Agenda
Minnetonka City Council
Regular Meeting, Monday, July 24, 2017
6:30 P.M.
Council Chambers

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Ellingson-Allendorf-Acomb-Wiersum-Bergstedt-Wagner-Schneider
4. Approval of Agenda
5. Approval of Minutes: June 12 and 26, 2017 regular council meetings
6. Special Matters: None
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases: None
10. Consent Agenda - Items Requiring a Majority Vote: None
11. Consent Agenda - Items Requiring Five Votes: None
12. Introduction of Ordinances:
   A. Items concerning Mesaba Capital, at 17710 and 17724 Old Excelsior Boulevard:
      1) Ordinance rezoning properties from B-1 to R-5;
      2) Preliminary and final plats; and
      3) Final site and building plans, with variances

Recommendation: Introduce the ordinance and refer to the planning commission (4 votes)
13. Public Hearings:
   A. Temporary on-sale liquor license for Underdog Rescue, MN, for use at 3739 Tonkawood Road
      Recommendation: Hold the public hearing and grant the license (5 votes)
   B. Temporary on-sale liquor license for Unmapped Brewing, LLC, at 14625 Excelsior Blvd.
      Recommendation: Hold the public hearing and grant the license (5 votes)

14. Other Business:
   A. Resolution authorizing and affirming the issuance, sale, and delivery of multifamily housing revenue obligations for the benefit of CHC Minnetonka Affordable Housing LLC and authorizing the execution and delivery of related documents
      Recommendation: Adopt the resolution (4 votes)

15. Appointments and Reappointments: None

16. Adjournment
Minutes
Minnetonka City Council
Monday, June 12, 2017

1. Call to Order

Mayor Terry Schneider called the meeting to order at 6:30 p.m.

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

Council Members Brad Wiersum, Tim Bergstedt, Tony Wagner, Bob Ellingson, Patty Acomb, and Terry Schneider were present. Dick Allendorf was excused.

4. Approval of Agenda

Wiersum moved, Acomb seconded a motion to accept the agenda, as presented. All voted “yes.” Motion carried.

5. Approval of Minutes: May 8 and 22, 2017 regular council meetings

Wagner moved, Bergstedt seconded a motion to approve the minutes of the May 8, 2017 regular council meeting, as presented. Bergstedt, Wagner, Ellingson, Acomb and Schneider voted “yes.” Wiersum abstained. Motion carried.

Wagner moved, Bergstedt seconded a motion to approve the minutes of the May 22, 2017 regular council meeting, as presented. All voted “yes.” Motion carried.

6. Special Matters: None

7. Reports from City Manager & Council Members

City Manager Geralyn Barone reported on upcoming events and council meetings.

8. Citizens Wishing to Discuss Matters not on the Agenda

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

A. Resolution approving Hennepin County residential recycling grant agreement
Bergstedt moved, Acomb seconded a motion to adopt resolution 2017-054 approving the Residential Recycling Grant Agreement between the city of Minnetonka and Hennepin County. All voted “yes.” Motion carried.

B. Items concerning implementation of a SAC/REC deferral program

Bergstedt moved, Acomb seconded a motion to adopt ordinance 2017-08 amending Section 1200.025, subdivision 1 of the Minnetonka city code; to adopt resolution 2017-055 establishing the interest rates for deferrals; and to adopt resolution 2017-056 amending Council Policy No. 12.10. All voted “yes.” Motion carried.

C. Resolution approving HOMESTEAD PLACE, a 2-lot subdivision, with lot width at setback variances at 3625 Plymouth Road

Bergstedt moved, Acomb seconded a motion to adopt resolution 2017-057 approving HOMESTEAD PLACE with the following condition: 9. All lots and structures within the development are subject to all R-1 zoning standards. In addition: a) the homes are limited to a maximum floor area ratio of 0.22. Floor area includes the sum of the fully exposed horizontal area of a building, as measured from exterior walls and including attached garage space and enclosed porch areas, and one-half the horizontal area of any partially exposed level such as a walkout or lookout level. All voted “yes.” Motion carried.

D. Resolution authorizing the city of Minnetonka to participate in the Mayors’ Monarch Pledge

Bergstedt moved, Acomb seconded a motion to adopt resolution 2017-058 authorizing the city of Minnetonka to participate in the Mayors’ Monarch Pledge. All voted “yes.” Motion carried.

E. Items concerning a trail, boardwalk, and pedestrian bridge at 5709 Rowland Road and 5624 Shady Oak Road (Lone Lake Park):

- Conditional use permits for recreational uses within: (1) required wetland buffer; and (2) floodplain;
- Wetland setback variance; and
- Floodplain alteration permit.

Bergstedt moved, Acomb seconded a motion to adopt resolution 2017-059 approving conditional use permits, wetland setback variance, and floodplain alteration permit for a trail, boardwalk and pedestrian bridge at
5709 Rowland Road and 5624 Shady Oak Road. All voted “yes.” Motion
carried.

F. Resolution approving setback variances, floodplain alteration permit,
and conditional use permit for additions and landscaping at 2807
McKenzie Pointe Road

Bergstedt moved, Acomb seconded a motion to adopt resolution 2017-060
approving setback variances, floodplain alteration permit, and conditional
use permit for a deck expansion and landscaping at 2807 McKenzie
Pointe Road. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances: None

13. Public Hearings: None

14. Other Business:

A. Metropolitan Council Transit Cooperation Agreement

Community Development Director Julie Wischnack gave the staff report.

Wagner said thinking in terms of walkability, there were not many
sheltered bus stops in the city. In the past the council has asked staff to
look at ridership numbers to see if there were areas where a sheltered bus
stop might be beneficial. Wischnack said the Met Council had guidelines
on where a bus shelter was warranted. The guidelines indicate that a
minimum of 25 people boarding a bus was the number where a shelter
was warranted. She displayed information about the number of boardings
at the stops in the city and said the park and ride areas were the ones
where the number of boardings might warrant a shelter. Wagner said the
stop he had in mind was the one at Steele Street and Minnetonka
Boulevard. He drives past that every day and sees a number of people
waiting for the bus. It would be nice to have a shelter at the stop given
there is no place to park.

Acomb said more people might use a bus if there was a shelter provided
at their nearest stop. She said the city should do more encouraging of
businesses to share in the cost of sheltered stops. Wischnack said staff
was committed to continuing to evaluate the bus stops where
redevelopment was occurring.
Wiersum said he asked staff earlier in the day how the city could help increase the ridership numbers. The numbers showed that in 2016, each of the 111,000 trips averaged 5.6 riders. He questioned if there was a marketing answer to increase the ridership. Wischnack said staff has had discussions about how to better market some of the routes in the city. The idea was to keep trying new things because there was no one answer. She noted the dial a ride service was substantially used by residents. Wiersum said he supported the recommendation to stick with the status quo because with light rail coming, it didn’t make sense to make major changes now only to have do so again in the near future.

Schneider said years back the city tried to work with Metro Transit to provide the best system possible for residents. Ultimately, the city ended up going to the legislature and the opt-in/opt-out option was created. The thought was never that if the city put in $4 million, that it would get $4 million worth of service back given the regional nature of the system. He said the response and accountability from Metro Transit has improved. Creativity where possible was good, but the challenge was having enough ridership to warrant more bus service. The game changers will be light rail and an effort to have Plymouth, Eden Prairie, and Minnetonka combine joint resources to meet the demands. He said the agreement allows the good dialogue with Metro Transit to continue.

Wiersum moved, Wagner seconded a motion to approve the Transit Cooperation Agreement. All voted “yes.” Motion carried.

B. Items related to Newport Midwest at 10400, 10500 and 10550 Bren Road East:

1) Concept plan review for Newport Midwest at 10400, 10500 and 10550 Bren Road East;
2) Resolution identifying the need for Livable Communities Demonstration Account – Transit Oriented Development (TOD) Funding and authorizing an application for grant funds; and
3) Resolution supporting a tax credit application related to Newport Midwest “The Mariner.”

City Planner Loren Gordon and Wischnack gave the staff report.

Wagner said the area will undergo substantial change. Given his participation in the Community Works planning process and the idea of place making, he had some concern with the redevelopment of this area knowing that the Minneapolis Mart site would also redevelop if light rail goes in. He noted the Wayzata project that Presbyterian Homes did is a “place.” It wouldn’t have been a place if there were four or five different
developers involved over a period of time. He said Minnetonka has never been a design city. He worried about the massive change to this area and how it might not have any feel or vibe to it. He said it may be worthwhile to use a process like the charret process that was used for Glen Lake. All the plans for the light rail areas indicated there would be changes in use and he noted there was not an active park in the area. He questioned if for the broader planning, when there were a large number of units involved, if park dedication funds should be used to buy property to do a park. He said he didn’t think that should be done for this particular project, but it should be thought about in the broader long term planning for the area.

Acomb said there were improvements to this plan including access to the site. She said the first concept plan didn’t include nearby surface parking for the affordable units. She appreciated that the revised plan included underground and surface parking for both buildings. She said Wagner brought up several good points to consider. She agreed with the suggestion to have a broader dialogue to see what could be done to drive the planning for the area.

Bergstedt said Wagner had brought up several things for the council to think about including what could be done to have a park in the area. He said the city needed to be forward thinking for the area. He commended the applicant for the changes made to the plan since the first concept plan. He agreed the second access would greatly improve the circulation. He also liked the changes to the architecture that would bring some energy and urban feel which was appropriate with the light rail. Adding more affordable housing to the city was also important.

Wiersum said the points Wagner made were very valid. Historically from a development perspective the city has been quite reactive. He thought this project was particularly intriguing and was appropriate for the area. He liked the architectural changes that were made. Presuming light rail happens, this project, being the first project, would set a tone for what would be done on the next two parcels. He said he thought this project could proceed but the city needed to be more proactive with the other parcels so whatever happens was consistent and appropriate. He said the notion of a park for the area was expensive and challenging but important. This would require some creativity. This project was a great first project and the look and vibe it provides was very appropriate and would help redefine what housing looks like in the Opus area.

Ellingson said he recently read an article that indicated Minneapolis and St. Paul ranked first and second for parks. He was glad Wagner brought up the issue of a park for this area.
Schneider said he agreed with the other comments but would change the vocabulary and the idea of a park to the idea of a place-making avenue around the development. In many places he has visited throughout the country and world, he has enjoyed the smaller more intimate things like San Antonio’s river walk. A lot of those were created because there was an existing natural amenity present. The amenity was integrated into the development to create a series of interconnecting experiences. He didn’t see a large park for this development but rather with the urban feel something that captures the uniqueness and natural feel of Minnetonka incorporated into a pedestrian walkway with some character to it. One option would be to dedicate the park dedication fees and let the developers and designers determine how this would be implemented.

Barone noted the CIP already included funding for Opus area park investments. The idea was to take advantage of the extensive trail system that already exists.

Bergstedt moved, Wiersum seconded a motion to adopt resolution 2017-061 identifying the need for Livable Communities Demonstration Account – Transit Oriented Development (TOD) Funding and authorizing an application for grant funds; and to adopt resolution 2017-062 committing up to $556,179 in TIF assistance, to support the tax credit application for Newport Midwest. All voted “yes.” Motion carried.

C. Resolution regarding participation in the Hennepin County CDBG program, and Joint Cooperation Agreement for the Urban Hennepin County Community Block Grant Program in Fiscal Years 2018-2020

Wischnack gave the staff report.

Wagner noted for the housing rehabilitation loans the staff report indicated the administration costs were increasing from 10 percent to 25 percent. Wischnack said the city was currently charged by the provider of the loan services. She said Minnetonka Home Enhancement for example, which is a different program, charges the city around nine percent for administration costs. For all the programs the administrative cost would be around 25 percent. This takes away from what could be used for loans.

Wiersum said the administrative costs were increasing but staff time was being saved as well. Wischnack said currently about 10 percent of the allocation was for staff time but there were a lot of things not being accounted for in that 10 percent. Pushing the administrative work to the county would free city staff to do other things.
Bergstedt said he hated to spend money unnecessarily and he was in total agreement with the staff recommendation. Looking at the list of advantages in the staff report and with the amount of development and how busy staff was, he didn’t think it was a good use of city staff time to do the things the county would now be doing. Although it would cost a little more money he agreed with Wischnack that staff time would be freed up to do higher priority things.

Schneider said while there was a slight shift in where the dollars were being spent, there would be an efficiency gained by having an agency do the work that they already do as opposed to city staff doing it as a sideline. He said the recipients of the loans often complain about all the required paperwork to get a $4,000 loan. The idea was by having this pool available, it would help consolidate some of that effort and make a more coordinated presentation for the funds.

Wischnack noted the city has yet to receive its allocation for this year and this was holding up any funding for the city’s loan programs.

Wiersum said the future of CDBG was unknown and while this work was important, it was not a core activity of what the city staff does day to day. Delegating the responsibilities to free up staff time was the right thing to do.

Wagner agreed city staff should not be in the business of program administration, but he had a difficult time that with the city’s most popular program, $25,000 out of the total $125,000 would not be available for loans. This meant five less loans could be done for housing stock that was in need of repair.

Schneider said he has seen in other areas of coordinated services, particularly social services involving Hennepin County, there were all kinds of other resources that come into play that tend to be blended together to provide for the ultimate needs. This meant the dollars were being leveraged to get much more back than is spent on administrative costs.

Wiersum moved, Bergstedt seconded a motion to adopt resolution 2017-063 and approve the agreement authorizing the city to elect to participate in the Urban Hennepin County CDBG program and relinquishing entitlement city status to receive CDBG funds directly from HUD for program years 2018-2020. Wiersum, Bergstedt, Ellingson, Acomb and Schneider voted “yes.” Wagner voted “no.” Motion carried.
D. Items concerning Ridgedale Festival:

1) Amendment to the existing sign plan; and
2) Amendment to the existing master development plan for façade changes.

Gordon gave the staff report.

Dan Gibson, representing Kimco Realty Corporation, said the entire shopping center was developed in the early 1990’s. One of the unique things about it was it was not homogeneous across the façade. The design breaks up the monotony. In 2011, Toys R Us got approval for their higher parapet. He showed an artist’s rendering of what the proposed façade would look like. He said the changes blend in and flow with the rest of the architecture. He showed a rendering of the proposed sign on the façade. He said Total Wine will be a great addition to the center and he doesn’t want to put them into a bad competitive situation.

Schneider said there were two elements that were subjective and one that was not, the 250 square foot criteria. The question was how big of a sign and if the fascia height was right.

Wagner noted that in addition to the height of the fascia, it was also being extended. Schneider said the staff were fine with the extension so the question was about the height. He noted the 35 foot height matched the lower portion next to Toys R Us. This seemed logical to him. The question then was the size of the sign. Given the 250 square foot criteria, it meant roughly an 84 percent reduction to the size of the sign. This was a solution he felt comfortable with.

Wagner agreed the façade question was the easiest for him and agreed 35 feet made sense.

Wiersum said Schneider made a valid point. It was a proportionality issue. Making the fascia wider would mean a lot more white space to meet the code. That was the applicant’s call but he questioned the wisdom of that. They were trying to get to a proportionality by making the fascia the biggest they could to make their logo bigger. He wasn’t going to agree to that. The city had a sign code. He thought the 35 foot height was fine as was sticking with the 250 square feet. The signs would be readable from the freeway as are the smaller tenants’ signs. He didn’t think allowing a bigger sign was necessary. He was confident Total Wine would be successful regardless of the size of the sign.
Bergstedt said Total Wine needed the tagline. He thought the 35 foot height would add balance to the mall. Currently the west side of the mall looked dated and boring.

Wiersum moved, Acomb seconded a motion to direct staff to prepare a resolution within the guidelines the council stated. All voted “yes.” Motion carried.

E. 2018–2022 Capital Improvements Program (CIP)

Barone gave the staff report.

Annette Bertelsen, 13513 Larkin Drive, said there was nothing more important in the community than public safety and she was excited about the proposed new fire/police facility. She said it was well worth every penny. Participating in the Imagine Minnetonka process, she heard people talk about wanting to see innovation in the community. She hoped the $25 million wouldn’t just go toward a modern up to date facility, but rather the city would get something distinctive and innovative. The building will be new for a short period of time, but if it includes some firsts it will be innovative and part of the city’s story for a long time. It could be a strong recruiting tool. She suggested paying architectural students to work on some of the facility’s features.

Bertelsen said she and her husband were very thankful for the proposed Ridgedale Drive road improvements but she suggested possibly delaying the project. With the cataclysmic shifts occurring in the retail industry, along with Total Wine being a destination that will bring in a lot of people to the area, it was unknown how this would impact traffic patterns. She said the CIP included $9 million as a solution but it was unknown if there was a $9 million problem. She said right now there was not a crisis and it would be a good idea to take time to think about the proper timeline given how things were potentially shifting so much.

