City"), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay the amounts hereinafter described (the "Payment Amounts") to Buhl GTA, LP (the "Developer") or its registered assigns (the "Registered Owner"), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

The principal amount of this Note shall equal from time to time the principal amount stated above, as reduced to the extent that such principal installments shall have been paid in whole or in part pursuant to the terms hereof; provided that the sum of the principal amount listed above shall in no event exceed \$1,565,037 as provided in that certain Development Agreement, dated as of March 1, 2021, as the same may be amended from time to time (the "Development Agreement"), by and between the City and the Developer. The unpaid principal amount hereof shall bear interest from the date of this Note at the simple non-compounded rate of 4.00% per annum. Interest shall be computed on the basis of a 360 day year consisting of twelve (12) 30-day months.

The amounts due under this Note shall be payable on August 1, 2023, and on each February 1 and August 1 thereafter to and including February 1, 2036, or, if such day should not be a Business Day (as defined in the Development Agreement), the next succeeding Business Day (the "Payment Dates"). On each Payment Date the City shall pay by check or draft mailed to the person that was the Registered Owner of this Note at the close of the last business day of the City preceding such Payment Date an amount equal to the Tax Increments (hereinafter defined) received by the City during the six (6) month period preceding such Payment Date. All payments made by the City under this Note shall first be applied to accrued and unpaid interest and then to the principal balance of the Note. This Note is prepayable by the City, in whole or in part, on any date.

The Payment Amounts due hereon shall be payable solely from 95% of tax increments (the "Tax Increments") derived from the Development Property (as defined in the Development Agreement) within the City's Tax Increment Financing District No. 1-4 (the "Tax Increment District") within its Development District No. 1 which are paid to the City and which the City is entitled to retain pursuant to the provisions of Minnesota Statutes, Sections 469.174 through 469.1794, as the same may be amended or supplemented from time to time (the "Tax Increment



Act"). This Note shall terminate and be of no further force and effect following the last Payment Date defined above, on any date upon which the City shall have terminated the Development Agreement under Section 4.2(2) thereof or on the date that all principal and interest payable hereunder shall have been paid in full, whichever occurs earliest.

The City makes no representation or covenant, expressed or implied, that the Tax Increments will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

The City's payment obligations hereunder shall be further conditioned on the fact that no Event of Default under the Development Agreement shall have occurred and be continuing at the time payment is otherwise due hereunder, but such unpaid amounts shall become payable if said Event of Default shall thereafter have been cured; and, further, if pursuant to the occurrence of an Event of Default under the Development Agreement the City elects to cancel and rescind the Development Agreement, the City shall have no further debt or obligation under this Note whatsoever. Reference is hereby made to all of the provisions of the Development Agreement, including without limitation Section 3.3 thereof, for a fuller statement of the rights and obligations of the City to pay the principal of this Note, and said provisions are hereby incorporated into this Note as though set out in full herein.

This Note is a special, limited revenue obligation and not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications stated or referenced herein. This Note is not a general obligation of the City, and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of the principal of this Note and no property or other asset of the City, save and except the above-referenced Tax Increments, is or shall be a source of payment of the City's obligations hereunder.

This Note is issued by the City in aid of financing a project pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including the Tax Increment Act.

This Note may be assigned only with the consent of the City, which consent shall not be unreasonably withheld. In order to assign the Note, the assignee shall surrender the same to the City either in exchange for a new fully registered note or for transfer of this Note on the registration records for the Note maintained by the City. Each permitted assignee shall take this Note subject to the foregoing conditions and subject to all provisions stated or referenced herein.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this Note, together with all other indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, City of Falcon Heights, Minnesota, by its City Council, has caused this Note to be executed by the manual signatures of its Mayor and City Administrator and has caused this Note to be dated as of \_\_\_\_\_, 20\_\_\_\_\_.

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

\_\_\_\_\_  
Mayor

**DO NOT EXECUTE UNTIL PAID INVOICES, A SETTLEMENT STATEMENT OR OTHER EVIDENCE OF PAYMENT FOR ACQUISITION OF THE DEVELOPMENT PROPERTY AND THE PAYMENT OF THE COST OF THE SITE IMPROVEMENTS ARE GIVEN TO THE CITY - REFER TO SECTION 3.3(1).**

CERTIFICATION OF REGISTRATION

It is hereby certified that the foregoing Note was registered in the name of Buhl GTA, LP, and that, at the request of the Registered Owner of this Note, the undersigned has this day registered the Note in the name of such Registered Owner, as indicated in the registration blank below, on the books kept by the undersigned for such purposes.

<u>NAME AND ADDRESS OF REGISTERED OWNER</u>	<u>DATE OF REGISTRATION</u>	<u>SIGNATURE OF CITY ADMINISTRATOR</u>
Buhl GTA, LP Attention: Peter Deanovic 5100 Eden Avenue, Suite 317 Edina, MN 55436	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

## EXHIBIT C

### SITE IMPROVEMENTS

Landscaping, including irrigation

Foundations and Footings

Grading/earthwork

Engineering

Survey

Environmental Testing

Soil Borings

Site Preparation

Onsite Utilities

Storm Water/Ponding

Outdoor Lighting

Onsite Road, Curb, Gutter, Driveway, Sidewalk and Streetscape Improvements

Parking

EXHIBIT D

COMPLIANCE CERTIFICATE

The undersigned Buhl GTA, LP, does hereby certify that as of the date of this Certificate and for the previous six (6) months prior to the execution of this Certificate not less than 100% of the residential units in the Buhl GTA, LP project located at 1667 North Snelling Avenue in Falcon Heights, Minnesota (the "Project") were occupied by individuals whose income is 50% or less of the Ramsey County median income.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BUHL GTA, LP

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

[Attach income verification required by Section 3.4]

**EXTRACT OF MINUTES OF A MEETING OF THE  
CITY COUNCIL OF THE CITY  
OF FALCON HEIGHTS, MINNESOTA**

**HELD: MARCH 10, 2021**

Pursuant to due call and notice thereof, a regular or special meeting of the City Council of the City of Falcon Heights, Ramsey County, Minnesota, was duly called and held at the City Hall, in said City on March 10, 2021, at 7:00 P.M.