Barone said as the process for the police/fire facility shifts into design mode, part of the discussion already has been to make sure the facility reflects Minnetonka. Innovation was a piece of that. It was important to remain within the budget but the city didn’t want a cookie cutter public safety facility. She said for the Ridgedale Drive road improvement project, there would be time for further discussion. As more details get flushed out, there would be neighborhood and public meetings.

Acomb moved, Wagner seconded a motion to adopt resolution 2017-064 approving the 2018-2022 Capital Improvements Program. All voted “yes.” Motion carried.
Schneider said the city’s CIP has always had a good balance between thinking through the projects objectively, stretching a little bit, thinking long term and making good decisions.

F. **Public safety facilities design services contract, CIP amendment, and resolution authorizing an internal loan for the first phases of the contract to be repaid with future bond proceeds, if bonding is approved**

Barone gave the staff report.

Bergstedt moved, Wiersum seconded a motion to award the contract for the Public Safety Facilities Addition and Renovation to Wold Architects and Engineers; to amend the CIP; and to adopt resolution 2017-065 authorizing an internal loan for the first phase of the contract to be repaid with future bond proceeds, if bonding is approved. All voted “yes.” Motion carried.

G. **2018–2022 Economic Improvement Program (EIP)**

Wischnack gave the staff report.

Schneider said he has received questions about if the city has been getting its value back for the annual $25,000 funding for the Greater MSP program. He said for him, the question was somewhat irrelevant since the Greater MSP program provides so much regional benefit. It puts the Twin Cities on the front stage in many ways.

Wagner noted the program has helped facilitate the discussion on how to attract the workforce to the area and how to stay relevant.

Wiersum said Minnetonka has the reputation of being a leader within the region. A key part of that was for the city to have a regional perspective.

Wagner moved, Wiersum seconded a motion to adopt resolution 2017-066 approving the 2018-2022 Economic Improvement Program. All voted “yes.” Motion carried.
15. **Appointments and Reappointments: None**

16. **Adjournment**

   Acomb moved, Wiersum seconded a motion to adjourn the meeting at 8:36 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
1. **Call to Order**

Schneider called the meeting to order at 6:30 p.m.

2. **Pledge of Allegiance**

All joined in the Pledge of Allegiance.

3. **Roll Call**

Council Members Tim Bergstedt, Tony Wagner, Bob Ellingson, Dick Allendorf, Patty Acomb, Brad Wiersum and Terry Schneider were present.

4. **Approval of Agenda**

Acomb moved, Wiersum seconded a motion to accept the agenda, as presented. All voted "yes." **Motion carried.**

5. **Approval of Minutes: None**

6. **Special Matters:**

   A. **Recognize 2017 C.C. Ludwig Award winner Mayor Terry Schneider**

      Wiersum read the recognition.

      Schneider thanked the council and staff and all who wrote letters describing his accomplishments. He reflected on the importance his grandfather had on his values and leadership style.

   B. **Review of the 2016 financial report with the city’s audit firm of CliftonLarsonAllen LLP**

      Doug Host, partner with CliftonLarsonAllen, presented the audit report.

   C. **Monarch and Pollinator Awareness Proclamation**

      Acomb read the proclamation.
7. Reports from City Manager & Council Members

City Manager Geralyn Barone reported on upcoming council meetings and city events.

Acomb reported that she attended the National League of Cities summer policy committee meeting in Cleveland the previous week. The focus of the meeting was looking at President Donald Trump’s budget and how it would impact cities.

Schneider said he heard a lot of favorable comments about beer and wine being sold at Summerfest over the weekend. He thought the musical group, the Casa Blanca Orchestra, was phenomenal.

8. Citizens Wishing to Discuss Matters not on the Agenda

Tim Litfin, from the Minnetonka School District, presented information about the upcoming Tour de Tonka.

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

   A. Twelve month extension of LEGACY OAKS 3rd ADDITION final plat

   Allendorf moved, Wagner seconded a motion to approve the twelve-month time extension. All voted “yes.” Motion carried.

   B. Resolution approving the final plat at HOMESTEAD PLACE at 3625 Plymouth Road

   Allendorf moved, Wagner seconded a motion to adopt resolution 2017-067 approving the final plat of HOMESTEAD PLACE. All voted “yes.” Motion carried.

   C. Resolution approving the following items concerning Ridgedale Festival:

   1) Amendment to the existing master development plan for façade changes; and
   2) Amendment to the existing sign covenants.

   Allendorf moved, Wagner seconded a motion to adopt resolution 2017-068 approving amendments to the existing master development plan and
sign covenants for Ridgedale Festival, 14200 Wayzata Boulevard. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances: None

13. Public Hearings:

   A. On-sale Wine and On-sale 3.2% Malt Beverage liquor licenses for Greenfield Farm + Vine, Inc., DBA Farm + Vine at 1700 Plymouth Road

      Barone gave the staff report.

      Doug Sams, the owner of Greenfield Natural Kitchen, LLC, said the concept was for a fast casual restaurant.

      Wagner asked Sams when he planned to open the restaurant. Sams indicated the plan was to open the restaurant the last week of August or the first week of September.

      Schneider closed the public hearing at 7:15 p.m.

      Wiersum moved, Acomb seconded a motion to grant the licenses. All voted “yes.” Motion carried.

   B. Temporary on-sale liquor license for The Rotary Club of Excelsior, 5016 Co Rd 101

      Barone gave the staff report.

      Cristie Keppeler representing the Excelsior Rotary Club, complimented city staff for being so easy to work with.

      Schneider closed the public hearing at 7:18 p.m.

      Wagner moved, Bergstedt seconded a motion to grant the temporary liquor license in connection with a fundraising event. All voted “yes.” Motion carried.

14. Other Business: None

15. Appointments and Reappointments: None
16. Adjournment

Wiersum moved, Acomb seconded a motion to adjourn the meeting at 7:19 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
City Council Agenda Item #12A
Meeting of July 24, 2017

Brief Description
Items concerning Mesaba Capital, at 17710 and 17724 Old Excelsior Boulevard:

1) Ordinance rezoning properties from B-1 to R-5;
2) Preliminary and final plats; and
3) Final site and building plans, with variances

Recommendation
Introduce the ordinance and refer it to the planning commission

Proposal
Mesaba Capital development has submitted applications and plans for the combination and redevelopment of two properties. As proposed, a three-story senior rental building would be constructed on the 2.5 acre site. The building would consist of 100 units and be a combination of assisted living and memory care units. Both underground and surface parking would be provided. (See attached).

The proposal requires:

• **Rezoning.** The subject property is currently zoned B-1, office. The applicant requests that the property be rezoned to high density residential (R-5).

• **Preliminary and Final Plat.** The applicant has proposed to combine two lots to create one lot.

• **Site and Building Plan Review.** By city code, site and building plan review is required for construction of any multi-family residential building.

• **Variances.** As proposed, side and rear yard setbacks variances would be required for the building. Per ordinance, 59-foot side and rear yard setbacks would be required for the building. However, the applicant is proposing side and rear yard setbacks ranging from 36 to 20 feet.
Issue Identification

The purpose of introducing an ordinance is to give the city council the opportunity to review a new application before referring it to the planning commission for a recommendation. Introducing an ordinance does not constitute an approval. The planning commission review of the proposal is tentatively set for August 10, 2017.

Based on preliminary review of the proposal, staff has identified items that will be closely analyzed as the formal review continues:

- **Consistency within the Village Center**: The Highway 7 / County Road 101 village center study identified opportunities for increased retail and residential development in this area. The proposed site was more specifically addressed in the study as an appropriate location to entertain higher density residential development. The study envisions densities will increase on other properties in the neighborhood over time. Single-family homes along the south side of Old Excelsior Blvd. are guided for medium density residential. The high density / low density residential relationship may be a more abrupt land use transition until redevelopment brings further change to the neighborhood. (See attached).

- **Rezoning**. If approved, the subject property would be rezoned to R-5. It would be surrounded by office-zoned properties to the north, east and west and R-1 zoned properties to the south. (See attached).

- **Building Setbacks**. As proposed, the subject building encroaches into the required side and rear yard setbacks. (See attached).

- **Trail Improvements**. The site plan includes various sidewalks and trails within the property. Public versus private amenities need to be detailed and discussion about extension of the trail to the east could be considered.

Staff Recommendation

1. Generally discuss the proposed rezoning and building setback variances, thereby providing direction to city staff and the applicant.

2. Introduce the rezoning ordinance and refer it to the planning commission.

3. Approve or modify the proposed notification area. (See attached).

Submitted through:

Geralyn Barone, City Manager
Julie Wischnack, AICP, Community Development Director
Loren Gordon, AICP, City Planner

Originated by:

Drew Ingvalson, Planner
LOCATION MAP

Mesaba Capital Development
17710 and 17724 Old Excelsior Blvd.

This map is for illustrative purposes only.
Master Plan Studies

The purpose of the master plan studies for the 7/101 Village Center are to graphically illustrate what could happen with a revitalized district. This approach does not outline a prescriptive plan, but rather a collection of ideas which articulate the key principles of land use, transportation & connectivity and public realm enhancements envisioned for the district.

Southwest Quadrant - Study #1

The southwest quadrant holds the most potential to become a truly mix-use district. The Master Plan Vision Book explores to varying degrees of development magnitude for this area, one a more horizontally mixed development better focused on improved access, circulation and connectivity and a second more intensive pattern of development that may become vertically mixed with a focused area of housing complementing the retail and commercial uses.

The first study is just that, looking at an urban village comprised of vertical mixed use structures at the intersection of Hutchins and Thimsen. This intersection becomes the 100% intersection and identity, or brand for the neighborhood. Buildings are placed near the street, on-street parking feeds the ground-level retail uses and structured or underground parking is envisioned to serve the residential population and office/commercial uses above. Nestled between the LSS office building and the revitalized Park Nicollet Clinic building, an urban residential village is envisioned. At the high-end, 296 new residential units would be added to the district - a number reflected in the City’s Comprehensive Plan as the planned growth for this village center. The housing in the neighborhood could be a collection of apartments, condominiums, rowhouses, senior co-op buildings, walk-up townhomes, targeting both the empty nester and young professional markets the market overview indicated were lacking in the community. Key to attracting these buyers and renters are a high level of amenities. Creating a walk-able urban district with convenient shopping and restaurants and convenient connections to significant park and open space areas are integral in attracting the right demographics to the area, the community desires.

Moving north toward Highway 7 and C.S.A.H. 101 a more traditional retail environment is envisioned, but becomes an extension of the urban fabric of streets to the south. Again, Thimsen Ave acts as a primary spine of activity with walk-able streets and angled, on-street parking to serve the retail establishments. The smaller footprints allow for visibility into storefronts from Highway 7 and enhancement of the district stormwater pond at the terminus of Thimsen becomes a beacon from the highway to entice patrons into the development. Continuing down Thimsen, the grade separated tunnel directly connects with the retail uses in the northwest quadrant near the Super Target.

Study #1

<table>
<thead>
<tr>
<th>Commercial</th>
<th>Residential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail</td>
<td>Sr. Co-op</td>
</tr>
<tr>
<td>75,000 Sq. Ft.</td>
<td>48-66 units</td>
</tr>
<tr>
<td>Office</td>
<td>Mixed Use</td>
</tr>
<tr>
<td>32,000 Sq. Ft.</td>
<td></td>
</tr>
<tr>
<td>Service</td>
<td>Apartments</td>
</tr>
<tr>
<td>50,000 Sq. Ft.</td>
<td>36-48 units</td>
</tr>
<tr>
<td>Bank</td>
<td>Condos</td>
</tr>
<tr>
<td>18,000 Sq. Ft.</td>
<td>120-162 units</td>
</tr>
<tr>
<td></td>
<td>Townhomes</td>
</tr>
<tr>
<td></td>
<td>20 units</td>
</tr>
<tr>
<td></td>
<td>Total:</td>
</tr>
<tr>
<td></td>
<td>224 - 296 units</td>
</tr>
</tbody>
</table>

This study diagram shows a transition of organized, suburban retail uses to an area of vertical mixed use of the intersection of Hutchins and Thimsen and transitioning to an urban residential area along an extended Thimsen and Old Excelsior Boulevard.
Project Team:

**Developer/Ownership**
Mesaba Capital Development
10700 Normandale Boulevard  55437
contact:  Della Kolpin
phone:  612.840.9801
email:  dkolpin@mesabacapital.com

Roers Investments
1964 West Wayzata Boulevard #200
Long Lake, Minnesota  55356
contact:  Paul Keenan
phone:  (612) 282-1977
email:  paul@roersinvestments.com

**Senior Housing Facility Operator**
Walker Methodist
3737 Bryant Avenue South
Minneapolis, Minnesota  55409
contact:  Scott Riddle, CEO/President
phone:  (612) 827-8380
email:  sriddle@walkermeothodist.org
Project Narrative:

Mesaba Capital Development and Roers Investments propose to develop a 100 unit Senior Housing facility in Minnetonka, Minnesota. The proposed building will be on the site parcels of 17710 and 17724 Old Excelsior Boulevard, in the southwest quadrant of the intersection of Highway 7 and 101. The sites are currently zoned commercial with older one-story office buildings. The two parcels are planned to be rezoned and replatted during the entitlement process.

Mesaba Capital Development, Roers Investments and Walker Methodist believe this is a strong development opportunity and aligns with the vision and goals of the City of Minnetonka. The development leverages land use with higher residential density, while having low vehicle ownership and usage. It also delivers a housing type that is needed within the marketplace, based on a market assessment dated July 2016 and June 2017.

Project Land Use Data:

The project site falls in the Hwy 7/101 Village Center. The sites would be re-zoned (R-5 High Density Residential) to accommodate the proposed development. This rezoning aligns the use within the 2011 Highway 7/101 Village Center study; High Density Residential.

The Highway 7/101 Village Center functions as the community village for southwest Minnetonka. The Commercial district contains larger commercial anchors in Super Target and Cub Food and a number of support retail and service uses including banks, medical and small office uses. The Vision Study outlines that Senior housing presents a strong potential for development in the Southwest quadrant of this area. This project can be a catalyst to begin redevelopment as outlined in the Vision Center study. It provides good visibility and access along with a broad range of uses for the residents. The attributes this site brings to Senior Housing:

- Centered near a major intersection
- Commercial district provides residents close proximity to living needs.
- North Memorial's Medical Center is 1.6 miles from proposed site.
- Hennepin County Library within walking distance.
- Minnetonka High School, .3 miles from site, would provide residents a variety of activities to attend or volunteer opportunities.

Mesaba Capital Development & Roers Investments
Parking:
City ordinance requires 1 parking space for each senior living unit. Below is a parking summary:

<table>
<thead>
<tr>
<th></th>
<th>Required</th>
<th>Provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surface Parking</td>
<td></td>
<td>43</td>
</tr>
<tr>
<td>Underground Parking</td>
<td></td>
<td>57</td>
</tr>
<tr>
<td>North Parking lot (covered)</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Total Parking</td>
<td>100</td>
<td>120</td>
</tr>
</tbody>
</table>

Twenty four of the units in the building are located within a Memory Care wing, and these residents will not contribute to the parking or traffic load. Additionally, we believe that one-half of the Assisted Living residents will not have vehicles, further reducing the parking need. The projection of residents with vehicle ownership is 59 or less.

Site:
The two existing parcels:

<table>
<thead>
<tr>
<th>Parcel Description</th>
<th>Acres</th>
<th>Square Feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>17710 Old Excelsior Boulevard</td>
<td>1.36</td>
<td>59,242</td>
</tr>
<tr>
<td>17724 Old Excelsior Boulevard</td>
<td>1.18</td>
<td>51,400</td>
</tr>
<tr>
<td></td>
<td>2.54</td>
<td>110,642</td>
</tr>
</tbody>
</table>

Design:
The building will be a three-story wood frame structure over a concrete and precast basement, used for enclosed parking and support functions. The facility is being programmed and designed to accommodate a continuum of aging, including Independent Living, Assisted Living and Memory Care Units. The total square footage of the project is proposed to be 127,161 GSF, including the underground parking.

The new Senior Living Building as been oriented on the site for multiple reasons:
- Main visitor/resident entrance visible to approach from Highway 101 and Old Excelsior Boulevard.
- North wing shields the main entry and surface parking from the prevailing northwesterly winds during winter months.
- Utilize the north basement structure as a retaining wall to accommodate the grade changes between proposed Senior Housing and the new surface parking to the north.
- Placement takes advantage of the east to west sun movement throughout the day for resident units.
- Old Excelsior street scape to be enhanced with new plantings, site furnishings, lights and sidewalks.
Senior Living with Services:
Private apartments with full kitchens and laundry. Support services for those who have more complex care requirements. Staff is on-site 24-hours-a-day.
- Independent Living is for seniors who wish to eliminate the burden of home ownership for an apartment and facility offering numerous conveniences and amenities.
- Assisted Living is for seniors who wish to live as independently as possible, yet may require assistance with some of the activities of daily living.
- The facility will create a dynamic environment that promotes activities throughout the day.