The following members of the Council were present:

and the following were absent:

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

**CITY OF FALCON HEIGHTS  
COUNCIL RESOLUTION**

February 10, 2021

No. 21-14

**RESOLUTION APPROVING THE MODIFICATION TO THE DEVELOPMENT  
PROGRAM FOR DEVELOPMENT DISTRICT NO. 1 AND ESTABLISHING TAX  
INCREMENT FINANCING DISTRICT NO. 1-4 WITHIN DEVELOPMENT  
DISTRICT NO. 1 AND APPROVING THE TAX INCREMENT FINANCING PLAN  
THEREFOR; AUTHORIZING AN INTERFUND LOAN AND AUTHORIZING  
EXECUTION OF A DEVELOPMENT AGREEMENT**

A. WHEREAS, it has been proposed that the City of Falcon Heights, Minnesota (the "City") (1) modify the Development Program for Development District No. 1 (the "Development District"); (2) establish Tax Increment Financing District No. 1-4 therein (the "TIF District") and (3) approve and adopt the proposed Tax Increment Financing Plan therefor under the provisions of Minnesota Statutes, Sections 469.174 to 469.1794, as amended (the "Act"); and

B. WHEREAS, the City Council has investigated the facts and has caused to be prepared the Modification to the Development Program for the Development District (the "Development Program Modification"), and has caused to be prepared a proposed tax increment financing plan for the TIF District therein (the "TIF Plan"); and

C. WHEREAS, the City has performed all actions required by law to be performed prior to the approval of the establishment of the TIF District and the adoption of the Development Program Modification and TIF Plan, including, but not limited to, notification of Ramsey County and Independent School District No. 623 having taxing jurisdiction over the property to be included in the TIF District and the holding of a public hearing upon published and mailed notice as required by law.

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

1. Development District. The City is not modifying the boundaries of the Development District.

2. Development Program Modification. The Modification to the Development Program for Development District No. 1, a copy of which is on file in the office of the City Administrator, is adopted.

3. Tax Increment Financing District No. 1-4. There is hereby established in the City within the Development District, Tax Increment District No. 1-4, a housing tax increment financing district, the initial boundaries of which are fixed and determined as described in the TIF Plan.

4. Tax Increment Financing Plan. The TIF Plan is adopted as the tax increment financing plan for the TIF District, and the City Council makes the following findings:

(a) The TIF District is a housing district as defined in Minnesota Statutes, Section 469.174, Subd. 11, the specific basis for such determination is set forth in Appendix C of the TIF Plan.

(b) The proposed development, in the opinion of the City, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future. The reasons for such determination are set forth in Appendix C of the TIF Plan.

(c) The TIF Plan for the TIF District conforms to the general plan for development or redevelopment of the City as a whole. The reasons for supporting this finding are set forth in Appendix C of the TIF Plan.

(d) The TIF Plan will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the development or redevelopment of the Development District by private enterprise. The reasons supporting this finding are set forth in Appendix C of the TIF Plan.

(e) Appendix C of the TIF Plan is incorporated herein by reference.

5. Public Purpose. The adoption of the TIF Plan for the TIF District within the Development District conforms in all respects to the requirements of the Act and will help fulfill a need to develop an area of the State which is already built up to provide safe, decent, sanitary housing for residents of the City, to improve the tax base and to improve the general economy of the State and thereby serves a public purpose.

6. Certification. The Auditor of Ramsey County is requested to certify the original net tax capacity of the TIF District as described in TIF Plan, and to certify in each year thereafter the amount by which the original net tax capacity has increased or decreased in accordance with the Act; and the City Administrator is authorized and directed to forthwith transmit this request to the County Auditor in such form and content as the Auditor may specify, together with a list of all properties within the TIF District for which building permits have been issued during the 18 months immediately preceding the adoption of this Resolution.

7. Filing. The City Administrator is further authorized and directed to file a copy of the Modification and TIF Plan for the TIF District with the Commissioner of Revenue and the Office of the State Auditor.

8. Interfund Loan. The City has determined to pay for certain costs (the "Qualified Costs") identified in the TIF Plan consisting of certain administrative expenses, which costs may be financed on a temporary basis from the City's general fund or any other fund from which such advances may be legally made (the "Fund"). Under Minnesota Statutes, Section 469.178, Subd. 7, the City is authorized to advance or loan money from the Fund in order to finance the Qualified Costs. The City intends to reimburse itself for the payment of the Qualified Costs, plus interest thereon, from tax increments derived from the TIF District in accordance with the following terms (which terms are referred to collectively as the "Interfund Loan"):

(a) The City shall repay to the Fund from which the Qualified Costs are initially paid, the principal amount of \$7,581,473 (or, if less, the amount actually paid from such fund) together with interest at 5.00% per annum (which is not more than the greater of (i) the rate specified under Minnesota Statutes, Section 270C.40, or (ii) the rate specified under Minnesota Statutes, Section 549.09) from the date of the payment.

(b) Principal and interest on the Interfund Loan ("Payments") shall be paid annually on each December 31 commencing with the date the tax increments from the TIF District are available and not otherwise pledged to and including the earlier of (a) the date the principal and accrued interest of the Interfund Loan is paid in full, or (b) the date of last receipt of tax increment from the TIF District ("Payment Dates") which Payments will be made in the amount and only to the extent of available tax increments. Payments shall be applied first to accrued interest, and then to unpaid principal.

(c) Payments on the Interfund Loan are payable solely from the tax increment generated in the preceding twelve (12) months with respect to the TIF District and remitted to the City by Ramsey County, all in accordance with Minnesota Statutes, Sections 469.174 to 469.1794, as amended. Payments on this Interfund Loan are subordinate to any outstanding or future bonds, notes or contracts secured in whole or in part with tax increment, and are on parity with any other outstanding or future interfund loans secured in whole or in part with tax increments.

(d) The principal sum and all accrued interest payable under this Interfund Loan are pre-payable in whole or in part at any time by the City without premium or penalty. No partial prepayment shall affect the amount or timing of any other regular payment otherwise required to be made under this Interfund Loan.