Memory Care:
The private memory care apartments will be secure and specially designed for those with mild to moderate memory loss from Alzheimer’s and other forms of dementia. The area is designed to bring comfort, peace and familiarity to the residents while providing exceptional care.

Proposed Building Features:
- Congregate dining w/ three meals a day.
- Private dining
- Coffee Shop
- Lounge areas on every floor
- Library & Computer Room
- Wellness Center
- Theater
- Community Room
- Screen Porch
- Club Room

Architecture
Exterior architecture is upscaled and modern in its form and materials. Flat roofs, banding in the exterior materials, and sun shades emphasize the horizontal reducing the overall scale of the building to better fit into its surroundings. Repetitive bay elements modulate the façade further reducing the scale of the building, but more importantly creates visual interest through pattern of materials as well as with light and shadow. Natural stone and wood textures compliment the neutral tones of siding planned for a timeless, elegant expression.

Site Landscape Architecture
Generally, the landscape for the site is characterized as native in plant material with carefully selected non-native plant material, or specialized hybrids, where appropriate or necessary. There are several distinctive, but related, styles or functions of the landscape and planting arrangements used throughout the site. These are; traditional foundation planting, semi-private & private specialty areas, screening, and naturalistic public roadway landscape.
Traditional Foundation Planting, including Parking Lot Planting:
- These areas are characterized as the public face of the building.
- Plant material and planting beds respond directly to building architectural elements and parking lot layout. These include rhythmic planting models at the base of the building, as well as regular sequences of shade and ornamental trees. These planting emphasize traditional plant forms and full season color as much as possible.
- Parking lot areas are highlighted with shade trees planted in islands and at the perimeter where possible to alleviate parking lot heating and high albedo (light reflection) levels.
- Plantings are generally less native than other areas of the site due to the required ornamental nature of the style and limited high quality native material availability.

Semi-private & Private Specialty Area:
- These areas are characterized as the specifically designed for the residents/users of the facility and include the seating area in front of the building, directly adjacent to resident exterior patios, as well as the walking path and Memory Care Garden on the west side of the building.
- Plant material and planting beds respond directly to the human scale and interaction of the user and are meant to be experienced by anyone within those spaces.
- These areas also include specialty decorative paving, benches, privacy fencing and various memory care therapeutic elements.
- The planting models used within these areas are small scale, intricate plantings meant to protect the users from surrounding distractions, as well as be familiar and aesthetically pleasing year-round. The planting style is gardenesque and, in the case of the walking loop, park-like in scale and layout.

Naturalistic Public Roadway Landscape:
- This area is characterized as a corridor style planting and site layout model and is in coordination with the City of Minnetonka to establish a roadway/streetscape model in this area of the City.
- Elements include a grassy/open boulevard directly along the street, municipal sidewalk, and seating/refuge nodes along the walk at regular intervals.
- Plant material and planting beds respond directly to the large scale corridor setting and its proximity to the municipal street activity, but each node areas is more human and naturalistic in scale and plant material, thereby creating a more comfortable micro-environments for human interaction.
- The node areas also include specialty decorative paving and naturalistic, boulder style seating/benches.
GENERAL NOTES:
1. This survey was based on a survey by the County Engineer's Office. The County Engineer's Office reserves the right to alter the survey if necessary.
2. The survey is based on a survey by a County Engineer's Office. The County Engineer's Office reserves the right to alter the survey if necessary.
3. All distances and elevations are recorded to the nearest foot.
4. All elevations are recorded to the nearest foot.

SITE SURVEY:

C0.1
CITY OF MINNETONKA REMOVAL NOTES:

EROSION CONTROL NOTES:

TREE INVENTORY:

TREE REMOVAL CALCULATIONS:

REMOVAL NOTES:

1. SEE STORM WATER POLLUTION PREVENTION PLAN FOR CONSTRUCTION STORM WATER MANAGEMENT PLAN.

2. REMOVAL OF MATERIALS FROM THE CHAINリンク WALLS AS ACCORDING WITH MINN. SHAPE AND LOCAL FLOODING.

3. REMOVAL OF PRIVATE UTILITIES SHALL BE COORDINATED WITH UTILITY OWNER PRIOR TO CONSTRUCTION COMMENCEMENT.

4. JUNCTION BOXES SHALL BE LEFT IN PLACE AND MARKED AS SHOWN ON THE DRAWINGS OR THE NEAREST AVAILABLE LOCATION FOR FUTURE CONSIDERATION.

5. REMOVED MATERIALS SHALL BE DISPOSED OF IN A LEGAL, SURFACE COVERED, AND IN ACCORDANCE WITH STATE AND LOCAL REGULATIONS.

6. ADJACENT, TEMPORARY, PERMANENT, AND PROTECTED WATERWAYS ON THE DRAWINGS AND APPROPRIATELY COORDINATED WITH PROTECTED AREAS.

7. ERECTION OF ALL TEMPORARY FENCES MIGHT BE REQUIRED THROUGHOUT THE DURATIONS OF THE CONTRACT.

8. PROPERTY WILL BE COVERED WITH GENERAL CONSTRUCTION MATERIALS SHOWN ON THE DRAWINGS AND AS SHOWN ON THE DRAWINGS, BARRICADES, FLASHERS, AND FLAGGERS AS NEEDED. ALL CONSTRUCTION mooie ON THE DRAWINGS.

9. REMOVE EXISTING HYDRANT, ELECTRIC UTILITIES, COORD. REMOVE EXISTING GAS AND REMOVE EXISTING SIGN

10. REMOVE EXISTING SIGN TO WALL, TYP. REMOVE EXISTING PARKING TRANSFORMER, COORD. REMOVE EXISTING AS SHOWN ON THE DRAWINGS.

11. REMOVE EXISTING PAVEMENT AND BASE REMOVAL OF PRIVATE UTILITIES SHALL BE COORDINATED WITH UTILITY OWNER PRIOR TO CONSTRUCTION

12. REMOVE EXISTING GUTTER, TYP. REMOVE ALL EXISTING REMOVE EXISTING TRASH ENCLOSURE, REPAIR.

13. REMOVE EXISTING GUTTER, TYP. REMOVE ALL EXISTING REMOVE EXISTING GUTTER, TYP.

14. REMOVE EXISTING SIGN TO WALL, TYP. REMOVE ALL EXISTING REMOVE EXISTING TRASH ENCLOSURE, REPAIR.

REMOVAL LEGEND:

BY CONSTRUCTION INTERNAL REMOVAL OF PAINT AND ALL SURFACE MATERIAL, INCLUDING BUT NOT LIMITED TO CONCRETE, PAVERS, AND SURFACE TREATMENTS.

REMOVAL OF STRUCTURE INCLUDING ALL FOUNDATION AND MASONRY MATERIALS.

TREE PROTECTION

TREE REMOVAL - W/ROOTS AND STUMPS

GUTTER, TYP.

REMOVAL OF ALL EXISTING GUTTER, TYP.

REMOVAL OF EXISTING SIGN TO WALL, TYP.

REMOVAL OF EXISTING FIRE HYDRANT, TYP. REMOVE EXISTING GAS AND ELECTRIC UTILITY METER BOXES, TYP.

REMOVAL OF EXISTING HYDRANT, TYP.

REMOVAL OF EXISTING GUTTER, TYP.

REMOVAL OF EXISTING PARKING TRANSFORMER, COORD.

STAGING, DEMOLITION, AND CLEAN-UP AREAS SHALL BE WITHIN THE PROPERTY LIMITS AS SHOWN ON THE DRAWINGS AND APPROVED BY THE CITY PRIOR TO CONSTRUCTION.

SHORING FOR BUILDING EXCAVATION MAY BE USED AT THE DISCRETION OF THE CONTRACTOR AND AS PERMITTED WITHOUT APPROVAL BY THE CITY.

NORMAL OPERATING HOURS. AT NO POINT THROUGHOUT THE DURATION OF THE CONTRACT SHALL SECURITY MANAGEMENT PLAN.

STORM WATER POLLUTION PREVENTION PLAN (SWPPP) PLAN FOR CONSTRUCTION STORM WATER MANAGEMENT PLAN.

DURING AND AFTER NORMAL WORK HOURS, THROUGHOUT THE DURATION OF THE CONTRACT. SECURITY MANAGEMENT PLAN.

ABANDON, REMOVAL, CONNECTION, AND PROTECTION NOTES SHOWN ON THE DRAWINGS ARE EXISTING ON-SITE FEATURES NOT NOTED FOR REMOVAL SHALL BE PROTECTED THROUGHOUT THE DURATION OF THE CONTRACT.

EXISTING PAVEMENTS SHALL BE SAWCUT IN LOCATIONS AS SHOWN ON THE DRAWINGS OR THE NEAREST AVAILABLE LOCATION FOR FUTURE CONSIDERATION.

SHOWN ON THE DRAWINGS. WORK WITHIN THE GENERAL CONSTRUCTION LIMITS SHALL INCLUDE, BUT NOT BE LIMITED TO, SIGNAGE, BARRICADES, FLASHERS, AND FLAGGERS AS NEEDED. ALL CONSTRUCTION mooie ON THE DRAWINGS.

PER LOCAL STATE & FEDERAL RULES AND REGULATIONS.

PROJECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

License No. 48776

Under the laws of the State of Minnesota.

David J. Knaeble

ST. LOUIS PARK, MN  55416

CivilSiteGroup.com

PROJECT NO.: 16133

EXISTING SIGN TO.

TREE REMOVAL - INCLUDING ROOTS AND STUMPS

TREE PROTECTION

GUTTER, TYP.

REMOVAL OF STRUCTURE INCLUDING ALL FOUNDATION AND MASONRY MATERIALS.

REMOVAL OF PRIVATE UTILITIES SHALL BE COORDINATED WITH UTILITY OWNER PRIOR TO CONSTRUCTION

REMOVE EXISTING TRASH ENCLOSURE, REPAIR.

REMOVE ALL EXISTING REMOVE EXISTING TRASH ENCLOSURE, REPAIR.

REMOVE EXISTING GUTTER, TYP.

REMOVE EXISTING PARKING TRANSFORMER, COORD.

REMOVE EXISTING SIGN TO WALL, TYP.

REMOVE EXISTING FIRE HYDRANT, TYP. REMOVE EXISTING GAS AND ELECTRIC UTILITY METER BOXES, TYP.

REMOVE EXISTING HYDRANT, TYP.

REMOVE EXISTING GUTTER, TYP.

REMOVE ALL EXISTING REMOVE EXISTING GUTTER, TYP.

REMOVE EXISTING PARKING TRANSFORMER, COORD.

REMOVE EXISTING SIGN TO WALL, TYP.

REMOVE ALL EXISTING REMOVE EXISTING TRASH ENCLOSURE, REPAIR.

REMOVE EXISTING GUTTER, TYP.

REMOVE ALL EXISTING REMOVE EXISTING GUTTER, TYP.

REMOVE EXISTING PARKING TRANSFORMER, COORD.

REMOVE EXISTING SIGN TO WALL, TYP.

REMOVE ALL EXISTING REMOVE EXISTING TRASH ENCLOSURE, REPAIR.

REMOVE EXISTING GUTTER, TYP.

REMOVE ALL EXISTING REMOVE EXISTING GUTTER, TYP.

REMOVE EXISTING PARKING TRANSFORMER, COORD.

REMOVE EXISTING SIGN TO WALL, TYP.

REMOVE ALL EXISTING REMOVE EXISTING TRASH ENCLOSURE, REPAIR.

REMOVE EXISTING GUTTER, TYP.

REMOVE ALL EXISTING REMOVE EXISTING GUTTER, TYP.

REMOVE EXISTING PARKING TRANSFORMER, COORD.

REMOVE EXISTING SIGN TO WALL, TYP.

REMOVE ALL EXISTING REMOVE EXISTING TRASH ENCLOSURE, REPAIR.

REMOVE EXISTING GUTTER, TYP.

REMOVE ALL EXISTING REMOVE EXISTING GUTTER, TYP.

REMOVE EXISTING PARKING TRANSFORMER, COORD.

REMOVE EXISTING SIGN TO WALL, TYP.
B. Concept plan for development of a 110-unit senior care facility at 17710 and 17724 Old Excelsior Boulevard.

Chair Kirk introduced the proposal and called for the staff report.

Thomson reported. Staff recommends that commissioners provide comments and feedback on the identified key issues. The discussion is intended to assist the applicant with future direction that may lead to the preparation of more detailed development plans.

Chair Kirk confirmed with Thomas that the side setbacks would be equal to one and a half times the height of the building.

Della Kolpin, with Mesaba Capital Development, applicant, stated that:

- The site is 2.54 acres. The applicant plans on purchasing both parcels and selling .38 acres, for a result of 2.24 acres. The .38 acres would be used for the South Lake Pediatrics building’s parking.
- The proposed building would be oriented to get natural light to as many residents as possible.
- The facility would have 110 units. For senior housing, parking is one stall for each unit. There would be 70 underground parking stalls as well as 40 above grade. The cross parking easement with South Lake Pediatrics would be beneficial for the holiday weekends and events throughout the year. The South Lake Pediatrics building is closed on weekends, so the parking lot would be available for the applicant. She pointed out where an additional 40 parking stalls would be located.
- The proposal would include a new sidewalk along the road and trails that would go around the site. Benches and lighting would also be looked at.
- The facility would provide continuum of living which would include independent, assisted, and memory care. There would be studio, one-bedroom, one-bedroom with den, and two-bedroom units. There would be resident common areas.
- The capital investment would be $22 million.
- The attributes of the site include that it is located near a major intersection, commercial businesses, and North Memorial Medical Center.
- There will be relatively low traffic.
- The high density offers an ideal redevelopment option for the area.
In 2011, the site was noted as high-density residential in the vision study.
There would be 4 levels. Each level would be around 28,000 square feet in size. The green space would be 1 and the building 1.6.
The site would have to be rezoned and platted.
The front setback would be 50 feet, side setbacks 40 feet, and rear setback of 30 feet. The underground parking wall could be used as part of the retaining wall with a rear setback of 20 feet. That would require a variance.
She described the entrance to the building and parking ramp.
The roof would be flat with a covered main entrance. Natural colors would be used. Main-level patios would be included on the south and west sides.
Memory care would be on the north wing and have a memory care garden.
There would be gardens, sidewalks, and benches throughout the site.
The applicant’s most recent project has almost been completed in Edina at 71st and York Avenue. The applicant would partner with the best operator for the market place.

Karen Swanson, 17809 Old Excelsior Boulevard, stated that:

She has concerns with the size, density, traffic flow, parking, impact to the neighborhood, and quality of life to the residents.
Four stories would overpower the neighbors, except for the large commercial building on the east side.
Residents would need support staff.
The street is two lanes and is extremely busy and backs up before and after school and during school events. The high school has grown tremendously over the years. Getting in and out of the site would be difficult.
The proposed driveway would be just passed the median at the Excelsior Boulevard and County Road 101 intersection. Drivers now make a u-turn around the median to access the daycare.
It would be difficult to extend a sidewalk down the street and may cause the removal of a huge tree. The residents would be contained to the trails on the site.
She was concerned with sirens that would visit the site.

Ms. Kolpin stated that:

Her kids go to Wayzata High School and she has been to the Minnetonka High School many times. Senior housing is an ideal
opportunity because the seniors do not have to travel during peak traffic times.

- About 20 of the 110 units would be memory care and 40 would be assisted living, so those residents would not drive or have vehicles. Senior housing would provide high density, but much less traffic.
- The details of making the site walkable have not been completed, but there would be an opportunity for a sidewalk, benches, and lighting along Old Excelsior Boulevard. She would work closely with city staff to determine what the city would like to link the site with neighboring properties.
- There would be approximately 30 staff members working across 3 shifts.
- The residents would have first priority for underground parking, but employees would have the opportunity if there would be some available. The surface stalls would be for visitors.
- The median is located further to the east.
- The cottonwood tree is located to the west of the proposed site.

Knight asked how much senior housing is available and if more is needed. Wischnack answered that in the last few years, 1,438 units of housing have been or are in the process of being built in Minnetonka. Of those, senior-focused housing includes Cherrywood which is 100 units and 2 cooperative projects which have 54 and 84 units. That is 238 units out of the 1,438. The majority of new housing being built is not considered senior housing. The baby boomers are at the 65 year to 67 year of age right now.

Chair Kirk noted that Applewood sold out very quickly.

O'Connell agreed with the current traffic issues, but thought that senior housing would add less traffic issues than an office use. The proposal seems to fit the long-range plan. He did not oppose it.

Odland saw nothing wrong with the product, but did not think it would be the right location. Staff change shifts at 7 a.m. and 3 p.m. A semi would deliver food and the site does not have a turnaround.

Knight asked how delivery vehicles would navigate the site. He liked the site’s proximity to health care providers. That would be a benefit.