(e) The Interfund Loan is evidence of an internal borrowing by the City in accordance with Minnesota Statutes, Section 469.178, Subd. 7, and is a limited obligation payable solely from tax increment pledged to the payment hereof under this resolution. The Interfund Loan and the interest hereon shall not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the City. Neither the State of Minnesota, nor any political subdivision thereof shall be obligated to pay the principal of or interest on the Interfund Loan or other costs incident hereto except out of tax increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on the Interfund Loan or other costs incident hereto. The City shall have no obligation to pay any principal amount of the Interfund Loan or accrued interest thereon, which may remain unpaid after the termination of the TIF District.



(f) The City may amend the terms of the Interfund Loan at any time by resolution of the City Council, including a determination to forgive the outstanding principal amount and accrued interest to the extent permissible under law.

9. Development Agreement.

(a) The Council hereby approves the Development Agreement in substantially the form submitted, and the Mayor and the City Administrator are hereby authorized and directed to execute the Development Agreement on behalf of the Council.

(b) The approval hereby given to the Development Agreement includes approval of such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by the City officials authorized by this resolution to execute the Development Agreement. The execution of the Development Agreement by the appropriate officer or officers of the City shall be conclusive evidence of the approval of the Development Agreement in accordance with the terms hereof.

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

and the following voted against same:

-----

Moved by:

Approved by: \_\_\_\_\_  
Randall C. Gustafson  
Mayor

GUSTAFSON        \_\_\_    In Favor  
MIAZGA  
ANDREWS        \_\_\_    Against  
LEEHY  
WEHYEE

Attested by: \_\_\_\_\_  
Sack Thongvanh  
City Administrator

STATE OF MINNESOTA  
RAMSEY COUNTY  
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 the establishment of the Tax Increment Financing District No. 1-4 in the City, authorization of an interfund loan and authorizing execution of a development agreement.

WITNESS my hand as such City Administrator of the City Council of the City of Falcon Heights, Minnesota this 10<sup>th</sup> day of March, 2021.

---

City Administrator



## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	March 10, 2021
<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: 3/04/21 \$37,459.56 Payroll through: 2/28/21 \$19,394.24
<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.

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PACKET: 02254 FEB 23 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
-----						
01-06290	CITY OF ROSEVILLE					
I-229836x		NETMOTION VANDARA	500.00			
2/23/2021	APBNK	DUE: 2/23/2021 DISC: 2/23/2021		1099: N		
		NETMOTION VANDARA		101 4116-85070-000	TECHNICAL SUPPORT	500.00
		=== VENDOR TOTALS ===	500.00			
-----						
01-03583	DELL MARKETING L.P.					
I-10463236398		MONITOR 23"	124.54			
2/23/2021	APBNK	DUE: 2/23/2021 DISC: 2/23/2021		1099: N		
		MONITOR 23"		401 4401-90100-000	FURNITURE & EQUIPMENT	124.54
		=== VENDOR TOTALS ===	124.54			
-----						
01-06185	RAMSEY COUNTY					
I-SHRFL 1930		CARES ITEMS REIMB	15,564.06			
2/23/2021	APBNK	DUE: 2/23/2021 DISC: 2/23/2021		1099: N		
		CARES ITEMS REIMB		101 20200-000	ACCOUNTS PAYABLE	15,564.06
		=== VENDOR TOTALS ===	15,564.06			
-----						
01-00935	ST PAUL REGIONAL WATER SERVICE					
I-202102237764		H2O AND SS	249.07			
2/23/2021	APBNK	DUE: 2/23/2021 DISC: 2/23/2021		1099: N		
		H2O		101 4131-85040-000	WATER	58.51
		SS		601 4601-85070-000	SAC CHARGES AND SS CHARG	16.48
		H2O		101 4141-85040-000	WATER	111.08
		SS		601 4601-85070-000	SAC CHARGES AND SS CHARG	63.00
		=== VENDOR TOTALS ===	249.07			
-----						
01-05870	XCEL ENERGY					
I-202102237763		ELECT	540.73			
2/23/2021	APBNK	DUE: 2/23/2021 DISC: 2/23/2021		1099: N		
		ELECT		101 4141-85020-000	ELECTRIC/GAS	72.84
		ELECT		101 4141-85020-000	ELECTRIC/GAS	13.85
		ELECT		101 4131-85020-000	ELECTRIC	421.45
		ELECT		209 4209-85020-000	STREET LIGHTING POWER	32.59
		=== VENDOR TOTALS ===	540.73			
		=== PACKET TOTALS ===	16,978.40			



PACKET: 02258 MAR 4 TH PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----		GROSS	P.O. #		
BT DATE	BANK CODE	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION

01-06290 CITY OF ROSEVILLE ( \*\* CONTINUED \*\* )

=== VENDOR TOTALS === 10,522.87

01-05115 GOPHER STATE ONE CALL

I-1020386		LOCATES	9.45		
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N	
		LOCATES		601 4601-88030-000 LOCATES	9.45

=== VENDOR TOTALS === 9.45

01-05153 HOME DEPOT CRC/GECF

I-202103047771		PHONE CHARGER	24.00		
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N	
		PHONE CHARGER		101 4131-70110-000 SUPPLIES	24.00

=== VENDOR TOTALS === 24.00

01-05235 JAN-PRO CLEANING SYSTEMS

99929		JANITORIAL SVC FEB	450.00		
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N	
		JANITORIAL SVC FEB		101 4131-87010-000 CITY HALL MAINTENANCE	450.00

=== VENDOR TOTALS === 450.00

01-05450 LEAGUE MN CITIES INS TRST

I-6424		CLAIM	34.45		
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N	
		CLAIM		101 4112-88000-000 INSURANCE & BONDS	34.45

=== VENDOR TOTALS === 34.45

01-05644 LEAGUE OF MN HUMAN RIGHTS COMM

I-2134		2021 MEMBERSHIP	100.00		
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N	
		2021 MEMBERSHIP		101 4111-86140-000 COMMISSIONS/MEMBERSHIPS/	100.00