O'Connell said that the building may appear large until the rest of the area catches up with the master plan.

Odland noted that 71st and York in Edina already has high-density residential uses surrounding the facility. The proposal would have traffic challenges.
Hanson noted that the proposal would be the first new project in the neighborhood. There is a fair amount of existing senior housing. The developer has done a number of great projects. Senior housing is hard to repurpose. There are better sites for senior housing in Minnetonka.

Chair Kirk felt that the site may be a little tight for the height of the building. The west side would be almost a four-story building adjacent to one-story office buildings. The east side faces the MedTech Building which is already large in mass. He would prefer the mass of the building set back further from Old Excelsior Boulevard. There is not a lot of site to play with. He struggled with the amount of activity that would be generated on Old Excelsior Boulevard. He would like to see the traffic study. The product is right. Senior housing is selling out fairly quickly.

Chair Kirk stated that the concept plan is schedule to be reviewed by the city council November 14, 2017.
CITY COUNCIL NOVEMBER 14, 2016 MEETING MINUTES

A. Concept plan review for Mesaba Capital Development.

Gordon gave the staff report.

Della Kolpin, of Mesaba Capital Development, applicant, stated that:

- She represents the project team. Welsh Construction would be the design builder.
- The proposal would include 110 units of rental housing with independent living, assisted living, and memory care. There would be studio, one-bedroom, and two-bedroom units and common residential areas. There would be a dining area, coffee shop, lounge, fitness center, and library.
- The applicant is looking for a $24 million capital investment for the project.
- A market-assessment study has been done. The numbers fully support the proposal.
- The site has many attributes including being located near a major intersection with commercial uses, medical clinic, and library. Residents could volunteer and attend activities at the high school.
- The main entrance would access Old Excelsior Boulevard.
- There would be 40 stalls of surface parking.
- The building would be four stories in the front and the back would be done to fit the topography. The main entrance would be visible from the main intersection and take into consideration the direction of the wind and angle of the sun.
- A flat roof, natural colors, balconies, and masonry would be looked at.
- Certain trees would be a priority for preservation.
- Making the site walkable is a goal.

Allendorf said that the use would fit with the council’s view for the property. He would like to see a model that would show how the building would fit with the surrounding buildings. It would be a good use for the area.

Acomb agreed. Rezoning the site to residential makes sense. The surrounding businesses, shopping, and library would complement a senior-living facility. She liked the idea of balconies and utilizing the outdoor space. She would appreciate seeing a rendering of the building in context with the surroundings. She confirmed with staff that a bus services the site.
Wiersum thought that the use makes a lot of sense for the proposed location. The size and mass may be a challenge with the low-density residential housing across the street, but the need for the use and appropriateness of the proposal with the village study makes the proposal make a lot of sense.

Wagner stated that the proposal is aligned with the visioning plan. He had no concerns with the use. The area is underserved for senior, high-density living. Height, setbacks, and parking would be challenges to address.

Ellingson liked the applicant making walkability a priority and encouraged making the site as walkable as possible. He appreciated the location of the entrance taking the wind direction and sun location into consideration.

Schneider thought that the use would be appropriate for the site. There are some current traffic concerns and senior housing would cause the least increase in traffic. The height of the building and setbacks need to be looked at and possibly the height scaled back. He did not have a problem with the proposal being out of context with the surrounding buildings because the goal is to change the area.

Schneider noted that having an owner and operator in place makes a big difference. Kolpin said that the final decision for an operator would be made in December before a final application would be submitted.

Kolpin asked if councilmembers felt that the proposed density of 47 units per acre would work for the site and within the quadrant. Schneider noted the relationship between height, mass, and units per acre. He thought the feel of the building would work well. A six-story building on a smaller footprint would provide larger setbacks, but would probably not be the better fit for senior housing. The top story might be problematic.

Gordon asked councilmembers to provide feedback on the importance of an affordability component to the project and the extent of the notification area for the project. Wagner expected the affordability policy to be followed and requested 10 percent to 20 percent of the units meet affordability guidelines. Wischnack provided that 10 percent of the units in Cherrywood and 20 percent of the units in Applewood meet affordability guidelines. Schneider would be a little more flexible with the affordability requirement because it would be a tough site to develop. He would prefer a high-quality, appropriately-scaled building if providing affordability would prevent that from happening.

Schneider suggested extending the standard notification area a little into Clear Springs.
Allendorf agreed with Schneider in regard to scale. His first priority would be getting the scale of the building right. The notification area used for the village-center study would be adequate.
Allendorf asked if there was any lighting on the building. Gordon said there was lighting on the building. There were wall packs primarily on the west side. The expectation was lighting around the building and not to light up the yard.

Allendorf moved, Acomb seconded a motion to adopt resolution 2017-014 approving the request. All voted “yes.” Motion carried.

B. Concept plan review for Mesaba Capital Development

Gordon gave the staff report.

Della Kolpin from Mesaba Capital Development said the focus after the previous review related to massing and if a four story building could really work within the area. The council wanted to see what it might look like. Work was done with staff and an architect to provide drawings to provide perspectives on what the exterior concepts might be. She said the square footage was decreased by about 11,000 to 12,000 square feet. The number of units decreased from 110 to 96 or 97. The building was elongated from the north to south.

Acomb said the site plan seemed to indicate there were stairs along the sidewalk at the east end of the building. She asked if that was truly the case. Kolpin said it was a retaining wall. Acomb asked if there would be a pedestrian friendly sidewalk in front of the building. Kolpin said there would be a sidewalk. The idea was to enhance the Old Excelsior Boulevard streetscape with new sidewalks, benches, lighting while hopefully keeping as many trees as possible and starting a vocabulary throughout a redevelopment area.

Wiersum asked for more information about the parking spots at the north end of the building. Kolpin said there was about a 10-foot grade difference between South Lake Pediatrics and the site being looked at. The intention was for there to be open air parking beneath the building basically at the same level as the underground parking with the three story building above it. She said this works well because it takes in the natural topography of the site.

Schneider said the change to a three story building from a four story building meant it was getting closer to meeting all the standard requirements. It likely still would be difficult meeting the height versus setback requirement. As the project goes through the process, he thought it would be better to identify issues upfront to determine if a planned unit development, which requires a public purpose, would be needed.
Wiersum said he thought the design of the building was attractive but even at three stories, it was going to be a good-sized building.

Bergstedt said the applicant had responded well to the council's previous concerns and comments. The use for this site was very appropriate. He thought it would be a good transition between the commercial on one side and the residential on the other and it would set an appropriately high standard for future redevelopment in the area.

Acomb said at the previous review, and in the staff report, there had been some mention of an affordable aspect to the project. Having a portion of the units affordable was an attractive aspect for her.

Allendorf asked if there had been a neighborhood meeting about the plan. Kolpin said there was a neighborhood meeting last fall.

Schneider said one thing, not necessarily for this project, but on a broader scope, that the council needed to look at was the city getting more and more areas around commercial nodes that want to be urban walkability focused versus suburban focused. The whole ordinance is setup for a suburban model and was likely counterproductive in trying to achieve walkability, density and urban feel in certain areas. He thought it would be appropriate to take a step back, perhaps as part of the comprehensive guide plan process, to determine if there needed to be an urban zone that would allow more latitude within that zone.

Allendorf said the plan was presented in the context of County Road 101 and the other commercial building in the area. He said he would benefit from seeing it from the perspective of someone residing in the neighborhood to the south. The neighbors living in the 394 and Hopkins Crossroads area next to the current building and the proposed building have already expressed concern about what they will see from their backyards.

Wiersum said he liked Schneider's idea of looking at the urban aspect as part of the comp plan process. One of the things the PUD concept requires is a public purpose. One public purpose is affordability. Back in the pre-depression development days, the city frequently traded density for affordability. The city has gotten away from that simply because the economics are not there. He said he wanted to be careful not to lose that tool because there were not as many tools to achieve affordability as there used to be.

15. Appointments and Reappointments:
17710 and 17724 Old Excelsior Blvd.

3011722410040
17710 Old Excelsior Boulevard

DECLAIMER:
This drawing is not a legally recorded plat or an accurate survey. It is intended to be only as approximate representation of information from various government offices and other sources. It should not be used for a purpose that requires exact measurement or precision. The City of Minnetonka provides this drawing as an example of the area, and is not responsible for any inaccuracies contained in the drawing. The City of Minnetonka provides this drawing on an "as is" basis, without warranty of any kind, express or implied, and without assurance of the accuracy of the information.
The City Of Minnetonka Ordains:

Section 1.

1.01 The properties at 17710 and 17724 Old Excelsior Boulevard are hereby rezoned from B-1, office, to R-5, high density residential.

1.02 The properties are legally described as EXHIBIT A.

Section 2.

2.01 This ordinance is based on the following findings:

1. The rezoning would be consistent with the intent of the zoning ordinance and of the comprehensive guide plan.

2. The rezoning would be consistent with the public health, safety, and welfare.

Section 3.

3.01 Approval is subject to the following conditions:

1. The site must be developed and maintained in substantial conformance with the following plans:

   a) 
   b)
2. Development must further comply with all conditions as outlined in City Council Resolution No. 2017-XXX, adopted by the Minnetonka City Council on ____________, 2017.

Section 4. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 5. This ordinance is effective immediately.

Adopted by the city council of the City of Minnetonka, Minnesota, on __________, 2017.

__________________________
Terry Schneider, Mayor

ATTEST:

__________________________
David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction:
Date of adoption:
Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Ordinance adopted.

Date of publication:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on ____________, 2017.

__________________________
David E. Maeda, City Clerk
Date:
EXHIBIT A

PARCEL A (17710 Old Excelsior Blvd (per Title Commitment No. 32438)):

Tract E, REGISTERED LAND SURVEY NO. 149G, Hennepin County, Minnesota.
(Torrens Property)
(Torrens Certificate No. 1115134)

PARCEL B (17724 Old Excelsior Blvd (per Title Commitment No. 52871)):

That part of the South half of Section 30, Township 117, Range 22, described as follows:

Beginning at the intersection of the West line of the East 544.42 feet of the Southeast Quarter of said Section 30, and the Northeastery line of Excelsior Boulevard, now known as County Road No. 3; thence north along said West line of said East 544.42 feet a distance of 300.00 feet; thence East at right angles a distance of 145.00 feet; thence South on a line 145.00 feet East of, measured at right angles to and parallel with, said West line to the Northeastery line of said County Road No. 3; thence Northwesterly along the Northeastery line of said County Road to place of beginning, Hennepin County, Minnesota.
City Council Agenda Item #13A
Meeting of June 26, 2017

Brief Description
Temporary on-sale liquor license for Underdog Rescue, MN, for use at 3739 Tonkawood Road

Recommendation
Hold the public hearing and grant the license

Background
The city has received an application for a temporary on-sale liquor license from Underdog Rescue, MN for a fundraiser event to be held at Tonkadale Nursery, 3739 Tonkawood Road. Underdog Rescue is a foster-based rescue organization dedicated to rescuing, rehabilitating and placing "underdogs" in the forever homes they deserve. The proceeds from the event will support the mission to rescue dogs from commercial breeding facilities.

The event will be held on Saturday, September 23, from 1:00 p.m. to 5:00 pm. The event will consist of craft beer, food trucks, silent auction, and specialty vendors. The event is a family friendly event, so guests over 21 will be given a wristband to designate that they have had their ID verified.

City liquor ordinances allow temporary on-sale liquor licenses to be issued to clubs and other charitable, religious, or not-for-profit organizations, subject to application, public hearing, and approval by the city council. Underdog Rescue, MN has completed the license application, paid the administrative fee, and provided proof of insurance. They are a non-profit charitable organization, and are therefore eligible for a temporary liquor license.

Staff does not anticipate any difficulties in connection with serving beer at the event held on September 23, 2017. The fundraiser will be held on one afternoon only, and only adults over the age of 21 will be allowed to be served beer.

Staff has asked for more information about parking at the site and in the surrounding area to ensure operation of the event is sensitive to the surrounding neighborhood. Much like the spring time busy season, cars park along the road and they made arrangements for off-site parking as well. The police department has been informed of the event to monitor if there are issues.

Recommendation
Staff recommends the council hold the public hearing and grant the license.

Submitted through:
Geralyn Barone, City Manager
Julie Wischnack, AICP, Community Development Director

Originated by:
Kathy Leervig, Community Development Coordinator
Location Map

Applicant: Underdog Rescue, MN
Event Address: 3739 Tonkawood Road
You’re Invited!

Please join us on

SATURDAY SEPTEMBER 23rd, 2017

1:00pm-5:00pm

For the Underdog Rescue Annual Fundraiser!
This year we’ve partnered with Tonkadale Greenhouse and LTD Brewery for a spectacular event!
Stop in for and enjoy a craft beer, specialty vendors, food trucks, silent auction, photo booth and more! The proceeds from this family friendly (that includes your furry family members!) event goes to support our mission to rescue dogs from commercial breeding facilities. Join us for an afternoon of fun and help save lives!

For more information: www.underdogrescuemn.com
Outdoor Retail space (Do not plan to use)

Outdoor space, partially covered. “break area” for dogs/people that need to take some quiet time.
Will be roped off with “no alcoholic beverages beyond this point” signs

Outdoor retail and employee access only (Do not plan to use)

Other shopping/employee access only space

Door

Underdog Rescue Fundraiser
FLOOR PLAN

Covered outdoor area
- set up tables for people to hang out
- Set up dog pen

Outdoor part of the parking lot that does not have spaces for parking
- Food truck(s) sales
This area will also be roped off with “no alcoholic beverages past this point” signs

Door

Main Door

Beverage Station 1

Beverage Station 2

Beverage Station 3

Registration

Main stage/seating area

Silent auction set up

Stage and Photo Backdrop Area

Outdoor area not labeled

Main entry area/cashiers/alcove shopping spaces
July 5, 2017

RE: Underdog Rescue Fundraiser Temporary Liquor License Permit Request

Dear Minnetonka City Council,

In conjunction with the application for our temporary liquor license permit, outlined below is our plan for parking during this event. On Saturday September 23rd, our fundraiser will be held at Tonkadale Greenhouse. We developed a plan with Jessie Jacobsen, owner and operator of this business. The fundraiser will be held between the hours of 1:00pm-5:00pm. During which time Tonkadale employees will be utilizing only parking spaces designated for them.

Underdog Rescue volunteers register in advance for timeslots in which they will be helping during the event. They are instructed to carpool, and park in one of two designated volunteer shuttle locations:
- Park & Ride located on Minnetonka Blvd and Tonkawood Road
- Metro Transit Park and Ride at Hopkins Crossroads

We have 2, twelve passenger vans that will be scheduled to pick up our volunteers at these locations. Active alumni who wish to ride may also join the shuttles at either location. The schedule will be communicated in our alumni Facebook group so they may choose where to park.

Tonkadale’s parking lot can accommodate up to 65 vehicles, as well as additional street parking within posted signs.

We have also reached out to Minnetonka Lutheran Church to arrange for overflow parking if necessary.

Our previous events see an average of 300 people, we are hoping to increase that number this year, but believe that this parking plan will be able to accommodate that traffic over the course of 4 hours.

Thank you for your consideration.

Sincerely,

Shannon McKenzie
Executive Director

CC: Jessie Jacobson, Tonkadale Greenhouse
Hi All,

I am thinking the parking should be manageable. We will be able to accommodate the transport vans in our employee parking area as well as perhaps 10 volunteer cars as well. During our busiest days in May, we have processed 130 transactions per hour resulting in a full parking lot and on street parking that is busy, but manageable. Based on historical attendance, I don’t anticipate the traffic and parking to be overwhelming or unmanageable. Looking forward to a great community event! Please let me know if there are any additional questions.

Thanks!

Jessie

---

Hi Kathy,

My name is Jessy, I am a volunteer with Underdog Rescue and I am helping to coordinate this year's fundraiser at Tonkadale. Shannon McKenzie gave me your email address so I could submit our parking plan.

Jessie Jacobsen (from Tonkadale) and myself have connected to put together a plan. Please see the attached letter outlining this.

Please let me know if anything further is needed.

Thank you so much!

Jessy Simonson
Adoption & Events Coordinator
Underdog Rescue
City Council Agenda Item #13B
Meeting of July 24, 2017

**Brief Description**
Temporary on-sale liquor license for Unmapped Brewing, LLC, 14625 Excelsior Blvd.

**Recommendation**
Hold the public hearing and grant the license

**Background**
The city has received an application for a temporary on-sale liquor license from Unmapped Brewing, LLC for an outdoor event at 14625 Excelsior Blvd.

**The Event**
Unmapped Brewing is requesting approval for an outdoor event on Saturday, August 19, 2017. The event will be held from 12 – 11 pm at Unmapped Brewing. The purpose of the event is the grand opening for Unmapped Brewing. Beer will be sold outside of the licensed premise in the parking lot which will require a temporary liquor license.

Unmapped Brewing anticipates between 1,000 – 2,000 attendees attending throughout the day/ evening. The event will feature live music, food trucks, and outdoor games and activities. Outdoor activities will be done at 9:00 pm. The outdoor area will be surrounded by a temporary safety fence.

**Parking and Security**
Due to the anticipated number of attendees at the event, staff requested that Unmapped Brewing submit a parking plan for review. At the time of the report, Unmapped Brewing has secured parking at Bethlehem Lutheran Church, Prestige Academy and the former Dairy Queen site. They are still researching other possibilities to accommodate parking for the event. With site parking and the agreements, there is approximately 260 spaces available but could provide more by the time of the event. The business is also coordinating with the police department for assistance with the event.

There will be two points of entry for all customers/attendees. Each entrance will have employees/volunteers in charge of checking identifications and issuing a wristband to those patrons age 21 and older. Staff at the event will only serve to those wearing a wristband. Unmapped Brewing will also hire off-duty police officers as security for the event to ensure safety.
Outdoor Activity Including Intoxicating Liquor

Minnesota State Statute 340A.404 subd 10(c) states that a brewery is eligible for a temporary liquor license for social events upon city approval:

(c) The governing body of a municipality may issue to a brewer who manufactures fewer than 3,500 barrels of malt liquor in a year a temporary license for the on-sale of intoxicating liquor in connection with a social event within the municipality sponsored by the brewer. The terms and conditions specified for temporary licenses under paragraph (a) shall apply to a license issued under this paragraph, except that the requirements of section 340A.409, subdivisions 1 to 3a, shall apply to the license.

340A.409, subdivisions 1 to 3a:

Insurance required. (a) No retail license may be issued, maintained or renewed unless the applicant demonstrates proof of financial responsibility with regard to liability imposed by section 340A.801. The issuing authority must submit to the commissioner the applicant's proof of financial responsibility. This subdivision does not prohibit a local unit of government from requiring higher insurance or bond coverages, or a larger deposit of cash or securities. The minimum requirement for proof of financial responsibility may be given by filing:

(1) a certificate that there is in effect for the license period an insurance policy issued by an insurer required to be licensed under section 60A.07, subdivision 4, or by an insurer recognized as an eligible surplus lines carrier pursuant to section 60A.206 or pool providing at least $50,000 of coverage because of bodily injury to any one person in any one occurrence, $100,000 because of bodily injury to two or more persons in any one occurrence, $10,000 because of injury to or destruction of property of others in any one occurrence, $50,000 for loss of means of support of any one person in any one occurrence, $100,000 for loss of means of support of two or more persons in any one occurrence, $50,000 for other pecuniary loss of any one person in any one occurrence, and $100,000 for other pecuniary loss of two or more persons in any one occurrence;

(2) a bond of a surety company with minimum coverages as provided in clause (1); or

(3) a certificate of the commissioner of management and budget that the licensee has deposited with the commissioner of management and budget $100,000 in cash or securities which may legally be purchased by savings banks or for trust funds having a market value of $100,000.
Unmapped Brewing has completed the license application and provided proof of insurance. Neighbors within 400 feet of the brewery were notified by Unmapped Brewing of the event. See attached comment from one neighbor. The police department has been notified of the event.

**Recommendation**

Staff recommends the council hold the public hearing and grant the temporary liquor license in connection with the grand opening event.

Submitted through:
   Geralyn Barone, City Manager
   Julie Wischnack, AICP, Community Development Director

Originated by:
   Kathy Leervig, Community Development Coordinator
Location Map

Project: Unmapped Brewing Co
Address: 14625 Excelsior Blvd

This map is for illustrative purposes only.
KEY:

- **Food Trucks**
- **Stage/Music**
- **Outdoor Bar (cash only)**
- **Merchandise (cash only)**
- **Outdoor Games**
July 10, 2017

Dear Neighbor,

This letter is to inform you of a request that we, Unmapped Brewing Co., have made application to the City of Minnetonka for an event at the address of 14625 Excelsior Blvd, Minnetonka, MN, 55345. You are receiving this letter as the city requires us to notify everyone within 400 feet of the address above when we request an outdoor activity includes the serving or sale of liquor as described below:

Name of event: Unmapped Brewing Co. Grand Opening

Date(s) of event: August 19, 2017

Time of event: 12:00 PM – 11:00 PM (9:00 PM for outdoor activities)

Type of liquor served: Beer

Outdoor activities planned: We will be serving beer in an outdoor tent, in addition to hosting live music, a couple food trucks, outdoor games, and log rolling.

This letter serves as your notice that the city will review this application/request at a regular City Council Meeting. The tentative date for the public hearing before the city council is July 24, 2017. The meeting begins at 6:30 p.m. in the Council Chambers of the Minnetonka Community Center at 14600 Minnetonka Boulevard.

If you have any comments, you may contact Kathy Leervig, Community Development Coordinator, City of Minnetonka, at (952) 939-8274 or by e-mail to: kleervig@eminnetonka.com.

Most Sincerely,

Megan Park
Co-Founder
PARKING MAP

Project: UnMapped Brewing Event
Applicant: Megan Park
Address: 14625 Excelsior Boulevard

In Discussions for Additional Parking
Additional Parking Acquired
Subject Site
i have no objections to the Unmapped brewing event to be held august 19, 2017

Its exciting to have a vibrant new business in this corridor!

Jerry Greene  CEO
Highland Management Group Inc
http://www.highlandapts.com
City Council Agenda Item #14A  
Meeting of July 24, 2017

**Brief Description**  
Resolution authorizing and affirming the issuance, sale, and delivery of multifamily housing revenue obligations for the benefit of CHC Minnetonka Affordable Housing LLC and authorizing the execution and delivery of related documents

**Recommendation**  
Adopt the resolution

**Background**

In May, Jay Jensen, the developer for the Music Barn and Elmbrooke Townhome and Golden Valley Townhome rehabilitation project, informed the city that due to the devaluation of the housing tax credits, it is no longer feasible for CHC Affordable Housing to move forward with the Music Barn project. In addition, Mr. Jensen informed city staff that the $500,000 in pooled tax increment that was committed to the Music Barn project was no longer needed. Instead, the Borrower (CHC Affordable Housing), would continue with the acquisition and substantial rehabilitation of the forty-six Elmbrooke Townhome units and eight townhome units in Golden Valley.

As part of the rehabilitation project, CHC Affordable Housing, is now requesting that the City issue permanent financing for the rehabilitation of the Elmbrooke Townhomes and Golden Valley townhomes. The financing is expected to include two series of tax exempt housing revenue bonds. The first series of bonds is expected to be secured by Fannie Mae. The second series of bonds is expected to be secured by tax credit investors privately placed through Bridgewater Bank. The issuance of the multifamily housing revenue bonds will not count towards the city’s bank qualification limit of up to $10,000,000 for calendar year 2017. In addition, the Borrower is required to pay all debt service and any other fees incurred by the city in relation to the bonds. The request complies with city council policies 2.5 and 2.16 related to tax-exempt financing for multifamily housing projects and post-issuance compliance.

The attached letter from the city’s bond counsel, Julie Eddington, further explains the request for permanent financing and issuance of bonds. In addition, Jay Jensen of Shelter Corporation provided the attached letter explaining the current tax credit market and status of the project. Both Julie Eddington (city’s bond counsel) and Jay Jensen (developer representing CHC affordable housing) will be present at the meeting to answer questions.

The attached resolution authorizes the issuance, sale, and delivery of the multifamily housing revenue bonds for the Elmbrooke and Golden Valley Townhomes and authorizes City officials to execute the loan documents. Following the council action, the
Borrower is requesting that the EDA consider renewal of the existing Elmbrooke Loan and its subordination in accordance with the requirements of Fannie Mae.

**Recommendation**

Staff recommends the city council adopt the attached resolution authorizing and affirming the issuance, sale, and delivery of multifamily housing revenue obligations for the benefit of CHC Minnetonka Affordable Housing LLC, authorizing the execution and delivery of documents; and authorizing City officials approve non-substantive changes to the related documents.

Submitted through:
- Geralyn Barone, City Manager
- Merrill King, Finance Director
- Julie Wischnack, AICP, Community Development Director

Originated by:
- Alisha Gray, EDFP, Economic Development and Housing Manager

**Supplemental Information:**

- [April 10, 2017 City Council Report](#)
- [December 19, 2016 City Council Report](#)
- [October 24, 2016 City Council Report](#)
- [May 9, 2016 City Council Report](#)
- [May 18, 2015 EDA Report](#)
Resolution No. 2017-____
Resolution authorizing and affirming the issuance, sale, and delivery of multifamily housing revenue obligations for the benefit of CHC Minnetonka Affordable Housing LLC and authorizing the execution and delivery of documents related thereto

Be it resolved by the City Council (the “Council”) of the City of Minnetonka, Minnesota (the “City”) as follows:

Section 1. Recitals.

1.01. The City is a home rule city duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota.

1.02. On May 9, 2016, following a duly noticed public hearing, the Council adopted Resolution No. 2016-037 (the “Initial Resolution”), which authorized the issuance of one or more series of multifamily housing revenue bonds, in the maximum principal amount of $11,500,000, to be issued pursuant to Minnesota Statutes, Chapters 462C and 474A, as amended (collectively, the “Act”), and Sections 471.59 and 471.656, as amended, for the benefit of CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), the managing member of which is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company (the “Managing Member”).

1.03. On August 8, 2016, following a duly noticed public hearing, the Council adopted Resolution No. 2016-063 (the “Temporary Note Resolution”), which authorized the issuance of the City’s Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Temporary Note”), in the original aggregate principal amount of $11,500,000, to provide short-term financing for the following: (i) financing the acquisition, construction, and equipping of approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road in the City (the “Music Barn Apartments”); (ii) financing the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive in the City (the “Elmbrooke Apartments”); and (iii) financing the acquisition and substantial rehabilitation of six (6) existing affordable townhome units at 2100 Douglas Drive North and two (2) existing affordable townhome units at 3354 Lilac Drive North, Golden Valley, Minnesota (the “Golden Valley Townhomes”).

1.04. The Temporary Note was issued on August 18, 2016 and was sold to Bridgewater Bank (the “Temporary Note Purchaser”). The Borrower
intended to refund the Temporary Note with the proceeds of permanent obligations to be issued by the City. The Temporary Note had an initial mandatory tender date of December 31, 2016 but has been extended, with the approval of the Temporary Note Purchaser, to a date no later than December 31, 2019.

1.04. The Temporary Note was drawn down for the purposes of financing the Elmbrooke Apartments and the Golden Valley Townhomes, and the Music Barn Apartments were not financed with proceeds of the Temporary Note.

1.05. The Borrower is requesting that the City now issue its multifamily housing revenue obligations, in one or more series, as taxable or tax-exempt obligations (the “Obligations”), in the maximum aggregate principal amount of $7,500,000, as permanent financing for the Project. Proceeds of the Obligations, along with unspent proceeds of the Temporary Note, will be used to (i) refund the Temporary Note and provide permanent financing for the acquisition and substantial rehabilitation of the Elmbrooke Apartments and the Golden Valley Townhomes (the “Project”); (ii) pay capitalized interest on the Obligations during the construction of the Project; (iii) fund required reserves; and (iv) pay costs of issuance of the Obligations.

Section 2. The Series 2017A Bonds.

2.01. The Borrower has requested that the City issue, sell, and deliver a portion of the Obligations in the approximate principal amount of $6,600,000 (the “Series 2017A Bonds”). The Series 2017A Bonds are proposed to be sold publicly and underwritten by Dougherty & Company LLC, a Delaware limited liability company (the “Bond Underwriter”).

2.02. The Series 2017A Bonds are proposed to be issued pursuant to the Initial Resolution, the Temporary Note Resolution, this resolution, the Act, and an Indenture of Trust Indenture (the “Bond Indenture”) between the City and U.S. Bank National Association, as trustee (the “Bond Trustee”).

2.03. The proceeds derived from the sale of the Series 2017A Bonds will be loaned by the City to make a mortgage loan (the “Bond Mortgage Loan”) to the Borrower pursuant to the terms of a Financing Agreement (the “Bond Financing Agreement”) between the City, the Borrower, the Bond Trustee, and Dougherty Mortgage LLC, as mortgage lender (the “Bond Mortgage Lender”). The Bond Mortgage Loan will be insured by Fannie Mae.

2.04. The Series 2017A Bonds and the interest on the Series 2017A Bonds (i) shall be payable solely from the revenues pledged therefor under the
Bond Financing Agreement and additional sources of revenue provided by or on behalf of the Borrower; (ii) shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation; (iii) shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers; (iv) shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City other than the City's interest in the Bond Financing Agreement; and (v) shall not constitute a general or moral obligation of the City.

2.05. The loan repayments to be made by the Borrower under the Bond Financing Agreement will be fixed so as to produce revenue sufficient to pay the principal of, premium, if any, and interest on the Series 2017A Bonds when due. Such loan repayments will be assigned to the Bond Trustee under the terms of the Bond Indenture.

2.06. The Borrower’s repayment obligations in respect of the Bond Mortgage Loan will be evidenced by a Multifamily Note (the “Bond Mortgage Note”) delivered to the City, which Mortgage Note will be endorsed by the City to the Bond Mortgage Lender, and a Multifamily Loan and Security Agreement (Non-Recourse) (the “Bond Loan Agreement”) between the Borrower and the City, which will be assigned by the City to the Bond Mortgage Lender. To secure the Borrower’s obligations under the Bond Mortgage Note, the Borrower will execute and deliver to the City a mortgage on the Project (the “Bond Mortgage”), which will be assigned to the Bond Mortgage Lender. Additionally, the Borrower may cause one or more guaranties to be delivered to secure the Borrower’s obligations under the Bond Financing Agreement.

2.07. The City acknowledges, finds, determines, and declares that the issuance of the Series 2017A Bonds is authorized by the Act and is consistent with the purposes of the Act and that the issuance of the Series 2017A Bonds, and the other actions of the City under the Bond Indenture, the Bond Financing Agreement, and this resolution constitute a public purpose and are in the interests of the City. In authorizing the issuance of the Series 2017A Bonds to refund a portion of the Temporary Note and provide permanent financing for the Project and the related costs, the City’s purpose is and the effect thereof will be to promote the public welfare of the City and its residents by providing multifamily housing developments for low or moderate income residents of the City and otherwise furthering the purposes and policies of the Act.

2.08. For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Series 2017A Bonds in the approximate aggregate principal amount of $6,600,000. The Series 2017A Bonds shall bear interest at the rates, shall be designated, shall be numbered, shall be
dated, shall mature, shall be in the aggregate principal amount, shall be subject to redemption prior to maturity, shall be in such form, and shall have such other terms, details, and provisions as are prescribed in the Bond Indenture, substantially in the form now on file with the City, with the amendments referenced herein. The City hereby authorizes all or a portion of the Series 2017A Bonds to be issued as “tax-exempt bonds,” the interest on which is not includable in gross income for federal and State of Minnesota income tax purposes.

All of the provisions of the Series 2017A Bonds, when executed as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Series 2017A Bonds shall be substantially in the form of the Bond Indenture on file with the City, which form is hereby approved, with such necessary and appropriate variations, omissions, and insertions (including changes to the aggregate principal amount of the Series 2017A Bonds, the stated maturities of the Series 2017A Bonds, the interest rates on the Series 2017A Bonds and the terms of redemption of the Series 2017A Bonds) as the Mayor and the City Manager, in their discretion, shall determine. The execution of the Series 2017A Bonds with the manual or facsimile signatures of the Mayor and the City Manager and the delivery of the Series 2017A Bonds by the City shall be conclusive evidence of such determination.

2.09. The Series 2017A Bonds shall be special, limited obligations of the City payable solely from the revenues provided by the Borrower pursuant to the Bond Financing Agreement, the Bond Loan Agreement, and other funds pledged pursuant to the Bond Indenture.

All of the provisions of the Bond Indenture, when executed as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Bond Indenture shall be substantially in the form on file with the City, which is hereby approved, with such necessary and appropriate variations, omissions and insertions as do not materially change the substance thereof, and as the Mayor and the City Manager, in their discretion, shall determine, and the execution thereof by the Mayor and the City Manager shall be conclusive evidence of such determination. The Mayor and the City Manager are hereby authorized and directed to execute the Bond Indenture, and to deliver the Bond Indenture to the Bond Trustee, and hereby authorizes and directs the execution of the Series 2017A Bonds in accordance with the terms of the Bond Indenture, and hereby provides that the Bond Indenture shall provide the terms and conditions, covenants,
rights, obligations, duties, and agreements of the owners of the Series 2017A Bonds, the City, and the Bond Trustee as set forth therein.