=== VENDOR TOTALS === 100.00

PACKET: 02258 MAR 4 TH 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				
I-149217		FLOOR MAT SVC	42.15			
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N		
		FLOOR MAT SVC		101 4132-87010-000	BOULEVARD MAINTENANCE	42.15
		=== VENDOR TOTALS ===	42.15			
-----						
01-05760	MINNESOTA GFOA					
I-202103047770		MEMBERSHIP	90.00			
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N		
		MEMBERSHIP		101 4113-86100-000	CONFERENCES/EDUCATION/AS	90.00
		=== VENDOR TOTALS ===	90.00			
-----						
01-05843	MN NCPERS LIFE INSURANCE					
I-45880032021		MN NCPERS LIFE INSURANCE	48.00			
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N		
		MN NCPERS LIFE INSURANCE		101 21709-000	OTHER PAYABLE	24.64
		MN NCPERS LIFE INSURANCE		204 21709-000	OTHER PAYABLE	1.60
		MN NCPERS LIFE INSURANCE		601 21709-000	OTHER PAYABLE	15.52
		MN NCPERS LIFE INSURANCE		602 21709-000	OTHER PAYABLE	6.24
		=== VENDOR TOTALS ===	48.00			
-----						
01-06030	OLSON,ROLAND					
I-202103047766		MILEAGE REIMB FEB	49.40			
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N		
		MILEAGE REIMB FEB		101 4113-86010-000	MILEAGE	49.40
		=== VENDOR TOTALS ===	49.40			
-----						
01-06024	ON SITE SANITATION					
I-1082434		HAND SANITIZERS PARKS	75.00			
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N		
		HAND SANITIZERS PARKS		601 4601-85080-000	PORTABLE TOILET PARKS	75.00
I-1082435		HAND SANITIZERS/RESTROOMS	160.00			
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N		
		HAND SANITIZERS/RESTROOMS		601 4601-85080-000	PORTABLE TOILET PARKS	160.00
		=== VENDOR TOTALS ===	235.00			



PACKET: 02258 MAR 4 TH 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
=====						
01-06115	TIMOTHY PITTMAN					
I-202103047768		MILEAGE REIMB	71.68			
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N		
		MILEAGE REIMB		101 4132-86101-000	MILEAGE	71.68
		=== VENDOR TOTALS ===	71.68			
=====						
01-06569	SAHER, LAURA					
I-202103047767		GARDEN PLOT REFUND	25.00			
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N		
		GARDEN PLOT REFUND		203 34500-000	COMMUNITY GARDEN PLOT FE	25.00
		=== VENDOR TOTALS ===	25.00			
=====						
01-06141	SHI INTERNATIONAL GROUP					
I-b13024374		HP THUNDEBOLT DOCK G2	615.00			
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N		
		HP THUNDEBOLT DOCK G2		401 4401-90100-000	FURNITURE & EQUIPMENT	615.00
		=== VENDOR TOTALS ===	615.00			
=====						
01-05374	TENNIS SANITATION LLC					
I-2879956		RECYCLING FEB	6,961.50			
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N		
		RECYCLING FEB		206 4206-82030-000	RECYCLING CONTRACTS	6,961.50
I-2879957		RECYCLING FEB	67.01			
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N		
		RECYCLING FEB		101 4131-87010-000	CITY HALL MAINTENANCE	67.01
		=== VENDOR TOTALS ===	7,028.51			
=====						
01-06628	SACK THONGVANH					
I-202103047769		CELL PHONE REIMB JAN/FEB	200.00			
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N		
		CELL PHONE REIMB JAN/FEB		101 4131-85015-000	CELL PHONE	100.00
		CELL PHONE REIMB JAN/FEB		601 4601-85015-000	CELL PHONE	100.00
		=== VENDOR TOTALS ===	200.00			

PACKET: 02258 MAR 4 TH PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----			GROSS	P.O. #		
DT DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
01-05870	XCEL	ENERGY				
I-202103047774		ELECT	41.76			
3/04/2021	APBNK	DUE: 3/04/2021 DISC: 3/04/2021		1099: N		
		ELECT		101 4121-85020-000	ELECTRIC	12.49
		ELECT		101 4141-85020-000	ELECTRIC/GAS	29.27
		=== VENDOR TOTALS ===	41.76			
		=== PACKET TOTALS ===	20,481.16			

IP #	NAME	AMOUNT
	RANDALL C GUSTAFSON	393.07
	MELANIE M LEEHY	262.05
	MARK J MIAZGA	262.05
	YAKASAH WEHYEE	262.05
	KAY ANDREWS	255.30
	SACK THONGVANH	3,911.96
	ASHLEIGH WALTER	1,451.10
	VANDARA THAMMAVONGSA	1,544.21
	ROLAND O OLSON	3,237.59
	TIMOTHY J PITTMAN	2,259.27
	DAVE TRETSVEN	1,813.02
	COLIN B CALLAHAN	1,693.22

TOTAL PRINTED: 12 17,344.89

-24-2021 6:46 AM PAYROLL CHECK REGISTER  
PAYROLL NO: 01 City of Falcon Heights

PAGE: 1  
PAYROLL DATE: 2/24/2021

IP NO	EMPLOYEE NAME	TYPE	CHECK DATE	CHECK AMOUNT	CHECK NO.
18	MORETTO, PAUL A	R	2/24/2021	2,049.35	090306

2-24-2021 6:46 AM PAYROLL CHECK REGISTER  
PAYROLL NO: 01 City of Falcon Heights

PAGE: 2  
PAYROLL DATE: 2/24/2021

\*\*\* REGISTER TOTALS \*\*\*

REGULAR CHECKS:	1	2,049.35
DIRECT DEPOSIT REGULAR CHECKS:	12	17,344.89
MANUAL CHECKS:		
PRINTED MANUAL CHECKS:		
DIRECT DEPOSIT MANUAL CHECKS:		
VOIDED CHECKS:		
NON CHECKS:		
TOTAL CHECKS:	13	19,394.24

\*\*\* NO ERRORS FOUND \*\*\*

\* END OF REPORT \*\*

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## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	March 10, 2021
<b>Agenda Item</b>	Consent F2
<b>Attachment</b>	N/A
<b>Submitted By</b>	Sack Thongvanh, City Administrator

<b>Item</b>	Post-Issuance Compliance Policy and Procedures
<b>Description</b>	<p>Records show the policy and procedures relating to post issuance compliance were adopted or approved on August 7, 2013. The documents were prepared by Ehlers. We have attached the procedures document for your reference. Since this date, significant changes have taken place which has led us to revise our policy and procedure document templates.</p> <p>Due to increased underwriter scrutiny (the Municipalities Continuing Disclosure Cooperation initiative "MCDC" in March of 2014 and afterward) regarding disclosure practices we are now including several procedural items in our policy templates that are intended to assist the obligated person with how to monitor compliance with each unique Continuing Disclosure Agreement.</p> <p>Also, effective February 27, 2019, the Securities and Exchange Commission (SEC) required amendments to Rule 15c2-12 of the Securities Exchange Act (the "Rule") to include two additional reportable events, increasing the number of required event notices to 16. The two additional reportable events are as follows:</p> <ul style="list-style-type: none"> <li>• <i>Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and,</i></li> <li>• <i>Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties.</i></li> </ul> <p>Numerous Industry experts have suggested updating policies and procedure documents to ensure Issuers are ready to comply with their disclosure obligations, which includes the two new rules. Now is a good time to update</p>

	<p>the documents to provide underwriters and current security holders assurance that your entity is prepared to comply with your post issuance obligations.</p> <p>The updated Ehlers policy also covers the SEC Continuing Disclosure Rule requirements in great detail which created an entirely new procedure section devoted to SEC Continuing Disclosure. In addition to discussing all 16 material events there are a number of other procedural items that are intended to assist the obligated person (City of Falcon Heights) with “how” to monitor compliance with each unique Continuing Disclosure Agreement.</p>
<b>Budget Impact</b>	The cost to update the post-issuance Compliance Policy and Procedures will be \$200.
<b>Attachment(s)</b>	<ul style="list-style-type: none"> <li>• Post-Issuance Compliance Policy</li> <li>• Post-Issuance Debt Compliance Procedures</li> <li>• Resolution 21-15 Adopting the Post-Issuance Debt Compliance Policy for Tax-exempt and Tax-advantaged Governmental Bonds</li> </ul>
<b>Action(s) Requested</b>	Staff would recommend approval of attached resolution and authorize the Mayor and City Administrator to execute all necessary documents.

March 5, 2021

POST-ISSUANCE COMPLIANCE POLICY FOR:

# The City of Falcon Heights, Minnesota



**Prepared by:**

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Ehlers  
3060 Centre Pointe Drive  
Roseville, Minnesota 55113

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**BUILDING COMMUNITIES. IT'S WHAT WE DO.**

# The City of Falcon Heights, Minnesota

## Post-Issuance Debt Compliance Policy

The City Council (the “Council”) of the City of Falcon Heights, Minnesota (the “City”) has chosen, by policy, to take steps to help ensure that all obligations will be in compliance with all applicable federal regulations. This policy may be amended, as necessary, in the future.

### IRS Background

The Internal Revenue Service (IRS) is responsible for enforcing compliance with the Internal Revenue Code (the “Code”) and regulations promulgated thereunder (“Treasury Regulations”) governing certain obligations (for example: tax-exempt obligations, Build America Bonds, Recovery Zone Development Bonds and various “Tax Credit” Bonds). The IRS encourages issuers and beneficiaries of these obligations to adopt and implement a post-issuance debt compliance policy and procedures to safeguard against post-issuance violations.

### SEC Background

The Securities and Exchange Commission (SEC) is responsible for enforcing compliance with the SEC Rule 15c2-12 (the “Rule”). Governments or governmental entities issuing obligations generally have a requirement to meet specific continuing disclosure standards set forth in continuing disclosure agreements (“CDA”). Unless the issuer, obligated person, or a specific obligation is exempt from compliance with CDAs, these agreements are entered into at the time of obligation issuance to enable underwriter(s) to comply with the Rule. The Rule sets forth certain obligations of (i) underwriters to receive, review and disseminate official statements prepared by issuers of most primary offerings of municipal securities, (ii) underwriters to obtain CDAs from issuers and other obligated persons to provide material event disclosure and annual financial information on a continuing basis, and (iii) broker-dealers to have access to such continuing disclosure in order to make recommendations of municipal securities transactions in the secondary market. The SEC encourages issuers and beneficiaries adopt and implement a post-issuance debt compliance policy and procedures to safeguard against Rule violations.

When obligations are issued, the CDA commits the issuer or obligated person to provide certain annual financial information and material event notices to the public. Issuers and other obligated persons may also choose to provide periodic, voluntary financial information and filings to investors in addition to fulfilling the specific responsibilities delineated in their CDA. It is important to note that issuers and other obligated persons should not give any one investor certain information that is not readily available to all market participants by disseminating information to the marketplace, at large. Issuers and other obligated persons should be aware that any disclosure activities determined to be “communicating to the market” can be subject to regulatory scrutiny.

### Post-Issuance Debt Compliance Policy Objective

The City desires to monitor these obligations to ensure compliance with the IRS Code, Treasury Regulations and the SEC Rule. To help ensure compliance, the City has developed the following policy (the “Post-Issuance Debt Compliance Policy”). The Post-Issuance Debt Compliance Policy shall apply to the obligations mentioned above, including bonds, notes, loans, lease purchase contracts, lines of credit, commercial paper or any other form of debt that is subject to compliance.

### Post-Issuance Debt Compliance Policy

The Finance Director of the City is designated as the City’s agent who is responsible for post-issuance compliance of these obligations.



The Finance Director shall assemble all relevant documentation, records and activities required to ensure post-issuance debt compliance as further detailed in corresponding procedures (the “Post-Issuance Debt Compliance Procedures”). At a minimum, the Post-Issuance Debt Compliance Procedures for each qualifying obligation will address the following:

1. General Post-Issuance Compliance
2. General Recordkeeping
3. Arbitrage Yield Restriction and Rebate Recordkeeping
4. Expenditure and Asset Documentation to be Assembled and Retained
5. Miscellaneous Documentation to be Assembled and Retained
6. Additional Undertakings and Activities that Support Sections 1 through 5 above
7. Continuing Disclosure Obligations
8. Compliance with Future Requirements

The Finance Director shall apply the Post-Issuance Debt Compliance Procedures to each qualifying obligation and maintain a record of the results. Further, the Finance Director will ensure that the Post-Issuance Debt Compliance Policy and Procedures are updated on a regular and as needed basis.

The Finance Director or any other individuals responsible for assisting the Finance Director in maintaining records needed to ensure post-issuance debt compliance, are authorized to expend funds as needed to attend training or secure use of other educational resources for ensuring compliance such as consulting, publications, and compliance assistance.