2.10. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the Bond Financing Agreement, the Bond Loan Agreement, an assignment of the Bond Mortgage, an assignment of the Bond Mortgage Note, a Bond Purchase Agreement between the City, the Borrower, and the Bond Underwriter, with respect to the Series 2017A Bonds, and all documents and assignments related to the Bond Mortgage Loan required to be executed by the City by Fannie Mae. All of the provisions of such documents, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The aforementioned documents shall be substantially in the forms on file with the City which are hereby approved, with such omissions and insertions as do not materially change the substance thereof, and as the Mayor and the City Manager, in their discretion, shall determine, and the execution thereof by the Mayor and the City Manager shall be conclusive evidence of such determinations.

2.11. The City will not participate in the preparation of the Preliminary Official Statement or the Official Statement relating to the offer and sale of the Series 2017A Bonds (collectively, the “Official Statements”) and will make no independent investigation with respect to the information contained therein, including the appendices thereto, except for the information set forth in the Official Statements regarding the City and certain matters relating to litigation, and the City assumes no responsibility for the sufficiency, accuracy, or completeness of such information. Subject to the foregoing, the City hereby consents to the distribution and the use by the Bond Underwriter of the Official Statements in connection with the offer and sale of the Series 2017A Bonds. The Official Statements are the sole material consented to by the City for use in connection with the offer and sale of the Series 2017A Bonds.

2.12. The City hereby authorizes the Borrower to provide such security for payment of its obligations under the Bond Financing Agreement and for payment of the Series 2017A Bonds, and the City hereby approves the execution and delivery of such security.

Section 3. The Series 2017B Note.

3.01. The Borrower has requested that the City issue, sell, and deliver a portion of the Obligations in the approximate principal amount of $900,000 (the “Series 2017B Note”). The Series 2017B Note is proposed to be
purchased by Bridgewater Bank, a Minnesota banking corporation (the “Note Lender”).

3.02. The proceeds derived from the sale of the Series 2017B Note will be loaned by the City to the Borrower pursuant to the terms of a Loan Agreement (the “Note Loan Agreement”) between the City and the Borrower.

3.03. The Series 2017B Note will be issued pursuant to the Initial Resolution, the Temporary Note Resolution, this resolution, and the Act, and the Series 2017B Note and the interest thereon (i) shall be payable solely from the revenues pledged therefor under the Note Loan Agreement and additional sources of revenues provided by or on behalf of the Borrower; (ii) shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation; (iii) shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers; (iv) shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City other than the City’s interest in the Note Loan Agreement; and (v) shall not constitute a general or moral obligation of the City.

3.04. The loan repayments to be made by the Borrower under the Note Loan Agreement will be fixed so as to produce revenue sufficient to pay the principal of, premium, if any, and interest on the Series 2017B Note when due. The City will assign its rights to the basic payments and certain other rights under the Note Loan Agreement to the Note Lender pursuant to the terms of an Assignment of Loan Agreement (the “Assignment of Note Loan Agreement”) between the City and the Note Lender.

3.05. To secure its obligations under the Note Loan Agreement, the Borrower will pledge to the Note Lender a portion of equity installments attributable to low-income housing tax credits for the Project. Additionally, the Borrower may cause one or more guaranties to be delivered to secure the Borrower’s obligations under the Note Loan Agreement.

3.06. The City acknowledges, finds, determines, and declares that the issuance of the Series 2017B Note is authorized by the Act and is consistent with the purposes of the Act and that the issuance of the Series 2017B Note, and the other actions of the City under the Note Loan Agreement and this resolution, constitute a public purpose and are in the interests of the City. In authorizing the issuance of the Series 2017B Note to refund a portion of the Temporary Note and provide permanent financing for the Project and the related costs, the City’s purpose is and the effect thereof will be to promote the public welfare of the City and its residents by providing
multifamily housing developments for low or moderate income residents of the City and otherwise furthering the purposes and policies of the Act.

3.07. For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Series 2017B Note in the approximate aggregate principal amount of $900,000. The Series 2017B Note shall bear interest at the rates, shall be designated, shall be numbered, shall be dated, shall mature, shall be in the aggregate principal amount, shall be subject to redemption prior to maturity, shall be in such form, and shall have such other terms, details, and provisions as are prescribed in the form of Series 2017B Note now on file with the City, with the amendments referenced herein. The City hereby authorizes the Series 2017B Note to be issued, in whole or in part, as a “tax-exempt bond,” the interest on which is not includable in gross income for federal and State of Minnesota income tax purposes.

All of the provisions of the Series 2017B Note, when executed as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Series 2017B Note shall be substantially in the form on file with the City, which form is hereby approved, with such necessary and appropriate variations, omissions, and insertions (including changes to the aggregate principal amount of the Series 2017B Note, the stated maturities of the Series 2017B Note, the interest rates on the Series 2017B Note and the terms of redemption of the Series 2017B Note) as the Mayor and the City Manager, in their discretion, shall determine. The execution of the Series 2017B Note with the manual or facsimile signatures of the Mayor and the City Manager and the delivery of the Series 2017B Note by the City shall be conclusive evidence of such determination.

3.08. The Series 2017B Note shall be a special, limited obligation of the City payable solely from the revenues provided by the Borrower pursuant to the Note Loan Agreement, including the equity installments attributable to low-income housing tax credits for the Project. The Council hereby authorizes and directs the Mayor and the City Manager to execute the Series 2017B Note in accordance with the terms thereof.

3.09. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the Note Loan Agreement and the Assignment of Note Loan Agreement. All of the provisions of the Note Loan Agreement and the Assignment of Note Loan Agreement, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and
delivery thereof. The Note Loan Agreement and the Assignment of Note Loan Agreement shall be substantially in the forms on file with the City which are hereby approved, with such omissions and insertions as do not materially change the substance thereof, and as the Mayor and the City Manager, in their discretion, shall determine, and the execution thereof by the Mayor and the City Manager shall be conclusive evidence of such determinations.

3.10. The City hereby authorizes the Borrower to provide such security for payment of its obligations under the Note Loan Agreement and for payment of the Series 2017B Note, and the City hereby approves the execution and delivery of such security.

Section 4. Additional Findings and Certifications.

4.01. The Obligations are authorized to be issued in an amount not to exceed $7,500,000. On the date hereof the Series 2017A Bonds are expected to be issued in the approximate aggregate principal amount of $6,600,000, and the Series 2017B Note is expected to be issued in the approximate aggregate principal amount of $900,000. However, the final principal amount of the Obligations may change so long as the total aggregate principal amount of the Obligations does not exceed $7,500,000.

4.02. To ensure compliance with certain rental and occupancy restrictions imposed by the Act and Section 142(d) of the Code, and to ensure compliance with certain restrictions imposed by the City, the Mayor and City Manager are also hereby authorized and directed to execute and deliver one Regulatory Agreement with respect to each of the Elmbrooke Apartments and the Golden Valley Townhomes (collectively, the “Regulatory Agreements”) between the City, the Borrower, the Bond Trustee, and the Note Lender. All of the provisions of the Regulatory Agreements, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Regulatory Agreements shall be substantially in the forms on file with the City which are hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the Mayor and the City Manager, in their discretion, shall determine, and the execution thereof by the Mayor and the City Manager shall be conclusive evidence of such determination.

4.03. The Mayor and the City Manager are authorized and directed to execute any additional documents deemed necessary to carry out the intentions of this resolution and to complete the financing described herein, so long as City staff and legal counsel approve such documents.
4.04. The Mayor and the City Manager are hereby authorized to execute and deliver, on behalf of the City, such other documents and certificates as are necessary or appropriate in connection with the issuance, sale, and delivery of the Obligations, including various certificates of the City, one or more Information Returns for Tax-Exempt Private Activity Bond Issues, Form 8038 (Rev. April 2011), one or more endorsements of the City to the tax certificate of the Borrower, and similar documents, and all other documents and certificates as shall be necessary and appropriate in connection with the issuance, sale, and delivery of the Obligations. The City hereby authorizes Kennedy & Graven, Chartered, as bond counsel ("Bond Counsel"), to prepare, execute, and deliver its approving legal opinions with respect to the Obligations.

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

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

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

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

4.07. In case any one or more of the provisions of this resolution, other than the provisions contained in the first sentence of Sections 2.09 and 3.08 hereof, or of the aforementioned documents, or of the Obligations issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, or of the Obligations, but this resolution, the aforementioned documents, and the Obligations shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

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

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

4.10. The Borrower shall pay the administrative fee of the City on the date of issuance of the Obligations in the amount of one-eighth of one percent (0.125%) of the outstanding principal amount of the Obligations. The Borrower will also pay, or, upon demand, reimburse the City for payment
of, any and all costs incurred by the City in connection with the Project and the issuance of the Obligations, whether or not the Obligations are issued, including any costs for attorneys’ fees.

Section 5. **Previous Resolutions Supplemented.** The provisions of this resolution hereby supplement the Initial Resolution and the Note Resolution.

Section 6. **Effective Date.** This resolution shall be in full force and effect from and after its approval. The approvals contained in the resolution are effective for one year after the date hereof.
Adopted by the City Council of the City of Minnetonka, Minnesota this 24th day of July, 2017.

__________________________
Terry Schneider, Mayor

ATTEST:

__________________________
David E. Maeda, City Clerk

ACTION ON THIS RESOLUTION:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on July 24, 2017.

__________________________
David E. Maeda, City Clerk
July 14, 2017

Alisha Gray
Economic Development and Housing Manager
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN  55345-1502

Re:  Resolution relating to the issuance of multifamily housing revenue obligations by the City of Minnetonka

Dear Alisha,

As you know, CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), has been working with the City of Minnetonka (the “City”) to finance with tax-exempt bonds the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive in the City (the “Elmbrooke Apartments”) and the acquisition and substantial rehabilitation of six (6) existing affordable townhome units located at 2100 Douglas Drive North and two (2) existing affordable townhome units located at 3354 Lilac Drive North in Golden Valley, Minnesota (the “Golden Valley Townhomes”).

On August 18, 2016, the City issued its Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Temporary Note”), in the original aggregate principal amount of $11,500,000, as short-term financing for the acquisition and substantial rehabilitation of the Elmbrooke Apartments and the Golden Valley Townhomes and for the acquisition, construction, and equipping of approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road, Minnetonka, Minnesota. The Borrower is requesting that the City now issue the permanent financing for the acquisition and substantial rehabilitation of the Elmbrooke Apartments and the Golden Valley Townhomes in the form of two or more series of revenue bonds (the “Obligations”), which will refund the Temporary Note. The permanent financing for the acquisition and substantial rehabilitation of the Elmbrooke Apartments and the Golden Valley Townhomes is expected to include two series of tax-exempt obligations (the “Obligations”), one series secured by a Fannie Mae-secured mortgage loan from Dougherty Mortgage LLC and a second series secured by tax credit investor contributions. One or more guaranties are also expected to be delivered as security. The series of Obligations to be secured by the Fannie-Mae-secured mortgage loan (the “Series 2017A Bonds”) is expected to be sold publicly and underwritten by Dougherty & Company LLC, as underwriter, and the series of Obligations to be secured by tax credit investor contributions (the “Series 2017B Note”) is expected to be privately placed with Bridgewater Bank, a Minnesota banking corporation.
The Borrower is requesting that the City Council consider the enclosed resolution at its meeting on July 24, 2017. This resolution approves the refunding of the Temporary Note and the permanent financing for the acquisition and substantial rehabilitation of the Elmbrooke Apartments and the Golden Valley Townhomes and also authorizes the City officials to execute various loan documents in connection with the Obligations.

The Obligations will be conduit revenue bonds of the City. The Borrower is required to pay all debt service on the proposed Obligations and any other fees or expenses of the City incurred in relation to the Obligations, including but not limited to legal expenditures, publication costs, the City’s administrative fee, costs of future modifications, and costs related to any audits by the State of Minnesota or the Internal Revenue Service.

The Series 2017A Bonds will be secured by a mortgage and a pledge of revenues from the project. The Series 2017B Note will be secured by tax credit income. The Obligations will not constitute general or moral obligations of the City, will not be secured by or payable from any property or assets of the City (other than the interests of the City in the loan agreements), and will not be secured by any taxing power of the City. The Obligations will not be subject to any debt limitation imposed on the City, and the issuance of the Obligations will not have any adverse impact on the credit rating of the City, even in the event that the Borrower encounters financial difficulties with respect to the Elmbrooke Apartments or the Golden Valley Townhomes.

The Obligations will be “private activity bonds” within the meaning of Section 141(a) of the Code but will be “exempt facility bonds” the net proceeds of which are to be used to provide a “qualified residential rental project” within the meaning of Sections 142(a)(7) and 143(d) of the Code and will not affect the City’s ability to designate up to $10,000,000 in tax-exempt bonds as “qualified tax-exempt obligations” (or “bank-qualified bonds”) for calendar year 2017.

The attached resolution provides approval for issuing the Obligations and approval for the related documents, including form documents and assignments provided by Fannie Mae. The resolution provides that the Mayor and City Manager may sign these documents in substantially the form on file as of July 24, 2017, which allows modifications of the documents but not substantial changes.

I will attend the City Council meeting on July 24, 2017 and can answer any questions that may arise during the meeting. Please contact me with any questions you may have prior to the City Council meeting.

Sincerely,

Julie A. Eddington
REGULATORY AGREEMENT  
(ELMBROOKE APARTMENTS)  

between  

CITY OF MINNETONKA, MINNESOTA,  
as Issuer  

CHC MINNETONKA AFFORDABLE HOUSING LLC,  
as Borrower  

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee  

and  

BRIDGEWATER BANK,  
as Bank  

Dated August ___, 2017  

Relating to:  

$6,600,000  
City of Minnetonka, Minnesota  
Multifamily Housing Revenue Refunding Bonds  
(Elmbrooke and Golden Valley Townhomes Project)  
Series 2017A  

$900,000  
City of Minnetonka, Minnesota  
Multifamily Housing Revenue Refunding Note  
(Elmbrooke and Golden Valley Townhomes Project)  
Series 2017B  

This Instrument Drafted by:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN  55402
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>PARTIES</td>
<td>Definitions</td>
<td>1</td>
</tr>
<tr>
<td>RECITALS</td>
<td>Representations by the Borrower</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Qualified Residential Rental Project</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Low Income Tenants</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Restrictions Imposed by Minnesota Statutes, Chapter 474A</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Covenants Run With the Land</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>Indemnification</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Consideration</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Reliance</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>Sale or Transfer of the Project</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Term</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>Burden and Benefit</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>Enforcement</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>The Trustee, the Bank, and the Issuer</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>Amendment</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Right of Access to the Project and Records</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>No Conflict with Other Documents</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>Severability</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Notices</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>Governing Law</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Payment of Fees</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>Limited Liability</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>Actions of Issuer</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>Counterparts</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>Recording and Filing</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>Fannie Mae Rider to Regulatory Agreement</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>Prior Regulatory Agreement Terminated</td>
<td>27</td>
</tr>
<tr>
<td>SIGNATURES</td>
<td></td>
<td>S-1</td>
</tr>
<tr>
<td>EXHIBIT A</td>
<td>Legal Description of Property</td>
<td>A-1</td>
</tr>
<tr>
<td>EXHIBIT B</td>
<td>Form of Income Certification</td>
<td>B-1</td>
</tr>
<tr>
<td>EXHIBIT C</td>
<td>Certificate of Continuing Program Compliance</td>
<td>C-1</td>
</tr>
<tr>
<td>Fannie Mae Rider to Regulatory Agreement</td>
<td>Rider-1</td>
<td></td>
</tr>
</tbody>
</table>
REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT, dated August ___, 2017 (the “Regulatory Agreement”), is between the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Issuer”), CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (the “Borrower”) and the owner of the property described herein, U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “Trustee”), as trustee for the Series 2017A Bonds (hereinafter defined) and BRIDGEWATER BANK, a Minnesota banking corporation (the “Bank”), as the purchaser of the Series 2017B Note (hereinafter defined).

RECITALS

The Issuer is authorized to issue bonds to finance and refinance multifamily housing developments in accordance with the terms of Minnesota Statutes, Chapters 462C and 474A, as amended (collectively, the “Act”).

On August 18, 2016, the Issuer issued its Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”), in the original aggregate principal amount of $11,500,000, pursuant to the Act, Minnesota Statutes, Sections 471.59 and 471.656, as amended, and a resolution adopted by the City Council of the Issuer on August 8, 2016. In conjunction with the issuance of the Note, the Issuer, the Borrower and the Trustee entered into a Regulatory Agreement (Elmbrooke Apartments), dated August 18, 2016.

The Issuer sold the Note to Bridgewater Bank, and the Issuer loaned the proceeds thereof to CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), the managing member of which is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company (the “Managing Member”), pursuant to a Loan Agreement, dated as of August 1, 2016, between the Issuer and the Borrower. The Note was issued to, among other things, finance the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive, Minnetonka, Minnesota (the “Project”).