Most of the provisions of this Post-Issuance Debt Compliance Policy are not applicable to taxable governmental obligations unless there is a reasonable possibility that the City may refund their taxable governmental obligation, in whole or in part, with the proceeds of a tax-exempt governmental obligation. If this refunding possibility exists, then the City shall treat the taxable governmental obligation as if such issue were an issue of tax-exempt governmental obligations and comply with the requirements of this Post-Issuance Debt Compliance Policy.

### **Private Activity Bonds**

The City may issue tax-exempt obligations that are “private activity” bonds because either (1) the bonds finance a facility that is owned by the City but used by one or more qualified 501(c)(3) organizations, or (2) the bonds are so-called “conduit bonds”, where the proceeds are loaned to a qualified 501(c)(3) organization or another private entity that finances activities eligible for tax-exempt financing under federal law (such as certain manufacturing projects and certain affordable housing projects). Prior to the issuance of either of these types of bonds, the Finance Director shall take steps necessary to ensure that such obligations will remain in compliance with the requirements of this Post-Issuance Debt Compliance Policy.

In a case where compliance activities are reasonably within the control of a private party (i.e., a 501(c)(3) organization or conduit borrower), the Finance Director may determine that all or some portion of compliance responsibilities described in this Post-Issuance Debt Compliance Policy shall be assigned to the relevant party. In the case of conduit bonds, the conduit borrower will be assigned all compliance responsibilities other than those required to be undertaken by the City under federal law. In a case where the Finance Director is concerned about the compliance ability of a private party, the Finance Director may require that a trustee or other independent third party be retained to assist with record keeping for

the obligation and/or that the trustee or such third party be responsible for all or some portion of the compliance responsibilities.

The Finance Director is additionally authorized to seek the advice, as necessary, of bond counsel and/or its financial advisor to ensure the City is in compliance with this Post-Issuance Debt Compliance Policy.

Adopted this date \_\_\_\_\_ by the City of Falcon Heights, Minnesota

March 5, 2021

POST-ISSUANCE DEBT PROCEDURES FOR:

# The City of Falcon Heights, Minnesota



**Prepared by:**

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Ehlers  
3060 Centre Pointe Drive  
Roseville, Minnesota 55113

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BUILDING COMMUNITIES. IT'S WHAT WE DO.

## The City of Falcon Heights, Minnesota Post-Issuance Debt Compliance Procedures

The City Council (the “Council”) of the City of Falcon Heights, Minnesota (the “City”) has adopted the attached Post-Issuance Debt Compliance Policy dated [REDACTED]. The Post-Issuance Debt Compliance Policy applies to qualifying debt obligations issued by the City. As directed by the adoption of the Post-Issuance Debt Compliance Policy, the Finance Director of the City will perform the following Post-Issuance Debt Compliance Procedures for all of the City’s outstanding debt.

### 1. General Post-Issuance Compliance

- a. Ensure written procedures and/or guidelines have been put in place for individuals to follow when more than one person is responsible for ensuring compliance with Post-Issuance Debt Compliance Procedures.
- b. Ensure training and/or educational resources for post-issuance compliance have been approved and obtained.
- c. The Finance Director understands that there are options for voluntarily correcting failures to comply with post-issuance compliance requirements (e.g. as remedial actions under Section 1.141-12 of the Treasury Regulations and the ability to enter into a closing agreement under the Tax-Exempt Bonds Voluntary Closing Agreement Program described in Notice 2008-31 (the “VCAP Program”).

### 2. General Recordkeeping

- a. Retain records and documents for the obligation and all obligations issued to refund the obligation for a period of at least seven years following the final payment of the obligation. If an obligation is refunded, then the final payment of the refunding obligation becomes the beginning of the period unless otherwise directed by the City’s bond counsel.
- b. Retain electronic (preferred) and/or paper versions of records and documents for the obligation.
- c. General records and documentation to be assembled and retained:
  - i. Description of the purpose of the obligation (i.e. the project or projects) and the state statute authorizing the project.
  - ii. Record of tax-exempt status or revocation of tax-exempt status, if applicable.
  - iii. Any correspondence between the City and the IRS.
  - iv. Audited financial statements.
  - v. All accounting audits of property financed by the obligation.
  - vi. Obligation transcripts, official statements, and other offering documents of the obligation.
  - vii. Minutes and resolutions authorizing the issuance of the obligation.
  - viii. Certifications of the issue price of the obligation.
  - ix. Any formal elections for the obligation (i.e. an election to employ an accounting methodology other than the specific tracing method).
  - x. Appraisals, demand surveys, or feasibility studies for property financed by the obligation.
  - xi. All information reports filed for the obligations.
  - xii. All management contracts and other service agreements, research contracts, and naming rights contracts.
  - xiii. Documents related to governmental grants associated with construction, renovation or purchase of property financed by the obligation.

- xiv. Reports of any prior IRS examinations of the City or the City's obligation.
- xv. All correspondence related to the above (faxes, emails, or letters).

### 3. Arbitrage Yield Restriction and Rebate Recordkeeping

- a. Investment and arbitrage documentation to be assembled and retained:
  - i. An accounting of all deposits, expenditures, interest income and asset balances associated with each fund established in connection with the obligation. This includes an accounting of all monies deposited to the debt service fund to make debt service payments on the obligation, regardless of the source derived. Accounting for expenditures and assets is described in further detail in Section 4.
  - ii. Statements prepared by Trustee and/or Investment Provider.
  - iii. Documentation of at least quarterly allocations of investments and investment earnings to each obligation.
  - iv. Documentation for investments made with obligation proceeds such as:
    - 1. investment contracts (i.e. guaranteed investment contracts),
    - 2. credit enhancement transactions (i.e. obligation insurance contracts),
    - 3. financial derivatives (e.g. swaps, caps, and collars), and
    - 4. bidding of financial products:
      - a. Investments acquired with obligation proceeds are purchased at fair market value (e.g. three bid safe harbor rule for open market securities needed in advance refunding escrows).
- b. Computations of the arbitrage yield.
- c. Computations of yield restriction and rebate amounts including but not limited to:
  - i. Compliance in meeting the "Temporary Period from Yield Restriction Exception" and limiting the investment of funds after the temporary period expires.
  - ii. Compliance in meeting the "Rebate Exception."
    - 1. qualifying for the "Small Issuer Exception,"
    - 2. qualifying for a "Spending Exception,"
      - a. 6-Month Spending Exception
      - b. 18-Month Spending Exception
      - c. 24-Month Spending Exception
    - 3. qualifying for the "Bona Fide Debt Service Fund Exception," and
    - 4. quantifying arbitrage on all funds established in connection with the obligation in lieu of satisfying arbitrage exceptions including reserve funds and debt service funds.
- d. Computations of yield restriction and rebate payments.
- e. Timely Tax Form 8038-T filing, if applicable.
  - i. Remit any arbitrage liability associated with the obligation to the IRS at each five-year anniversary date of the obligation, and the date in which the obligation is no longer outstanding (redemption or maturity date), whichever comes sooner, within 60 days of said date.
- f. Timely Tax Form 8038-R filing, if applicable.
  - i. Remit the form after the date in which the obligation is no longer outstanding (redemption or maturity date), whichever comes sooner, within 2 years of said date.
- g. Procedures or guidelines for monitoring instances where compliance with applicable yield restriction requirements depends on subsequent reinvestment of obligation proceeds in lower yielding investments (e.g. reinvestment in zero coupon SLGS).