The Issuer has agreed to issue the following obligations to refund the Note and finance the Project: (i) the Multifamily Housing Revenue Refunding Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Series 2017A Bonds”), in the original aggregate principal amount of $6,600,000, pursuant to the terms of resolutions adopted by the City Council of the Issuer on August 8, 2016 and July 24, 2017 (together, the “Bond Resolution”) and an Indenture of Trust, dated as of August 1, 2017 (the “Series 2017A Indenture”), between the Issuer and the Trustee; and (ii) the Multifamily Housing Revenue Refunding Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Series 2017B Note”), in the original aggregate principal amount of $900,000, pursuant to the terms of the Bond Resolution.

To refund the Note and finance the Project, the Issuer will (i) loan the proceeds derived from the sale of the Series 2017A Bonds to the Borrower pursuant to a Financing Agreement, dated as of August 1, 2017 (the “Series 2017A Financing Agreement”), between the Issuer, the Borrower, the Trustee, and Dougherty Mortgage LLC, a Delaware limited liability company, as the mortgage lender; and (ii) loan the proceeds derived from the sale of the Series 2017B Note to the Borrower pursuant to a Loan Agreement, dated as of August 1, 2017 (the “Series 2017B Loan Agreement”), between the Issuer and the Borrower.
For good and valuable consideration, the Borrower, the Trustee, the Bank, and the Issuer have determined to enter into this Regulatory Agreement in order to impose on the Project certain requirements of the Internal Revenue Code of 1986, as amended, and of the Act applicable to the Project. This Regulatory Agreement supersedes the Regulatory Agreement (Elmbrooke Apartments), dated August 18, 2016.

NOW, THEREFORE, the Borrower, the Trustee, the Bank, and the Issuer do hereby impose upon the Project the following covenants, restrictions, charges, and easements, which shall run with the land and shall be binding and a burden upon the Project and all portions thereof, and upon any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein, for the length of time that this Regulatory Agreement shall be in full force and effect:

Section 1. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof.

“Act” means, collectively, Minnesota Statutes, Chapters 462C and 474A, as amended.

“Adjusted Income” means the adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one Dwelling Unit), as calculated in the manner prescribed under Section 142(d)(2)(B) of the Code.

“Bank” means Bridgewater Bank, a Minnesota banking corporation, as the purchaser of the Series 2017B Note, or any successor or assign.

“Bond Counsel” means Kennedy & Graven, Chartered, or any other attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds and other obligations issued by states and political subdivisions thereof, duly admitted to practice law before the highest court of any state of the United States of America.

“Borrower” means CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company, and its lawful successors and assigns to the extent permitted by the Loan Agreements.

“Certificate of Continuing Program Compliance” means the document substantially in the form set forth in EXHIBIT C attached hereto.

“Code” means the Internal Revenue Code of 1986, as amended, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Combined Bonds.

“Combined Bonds” means, collectively, the Series 2017A Bonds and the Series 2017B Note.

“County” means Hennepin County in the State.

“Dwelling Units” means the units of multifamily residential rental housing comprising the Project.

“Event of Default” has the meaning specified in Section 13 hereof.
“Functionally Related and Subordinate” means and includes facilities for use by tenants, for example, laundry facilities, parking areas, and recreational facilities, provided that the same is of a character and size commensurate with the character and size of the Project.

“Housing Act” means the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq.

“Issuer” means the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota.

“Loan Agreements” means, collectively, the Series 2017A Financing Agreement and the Series 2017B Loan Agreement.

“Loans” means, collectively, the Loans provided by the Issuer to the Borrower pursuant to the Loan Agreements to provide financing for the Project.

“Low Income Tenants” means persons or families with Adjusted Income which does not exceed sixty percent (60%) of the Median Income for the Area adjusted for household size. In no event will the occupants of a unit be considered to be Low Income Tenants if all of such occupants are students (as defined in Section 152(f)(2) of the Code), unless the unit is occupied:

(i) by an individual who is (A) a student and receiving assistance under Title IV of the Social Security Act, (B) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under Part B or Part E of Title IV of the Social Security Act, or (C) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, State, or local laws; or

(ii) entirely by full-time students if such students are (A) single parents and their children and such parents are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual other than a parent of such children, or (B) married and entitled to file a joint return.

“Low Income Units” means the Dwelling Units in the Project designated for occupancy by Low Income Tenants pursuant to Section 4(a) hereof.

“Median Income for the Area” means the median yearly income for households of an applicable size in the applicable Primary Metropolitan Statistical Area as most recently determined by the Secretary of Housing and Urban Development under Section 8(f)(3) of the Housing Act, or, if such figures are no longer available, the method of calculation is substantially altered, or the programs under Section 8(f) are terminated, the Issuer shall provide the Borrower with another income determination that is reasonably similar to the method used by the Secretary prior to such termination.

“Project” means the approximately forty-six (46) existing affordable apartment units located at 5400 Smetana Drive, Minnetonka, Minnesota, which will be acquired and substantially rehabilitated with a portion of the proceeds of the Combined Bonds.
“Qualified Project Period” means the period beginning on the later of the date of issuance of the Combined Bonds and the first day on which ten percent (10%) of the Dwelling Units in the Project are occupied and ending on the latest of:

(i) the date which is fifteen (15) years after the date on which fifty percent (50%) of the Dwelling Units in the Project are occupied;

(ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding; or

(iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

“Regulatory Agreement” means this Regulatory Agreement, dated August ___, 2017, between the Issuer, the Borrower, and the Trustee, together with any amendments or supplements hereto.

“Section 474A Penalty” means the penalty described in Minnesota Statutes, Section 474A.047, subdivision 3, as applied to the Project.

“Series 2017A Bonds” means the Issuer’s Multifamily Housing Revenue Refunding Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A, issued in the original aggregate principal amount of $6,600,000.


“Series 2017A Indenture” means the Indenture of Trust, dated as of August 1, 2017, between the Issuer and the Trustee, relating to the Series 2017A Bonds.

“Series 2017B Loan Agreement” means the Loan Agreement, dated as of August 1, 2017, between the Issuer and the Borrower, relating to the Series 2017B Note.

“Series 2017B Note” means the Issuer’s Multifamily Housing Revenue Refunding Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B, issued in the original aggregate principal amount of $900,000.

“State” means the State of Minnesota.

“Treasury Regulations” means the regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time or pursuant to any successor statute to the Code.

“Trustee” means U.S. Bank National Association, a national banking association, or any successor or assign.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate, and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all of the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.
Section 2. Representations by the Borrower. The Borrower covenants, represents, and warrants that:

(a) The Borrower is a limited liability company organized and existing under the laws of the State. The Borrower is in good standing in the State and has duly authorized, by proper action, the execution and delivery of this Regulatory Agreement. The Borrower is duly authorized by the laws of the State to transact business in the State and to perform all of its duties hereunder.

(b) Neither the execution and delivery of this Regulatory Agreement or any other document in connection with the financing of the Project, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the terms and conditions hereof and thereof conflicts with or results in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Borrower is now a party or by which it is bound or constitutes a default (with due notice or the passage of time or both) under any of the foregoing or results in the creation or imposition of any prohibited lien, charge, or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any instrument or agreement to which the Borrower is now a party or by which it is bound.

(c) The execution, delivery, and performance of this Regulatory Agreement and all other documents to be delivered by the Borrower in connection with the consummation of the transactions contemplated hereby will not conflict with, or constitute a breach of or default under, any indenture, mortgage, deed of trust, lease, commitment, agreement, or other instrument or obligation to which the Borrower is a party or by which the Borrower or any of its property is bound, or under any law, rule, regulation, judgment, order, or decree to which the Borrower is subject or by which the Borrower or any of its property is bound.

(d) To the best of the Borrower’s knowledge, there is no action, suit, proceeding, inquiry, or investigation by or before any governmental agency, public board, or body pending or threatened against the Borrower (nor to the best of its knowledge is there any basis therefor), which:

(i) affects or seeks to enjoin, prohibit, or restrain the issuance, sale, or delivery of the Combined Bonds or the use of the proceeds of the Combined Bonds to finance the acquisition or construction, rehabilitation, and equipping of the Project or the execution and delivery of this Regulatory Agreement,

(ii) affects or questions the validity or enforceability of the Combined Bonds or this Regulatory Agreement,

(iii) questions the tax-exempt status of the Combined Bonds, or

(iv) questions the power or authority of the Borrower to own, acquire, substantially rehabilitate, or operate the Project or to execute, deliver, or perform the Borrower’s obligations under this Regulatory Agreement.

(e) The Project will be located wholly within the boundaries of the City of Minnetonka, Minnesota.

(f) On and after the date on which the Combined Bonds are executed and delivered to the Trustee, the Borrower will have title to the Project sufficient to carry out the purposes of this Regulatory Agreement, and such title shall be in and remain in the name of the Borrower except as otherwise permitted by this Regulatory Agreement.
(g) The Project consists and will consist of those facilities described herein, which generally are described as residential apartment buildings and related facilities situated on the real property described in EXHIBIT A attached hereto. The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exemption from federal income taxation of the interest on the Combined Bonds. The Borrower will utilize and operate the Project as a multifamily rental housing project during the term of the Combined Bonds in accordance with all applicable federal, State, and local laws, rules, and regulations applicable to the Project.

(h) The Borrower has obtained, or will obtain on or before the date required therefor, all necessary certificates, approvals, permits, and authorizations with respect to the operation of the Project.

(i) The Borrower does not and will not own any of the Combined Bonds. The Borrower acknowledges and understands that during any period of time when the Borrower owns the Combined Bonds, the interest on the Combined Bonds shall not be tax-exempt pursuant to Section 147(a) of the Code.

(j) The Borrower does not own any buildings or structures which are proximate to the Project other than those buildings or structures which comprise the Project, which are being financed pursuant to a common plan under which the Project is also being financed.

(k) The Borrower will incur rehabilitation expenditures (as defined in Section 147(d)(3) of the Code) with respect to the Project in an amount of at least fifteen percent (15%) of the acquisition cost of the Project financed with the proceeds of the Combined Bonds within two years from the later of (i) the date the Borrower acquires the Project; or (ii) the date of issuance of the Combined Bonds.

(l) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee on the date of issuance of the Combined Bonds are true and correct.

Section 3. Qualified Residential Rental Project. The Borrower shall acquire, rehabilitate, own, manage, and operate the Project as a "qualified residential rental project," as such phrase is utilized in Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. To that end, the Borrower hereby represents, warrants, and covenants as follows:

(a) that a qualified residential rental project will be acquired and substantially rehabilitated on the real property described in EXHIBIT A hereto, and the Borrower shall own, manage and operate the Project as a qualified residential rental project containing Dwelling Units and facilities Functionally Related and Subordinate to such Dwelling Units, in accordance with Section 142(a)(7) and Section 142(d) of the Code and all applicable Treasury Regulations promulgated thereunder, as the same may be amended from time to time;

(b) that all of the Dwelling Units of the Project will be similarly constructed and each Dwelling Unit in the Project will contain complete facilities for living, sleeping, eating, cooking, and sanitation for a single person or a family;

(c) that:

(i) none of the Dwelling Units in the Project shall at any time in the future be utilized on a transient basis;
(ii) that none of the Dwelling Units in the Project shall at any time in the future be leased or rented for a period of less than thirty (30) days; and

(iii) that neither the Project nor any portion thereof shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park or trailer court for use on a transient basis, or by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code);

(d) that, following the substantial rehabilitation thereof, once available for occupancy:

(i) each Dwelling Unit in the Project must be rented or available for rental on a continuous basis to members of the general public during the Qualified Project Period; and

(ii) the Borrower shall not give preference in renting Dwelling Units in the Project to any particular class or group of persons, other than Low Income Tenants as provided herein or as otherwise permitted by law;

(e) that the Dwelling Units in the Project shall be leased and rented to members of the general public in compliance with this Regulatory Agreement, except for any Dwelling Unit for a resident manager or maintenance personnel;

(f) that the Project consists of one or more discrete edifices and other man-made construction, each consisting of an independent foundation, outer walls and roof, all of which will be (i) owned by the same person for federal tax purposes, (ii) located on a common tract of land or two or more parcels of land which are contiguous except for being separated only by a road, street, stream, or a similar property and (iii) financed by the Loans or otherwise pursuant to a common plan of financing, and which consists entirely of:

(i) units which are similar in quality and type of construction and amenities; and

(ii) property Functionally Related and Subordinate in purpose and size to the Project, e.g., parking areas, laundries, swimming pools, tennis courts, and other recreational facilities (none of which may be unavailable to any person because such person is a Low Income Tenant) and other facilities which are reasonably required for the Project, e.g., heating and cooling equipment, trash disposal equipment, or units for residential managers or maintenance personnel;

(g) that no portion of the Project shall be used to provide any health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(h) that the Project shall not include a Dwelling Unit in a building where all Dwelling Units in such building are not also included in the Project;

(i) that the Borrower shall not convert the Project to condominium or cooperative ownership;

(j) that no Dwelling Unit in the Project shall be occupied by the Borrower (or any person related to the Borrower within the meaning of Section 147(a)(2) of the Code) at any time unless such person resides in a Dwelling Unit in a building or structure which contains at least five Dwelling Units and unless the resident of such Dwelling Unit is a resident manager or other necessary employee (e.g., maintenance and security personnel);
(k) that the Combined Bonds will not be “federally guaranteed,” as defined in Section 149(b) of the Code;

(l) that the Project shall at all times be used and operated as a “multifamily housing development,” as defined in the Act; and

(m) that the Borrower shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g., AFDC or SSI), physical disability, national origin, or marital status in the rental, lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

Section 4. Low Income Tenants. Pursuant to the requirements of the Act and Section 142(d) of the Code, the Borrower hereby represents, warrants, and covenants as follows:

(a) Upon completion of the substantial rehabilitation of the Project, at least forty percent (40%) of the units in the Project will be occupied or held for occupancy by Low Income Tenants. Throughout the Qualified Project Period, not less than forty percent (40%) of the completed units in the Project shall be continuously occupied or held for occupancy by Low Income Tenants. The Borrower will designate the Low Income Units and will make any revisions to such designations as necessary to comply with the applicable provisions of the Code and the Treasury Regulations. As set forth in subsection (e) below, the Borrower shall advise the Issuer and the Trustee by delivery of a certificate in writing of the status of the occupancy of the Project with respect to Low Income Tenants on an annual basis for the term of this Regulatory Agreement. An Annual Certification of a Residential Rental Project, Form 8703 (Rev. September 2013), or successor form, shall be prepared annually by the Borrower and filed with the United States Secretary of the Treasury pursuant to Section 142(d)(7) of the Code (currently with the Internal Revenue Service Center, Ogden, Utah 84201), with a copy to be filed by the Borrower with the Issuer and the Trustee. The percentage of units is measured by number of units, and not square footage of units.

For purposes of satisfying the occupancy requirements set forth above, a unit occupied by a person or family who at the commencement of their occupancy qualified as a Low Income Tenant shall be treated as occupied by a Low Income Tenant until such time as any recertification of such tenant’s income in accordance with subsections (c) and (h) below demonstrates that such tenant’s income exceeds one hundred forty percent (140%) of the income limitation applicable to Low Income Tenants.

A unit occupied by a Low Income Tenant shall be deemed, upon the termination of such tenant’s occupancy, to be continuously occupied by a Low Income Tenant until reoccupied, other than for a temporary period (not to exceed sixty (60) days), at which time the character of the unit shall be redetermined.

(b) The Borrower will notify the Issuer on an annual basis of any vacancy of any Low Income Units.

(c) The Borrower will obtain, complete, and maintain on file income certifications from each Low Income Tenant, obtained immediately prior to the initial occupancy of such tenant in the Project, substantially in the form of the income certification set forth in EXHIBIT B hereto or another form approved by Bond Counsel (the “Income Certification”) and will provide such additional information as may be required by Section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Treasury Regulations now or hereafter promulgated, proposed or made by the Department of the Treasury.
or the Internal Revenue Service applicable to the Combined Bonds. If requested by the Trustee or Issuer, a copy of such Income Certification shall be filed with the Trustee and the Issuer prior to occupancy by the tenant whenever possible but in no event more than one month after initial occupancy by the tenant. A copy of each re-certification of income shall be attached to each report filed with the Issuer and the Trustee pursuant to subsection (a) above. The Borrower shall make a good-faith effort to verify that the income reported by an applicant in an income certification is accurate by taking at least one of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) conduct a credit or similar search, (4) obtain an income verification form from the applicant’s current employer, (5) obtain an income verification form from the Social Security Administration if the applicant receives assistance from such agency, or (6) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. If the Low Income Tenant is a Section 8 Certificate Holder, the Borrower shall retain a copy of the certificate or voucher for verification of income in lieu of an income verification.

The Borrower understands that failure to file the Annual Certification of a Residential Rental Project, Form 8703 (Rev. September 2013), or successor form, as required by Section 142(d)(7) of the Code at the times stated therein may subject it to the penalty described in Section 6652(j) of the Code.