#### 4. Expenditure and Asset Documentation to be Assembled and Retained

- a. Documentation of allocations of obligation proceeds to expenditures (e.g. allocation of proceeds to expenditures for the construction, renovation or purchase of facilities owned and used in the performance of exempt purposes).
  - i. Such allocation will be done not later than the earlier of:
    1. eighteen (18) months after the later of the date the expenditure is paid, or the date the project, if any, that is financed by the obligation is placed in service; or
    2. the date sixty (60) days after the earlier of the fifth anniversary of the issue date of the obligation, or the date sixty (60) days after the retirement of the obligation.
- b. Documentation of allocations of obligation proceeds to issuance costs.
- c. Copies of requisitions, draw schedules, draw requests, invoices, bills, and cancelled checks related to obligation proceed expenditures during the construction period.
- d. Copies of all contracts entered into for the construction, renovation or purchase of facilities financed with obligation proceeds.
- e. Records of expenditure reimbursements incurred prior to issuing obligations for projects financed with obligation proceeds (declaration of official intent/reimbursement resolutions including all modifications).
- f. List of all facilities and equipment financed with obligation proceeds.
- g. Depreciation schedules for depreciable property financed with obligation proceeds.
- h. Documentation that tracks the purchase and sale of assets financed with obligation proceeds.
- i. Documentation of timely payment of principal and interest payments on the obligation.
- j. Tracking of all issue proceeds and the transfer of proceeds into the debt service fund as appropriate.
- k. Documentation that excess earnings from a Reserve Fund are transferred to the Debt Service Fund on an annual basis. Excess earnings are balances in a Reserve Fund that exceed the Reserve Fund requirement.

#### 5. Miscellaneous Documentation to be Assembled and Retained

- a. Ensure that the project, while the obligation is outstanding, will avoid IRS private activity concerns.
- b. The Finance Director shall monitor the use of all obligation-financed facilities in order to:
  - i. Determine whether private business uses of obligation-financed facilities have exceeded the de minimus limits set forth in Section 141(b) of the Code as a result of:
    1. sale of the facilities;
    2. sale of City capacity rights;
    3. leases and subleases of facilities including easements or use arrangements for areas outside the four walls (e.g. hosting of cell phone towers);
    4. leasehold improvement contracts, licenses, management contracts in which the City authorizes a third party to operate a facility (e.g. cafeteria);
    5. research contracts;
    6. preference arrangements in which the City permits a third-party preference (e.g. parking in a public parking lot, joint ventures, limited liability companies or partnership arrangements);
    7. output contracts or other contracts for use of utility facilities including contracts with large utility users;
    8. development agreements which provide for guaranteed payments or property values from a developer;
    9. grants or loans made to private entities including special assessment agreements;
    10. naming rights agreements; and
    11. any other arrangements that provide special legal entitlements to nongovernmental persons.

- ii. Determine whether private security or payments that exceed the de minimus limits set forth in Section 141(b) of the Code have been provided by nongovernmental persons with respect to such obligation-financed facilities.
- c. The Finance Director shall provide training and educational resources to any City staff that have the primary responsibility for the operation, maintenance, or inspection of obligation-financed facilities with regard to the limitations on the private business use of obligation-financed facilities and as to the limitations on the private security or payments with respect to obligation-financed facilities.
- d. The City shall undertake the following with respect to the obligations:
  - i. An annual review of the books and records maintained by the City with respect to such obligations.
  - ii. An annual physical inspection of the facilities financed with the proceeds of such obligations, conducted by the Finance Director with the assistance of any City staff who have the primary responsibility for the operation, maintenance, or inspection of such obligation-financed facilities.
- e. Changes in the project that impact the terms or commitments of the obligation are properly documented and necessary certificates or opinions are on file.

## 6. Additional Undertakings and Activities that Support Sections 1 through 5 above:

- a. The Finance Director will notify the City's bond counsel, financial advisor and arbitrage provider of any survey or inquiry by the IRS immediately upon receipt. Usually responses to IRS inquiries are due within 21 days of receipt. Such IRS responses require the review of the above-mentioned data and must be in writing. As much time as possible is helpful in preparing the response.
- b. The Finance Director will consult with the City's bond counsel, financial advisor and arbitrage provider before engaging in post-issuance credit enhancement transactions (e.g. obligation insurance, letter of credit, or hedging transaction).
- c. The Finance Director will monitor all "qualified tax-exempt debt obligations" (often referred to as "bank qualified" obligations) within the first calendar year to determine if the limit is exceeded, and if exceeded, will address accordingly. For obligations issued during years 2009 and 2010 the limit was \$30,000,000. During this period, the limit also applied to pooled financings of the governing body and provides a separate \$30,000,000 for each 501 (c)(3) conduit borrower. In 2011 and thereafter it is \$10,000,000 unless changed by Congress.
- d. Identify any post-issuance change to terms of obligations which could be treated as a current refunding of "old" obligations by "new" obligations, often referred to as a "reissuance."
- e. The Finance Director will consult with the City's bond counsel prior to any sale, transfer, change in use or change in users of obligation-financed property which may require "remedial action" under applicable Treasury Regulations or resolution pursuant to the VCAP Program.
  - i. A remedial action has the effect of curing a deliberate action taken by the City which results in satisfaction of the private business test or private loan test. Remedial actions under Section 1.141-12(d)(e) and (f) include the redemption of non-qualified obligations and/or the alternative uses of proceeds or the facility (i.e. to be used for another qualified purpose).
- f. The Finance Director will ensure that the appropriate tax form for federal subsidy payments is prepared and filed in a timely fashion for applicable obligations (e.g. Build America Bonds).

## 7. Continuing Disclosure Obligations

- a. Identify a position at the City to be responsible for compliance with continuing disclosure obligations as defined by the Rule and any policies of the City.
- b. The position responsible for compliance may have the ability to assign responsibilities, delegate where appropriate or engage a dissemination agent or third-party service providers to perform all or some of the duties described in this section. The City cannot delegate its compliance responsibilities.

- c. The City should specify how providers or delegated authorities will be monitored and supervised.
- d. The City should identify the documents that set forth the respective requirements being monitored at the time of closing for each obligation.
- e. The City should catalog all outstanding Continuing Disclosure Agreements and establish consolidated filing requirements based on the outstanding CDAs.
- f. The City should identify the frequency of the actions to be undertaken to ensure compliance, establish a system or filing alerts or reminders to administer the filing requirements.
- g. The Finance Director for compliance must be made aware of any new outstanding debt, changes to obligation or loan covenants, events of acceleration or default that would materially affect investors.
- h. The City should review a compliance checklist to verify compliance with CDA requirements, at least annually, although it may be advisable to provide more frequent reviews in connection to specific material events.
- i. The City should monitor mandatory material events specifically identified in accordance with the Rule and file required notices within 10 days of occurrence.
  - i. Principal and interest payment delinquencies.
  - ii. Non-payment related defaults, if material.
  - iii. Unscheduled draws on debt service reserves reflecting financial difficulties.
  - iv. Unscheduled draws on credit enhancements reflecting financial difficulties.
  - v. Substitution of credit or liquidity providers or their failure to perform.
  - vi. Adverse tax opinion, IRS notices or material events affecting the tax status of the obligation.
  - vii. Modifications to rights of security holders, if material.
  - viii. Obligation calls, if material.
  - ix. Defeasances.
  - x. Release, substitution or sale of property securing repayment of the obligations, if material.
  - xi. Rating Changes.
  - xii. Bankruptcy, insolvency, receivership, or similar event of the obligated person(s).
  - xiii. Merger, consolidation, or acquisition of the obligated person, if material.
  - xiv. Appointment of a successor or additional trustee, or change of name of a trustee, if material.
  - xv. Incurrence of financial obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the City, any of which affect security holders, if material.
  - xvi. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the City, any of which reflect financial difficulties.
- j. In addition to the mandatory material events, the City should review and file any additional or voluntary event notices.
- k. The City should maintain a catalog of all outstanding obligations whether publicly offered or privately placed, and the terms and conditions that govern default or acceleration provisions.
- l. Any missed filing requirement should be remedied with a failure to file notice as soon as possible once the late filing is identified and the required information is available to file.
- m. Sensitive information such as bank accounts and wire information should be redacted from documents prior to posting on EMMA.
- n. The City needs to monitor for changes in law and regulations that effect continuing disclosure obligations and review disclosure policies and procedures periodically to ensure compliance and consistency with regulation and market expectations.



## 8. Compliance with Future Requirements

- a. Take measures to comply with any future requirements issued beyond the date of these Post-Issuance Debt Compliance Procedures which are essential to ensuring compliance with the applicable state and federal regulations.

**CITY OF FALCON HEIGHTS  
COUNCIL RESOLUTION**

March 10, 2021

No. 21-15

-----  
**A RESOLUTION ADOPTING POST-ISSUANCE DEBT COMPLIANCE POLICY FOR TAX-EXEMPT AND TAX-ADVANTAGED GOVERNMENTAL BONDS**

**WHEREAS**, the City of Falcon Heights, Minnesota (the "City") from time to time will issue tax-exempt and tax-advantaged governmental bonds; and

**WHEREAS**, under the Internal Revenue Code of 1986, as amended and related regulations (the "Code"), and Securities and Exchange Commission (the "SEC") the City is required to take certain actions after bond issuance to ensure that interest on those bonds remains in compliance with the Code and SEC; and

**WHEREAS**, the City has determined to adopt a policy regarding how the City will carry out its compliance responsibilities via written procedures, and to that end, has caused to be prepared documents titled Post-Issuance Debt Compliance Policy and Post-Issuance Debt Compliance Procedures; and

**WHEREAS**, the City Council (the "Council") of the City has reviewed the Post-Issuance Debt Compliance Policy in connection with the Post-Issuance Debt Compliance Procedures and has determined that it is in the best interest of the District to adopt the Policy.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY OF FALCON HEIGHTS, MINNESOTA;** the Council approves the Policy as shown in the form attached; and

**BE IT FURTHER RESOLVED;** City staff are authorized to take all actions necessary to carry out the Post-Issuance Debt Compliance Policy and Post-Issuance Debt Compliance Procedures.

Moved by:

Approved by: \_\_\_\_\_  
Randall C. Gustafson  
Mayor

GUSTAFSON        \_\_\_    In Favor  
MAZGA  
ANDREWS        \_\_\_    Against  
LEEHY  
WEHYEE

Attested by: \_\_\_\_\_  
Sack Thongvanh  
City Administrator



## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	March 10, 2021
<b>Agenda Item</b>	Consent F3
<b>Attachment</b>	N/A
<b>Submitted By</b>	Sack Thongvanh, City Administrator

<b>Item</b>	Administrative and Communication Coordinator
<b>Description</b>	<p>Ashleigh Walter was appointed by the City Council six months ago as the Administrative and Communication Coordinator. It is the practice of the City to reward after the six month probationary period with an increase in their base salary.</p> <p>Ashleigh has been instrumental in helping me focus on increasing our communication to residents and the Council via the weekly newsletter, website and social media platforms.</p>
<b>Budget Impact</b>	There are available funds for this increase.
<b>Attachment(s)</b>	N/A
<b>Action(s) Requested</b>	I recommend that the Falcon Heights City Council approve an increase for Ashleigh in the amount to \$54,000/year effective February 27, 2021.