(d) The Borrower will maintain complete and accurate records pertaining to the Low Income Units and will permit, upon reasonable prior notice, any duly authorized representative of the Issuer, the Trustee, the Department of the Treasury, or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Low Income Units. This section is not intended to create any additional duties to inspect records.

(e) The Borrower will prepare and submit to the Issuer and the Trustee, on or before May 1 of each year during the Qualified Project Period, beginning the first May 1 following commencement of the Qualified Project Period, a Continuing Program Compliance Certificate in the form of EXHIBIT C attached hereto and executed by the Borrower, and, if requested by the Trustee or Issuer the Income Certifications described in subsection (c) above.

(f) The Borrower, upon becoming aware of an Event of Default, will notify the Issuer and the Trustee, in writing, of the occurrence of any such Event of Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. Such notice shall be given promptly and in no event longer than ten (10) Business Days after the Borrower receives notice or gains knowledge of the occurrence of any such event. The Borrower further agrees that it will give prompt written notice to the Issuer and the Trustee if insurance proceeds or condemnation awards are received with respect to the Project and are not used to repair or replace the Project, which notice shall state the amount of such proceeds or award.

(i) Except as provided in clause (ii) below, the Borrower shall accept as tenants on the same basis as all other prospective tenants Low Income Tenants who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the Housing Act or its successor and shall not apply selection criteria to Section 8 certificate/voucher holders that are more burdensome than the criteria applied to all other prospective tenants.

(ii) The Borrower agrees to modify the leases for units in the Project as necessary to allow the rental of Low Income Units to Section 8 certificate/voucher holders.

(g) Each lease pertaining to a Low Income Unit shall contain a provision to the effect that the Borrower has relied on the income certification and supporting information supplied by the Low Income
Tenant in determining qualification for occupancy of the Low Income Unit and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

(h) Throughout the Qualified Project Period, the Borrower shall re-certify each Low Income Tenant’s income on or before the anniversary of the Low Income Tenant’s tenancy, in any year in which a unit in the Project is occupied by a new resident whose income exceeds the applicable income limit, by obtaining a completed Income Certification. In the event the recertification demonstrates that any such tenant’s household income exceeds one hundred forty percent (140%) of the applicable income limit, the Borrower shall hold the next available unit or units of comparable or smaller size in the Project available for rental by new Low Income Tenants.

The Borrower in its sole discretion may notify, in writing, each tenant who is no longer a Low Income Tenant of such fact, and that the rent of such tenant(s) is subject to increase thirty (30) days after receipt of such notice. The Borrower shall be entitled to so increase any such tenant’s rent only if Borrower complies with any law applicable thereto and only after the Borrower has rented the next available unit or units in the Project on a one-for-one basis to a Low Income Tenant, or holds units vacant and available for occupancy by Low Income Tenants.

The Borrower agrees to inform all prospective Low Income Tenants of the requirements for recertification of income and of the provisions of the preceding paragraph.

Section 5. Restrictions Imposed by Minnesota Statutes, Chapter 474A. Because the Combined Bonds are issued by the Issuer as residential rental project bonds, as defined in Chapter 474A of the Act (“Chapter 474A”), and have received an allocation of tax-exempt bonding authority pursuant to applicable provisions of Chapter 474A, the restrictions imposed by Chapter 474A apply to the Project as described below.

(a) In addition to any other restrictions on rent or the income of tenants set forth in this Regulatory Agreement, during the Qualified Project Period, the Borrower shall restrict rents on at least twenty percent (20%) of the units in each Project (which shall consist of the same units as meet the requirements of Section 4) to an amount not exceeding the area fair market rents or exception fair market rents, as applicable, for existing housing as established by the federal Department of Housing and Urban Development from time to time, which units shall be occupied, or held for occupancy, by Low Income Tenants.

(b) The annual certifications required to be made by the Borrower hereunder shall conform to the requirements of Section 474A.047, subdivision 3, and the Issuer shall have the authority to impose upon the Borrower any and all penalties described in Section 474A.047, subdivision 3, from time to time, in addition to any remedies otherwise available under this Regulatory Agreement.

(c) The Borrower must satisfy the requirements of Section 474A.047, subdivision 1(a), during the Qualified Project Period. The Borrower must annually certify to the Issuer over the term of this Regulatory Agreement that the rental rates for the rent-restricted units are within the limitations under Section 474A.047, subdivision 1(a). The Issuer may request individual certification of the income of residents of the income-restricted units. The Commissioner of Minnesota Management & Budget may request from the Issuer a copy of the annual certification prepared by the Borrower. The Commissioner of Minnesota Management & Budget may require the Issuer to request individual certification of all residents of the income-restricted units.
Section 6. Covenants Run With the Land. The Borrower hereby declares its express intent that the covenants, restrictions, charges, and easements set forth herein shall be deemed covenants running with the land and shall, except as otherwise provided in this Regulatory Agreement, pass to and be binding upon the Borrower’s successors in title including any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein. Except as otherwise provided in this Regulatory Agreement, each and every contract, deed, or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges, and easements contained herein; provided, however, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.

Section 7. Indemnification. The Borrower hereby covenants and agrees that it shall indemnify and hold harmless the Issuer and its officers, agents, and employees (the “Indemnified Parties”) and the Trustee and the Bank and their respective officers, agents, members, directors, officials, and employees as provided in the Loan Agreements. All provisions of the Loan Agreements relating to indemnification are incorporated by reference herein and are considered provisions of this Regulatory Agreement, as if expressly set out herein.

Section 8. Consideration. The Issuer has issued the Combined Bonds in part to provide funds to make the Loans to finance the acquisition and substantial rehabilitation of the Project all for the purpose, among others, of inducing the Borrower to acquire, substantially rehabilitate, and operate the Project. In consideration of the issuance of the Combined Bonds by the Issuer, the Borrower has entered into this Regulatory Agreement and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth herein.

Section 9. Reliance. The Issuer and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Combined Bonds and in the exemption from federal income taxation of the interest on the Combined Bonds. In performing their duties and obligations hereunder, the Issuer, the Trustee, and the Bank may rely upon statements and certificates of the Borrower and the tenants and upon audits of the books and records of the Borrower pertaining to the Project. In addition, the Issuer, the Trustee, and the Bank may consult with counsel, and the written opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer, the Trustee, or the Bank hereunder in good faith and in conformity with such written opinion. A copy of any such opinion shall be furnished by the Issuer, the Trustee, or the Bank to the Borrower upon written request. In determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement, the Issuer, the Trustee, or the Bank shall not be required to conduct any investigation into or review of the operations or records of the Borrower and may rely solely on any notice or certificate delivered to the Issuer, the Trustee, or the Bank by the Borrower with respect to the occurrence or absence of a default unless it knows, or in the exercise of reasonable care should have known, that the notice or certificate is erroneous or misleading.

The Trustee shall be under no duty to make any investigation or inquiry as to any statements or other matters contained or referred to in any documents or any instruments delivered to it in accordance with this Regulatory Agreement, but it may receive and accept the same as conclusive evidence of the truth and accuracy of such statements.
Section 10. Sale or Transfer of the Project. The Borrower hereby covenants and agrees not to sell, transfer, or otherwise dispose of the Project, or any portion thereof, except as permitted under the terms of the Loan Agreements. Any attempted sale, transfer, or disposition which would cause or result in the violation of any of these covenants, provisions, reservations, restrictions, charges, or easements shall be null and void ab initio and of no force and effect. Nothing herein shall prohibit the transfer, sale or assignment of the interests in the Borrower or any direct or indirect ownership interests in the Borrower’s members.

Section 11. Term. This Regulatory Agreement and the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for a term and period equal to the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Combined Bonds and termination of the Loan Agreements and the Loans if the Qualified Project Period has not expired at the time of such retirement and expiration. Notwithstanding anything in this Regulatory Agreement to the contrary:

(a) The Project may be transferred pursuant to a foreclosure, exercise of power of sale, or deed in lieu of foreclosure, or comparable proceedings without the consent of or fee of any kind payable to the Issuer or compliance with the provisions of this Regulatory Agreement. In connection with any such foreclosure, deed in lieu of foreclosure, or other proceedings, this Regulatory Agreement shall be terminated upon completion of the foreclosure and expiration of the applicable redemption period, or recording of a deed in lieu of foreclosure.

(b) The requirements of this Regulatory Agreement shall terminate and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire or other casualty, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law, or an action of a federal agency after the date of this Regulatory Agreement, which prevents the Issuer and the Trustee from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Combined Bonds are retired or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof (provided that this shall be deemed met if the Combined Bonds have been previously retired); provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, or the delivery of a deed in lieu of foreclosure, or a similar event, the Borrower or any related person (within the meaning of Section 1.103-10(e) of the Treasury Regulations) obtains an ownership interest in the Project for federal income tax purposes.

(c) This Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the Issuer and the Borrower, upon receipt of an opinion of Bond Counsel to the effect that such termination will not cause interest on the Combined Bonds to become included in gross income for federal income tax purposes or cause interest on the Combined Bonds to become included in the net taxable income of individuals, trusts, and estates for State income tax purposes.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver, and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

Section 12. Burden and Benefit. The Issuer and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Borrower’s legal interest in the Project is rendered less valuable thereby. The Issuer and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touch
and concern the land by enhancing and increasing the enjoyment and use of the Project by Low Income Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the Combined Bonds were issued. Notwithstanding the foregoing, the Low Income Tenants are not intended to be third-party beneficiaries of this Regulatory Agreement and shall have no rights to enforce any provision herein.

Section 13. Enforcement. If the Borrower defaults in the performance or observance of any covenant, agreement, or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days after written notice thereof shall have been given by the Issuer, the Bank or the Trustee to the Borrower, then the Issuer, the Trustee, acting upon the direction of the holders of the Series 2017A Bonds pursuant to the Series 2017A Indenture, or the Bank acting pursuant to the Series 2017B Loan Agreement, may declare an “Event of Default” to have occurred hereunder and, at its option, may take any one or more of the following steps:

(a) by mandamus or other suit, action, or proceeding at law or in equity require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer, the Trustee, the Bank, or the holders of the Combined Bonds hereunder;

(b) have access to and inspect, examine, and make copies of all the books and records of the Borrower pertaining to the Project;

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, and agreements of the Borrower hereunder; or

(d) with the consent of the Trustee or the Bank, respectively, declare a default under either of the Loans, accelerate the indebtedness evidenced by either of the Loans, and proceed to redeem the Series 2017A Bonds or the Series 2017B Note in accordance with their terms.

Notwithstanding anything to the contrary contained herein, the Issuer, the Trustee, and the Bank hereby agree that any cure of any default made or tendered by one or more of the Borrower’s members shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

All fees, costs, and expenses of the Trustee, the Bank, or the Issuer incurred in taking any action pursuant to this Section 13 shall be the sole responsibility of the Borrower and shall be paid to the Trustee, the Bank, or the Issuer, as the case may be, on demand.

After the Combined Bonds have been discharged, the Issuer may act on its own behalf to declare an “Event of Default” to have occurred and to take any one or more of the steps specified hereinabove to the same extent and with the same effect as if taken by the Trustee or the Bank at the direction of the holders of the Combined Bonds.

Section 14. The Trustee, the Bank, and the Issuer. The Trustee is entering into this Regulatory Agreement in its capacity as the Trustee with respect to the Combined Bonds and the Series 2017A Indenture. The Bank is entering into this Regulatory Agreement in its capacity as the purchaser of the Series 2017B Note. The Issuer may, at all times, assume the Borrower’s compliance with this Regulatory Agreement unless otherwise notified in writing by the Trustee or the Bank (but neither the Trustee nor the Bank shall have any obligation to so notify the Issuer), or unless the Issuer has actual knowledge of noncompliance. The Trustee and the Bank can rely on the accuracy of any certificates, instruments, opinions, or reports delivered to them by the Borrower. It is possible that the
Combined Bonds will be discharged and the Series 2017A Indenture, the Series 2017A Financing Agreement, and the Series 2017B Loan Agreement will terminate prior to the expiration of the Qualified Project Period. Following the payment in full and the discharge of the Series 2017A Bonds and the termination of the Series 2017A Indenture and the Series 2017A Financing Agreement: (i) all obligations, rights, and duties of the Trustee under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Trustee will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Trustee will instead be delivered to the Issuer and all notices to be delivered by the Trustee will instead be delivered by the Issuer; and (iv) the Trustee shall no longer be parties to this Regulatory Agreement and shall be considered released from all obligations hereunder. Following the payment in full and the discharge of the Series 2017B Note and the termination of the Series 2017B Loan Agreement: (i) all obligations, rights, and duties of the Bank under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Bank will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Bank will instead be delivered by the Issuer; and (iv) the Bank shall no longer be parties to this Regulatory Agreement and shall be considered released from all obligations hereunder.

**Section 15. Amendment.** The provisions hereof shall not be amended or revised prior to the stated term hereof except by an instrument in writing duly executed by the Issuer and the Borrower, and consented to by the Trustee and the Bank as may be required by the Loan Agreements, and duly recorded. The Issuer’s, the Trustee’s, and the Bank’s consent to any such amendment or revision (whether or not the Combined Bonds shall then be outstanding) shall be given only upon receipt of an opinion of Bond Counsel addressed to the Issuer, the Trustee, and the Bank that such amendment or revision will not adversely affect the exemption from federal income taxation of interest on the Combined Bonds. None of the Issuer, the Trustee, or the Bank shall have a duty to prepare any such consent, amendment, or revision.

**Section 16. Right of Access to the Project and Records.** The Borrower agrees that during the term of this Regulatory Agreement, the Issuer, the Trustee, the Bank, and their duly authorized agents shall have the right at all reasonable times, and upon reasonable notice of at least twenty-four (24) hours, to enter upon the site of the Project during normal business hours to examine and inspect the Project and to have access to the books and records of the Borrower with respect to the Project, a copy of which shall be maintained at the site of the Project.

**Section 17. No Conflict with Other Documents.** The Borrower warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof.

**Section 18. Severability.** The invalidity of any clause, part, or provision of this Regulatory Agreement shall not affect the validity of the remaining portions thereof.

**Section 19. Notices.** All notices to be given pursuant to this Regulatory Agreement shall be in writing and shall be deemed given when sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods or when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

To the Issuer:

City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN  55345
Attn: City Manager
Section 20. Governing Law. This Regulatory Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as such laws may be preempted by any federal rules, regulations, and laws.

Section 21. Payment of Fees. Notwithstanding payment of the Loans, the termination of the Loan Agreements, and the defeasance or discharge of the Combined Bonds, throughout the term of the Qualified Project Period, the Borrower shall continue to pay:
Section 22. Limited Liability. All obligations of the Issuer hereunder shall be special, limited obligations of the Issuer, payable solely and only from proceeds of the Combined Bonds and amounts derived by the Issuer from the Loans and the Loan Agreements.

Section 23. Actions of Issuer. The Issuer shall be entitled to rely conclusively on an opinion of counsel in the exercise or non-exercise of any of the rights or powers vested in the Issuer by virtue of this Regulatory Agreement or any other agreement or instrument executed in connection with the issuance of the Combined Bonds; it being the intent of the parties hereto that the Issuer, and any and all present and future trustees, members, commissioners, officers, employees, attorneys, and agents of the Issuer shall not incur any financial or pecuniary liability for the exercise or non-exercise of any rights or powers vested in the Issuer by this Regulatory Agreement or any other instrument or agreement executed in connection with the issuance of the Combined Bonds; or for the performance or nonperformance of any obligation under, or the failure to assert any right, power, or privilege under this Regulatory Agreement, the Combined Bonds, the Series 2017A Indenture, the Series 2017A Financing Agreement, the Series 2017B Loan Agreement, or any other instrument or agreement executed in connection with the issuance of the Combined Bonds. If the Issuer’s consent or approval is required under this Regulatory Agreement, or any other agreement or instrument executed in connection with the issuance of the Combined Bonds, the Issuer shall be entitled to rely conclusively on an opinion of counsel and shall not be responsible for any loss or damage resulting from any action or inaction in reliance upon such opinion.

Section 24. Counterparts. This Regulatory Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Regulatory Agreement, and, in making proof of this Regulatory Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 25. Recording and Filing. The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto to be recorded and filed in the real property records of the County, the State, and in such other places as the Issuer may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

Section 26. Fannie Mae Rider to Regulatory Agreement. The Fannie Mae Rider to Regulatory Agreement (the “Fannie Mae Rider”) attached hereto is hereby made a part of this Regulatory Agreement. In the event of a conflict between the provisions of the Fannie Mae Rider and the provisions of this Regulatory Agreement, the provisions of the Fannie Mae Rider shall control.

Section 27. Prior Regulatory Agreement Terminated. The Regulatory Agreement (Elmbrooke Apartments), dated August 18, 2016, is terminated.
IN WITNESS WHEREOF, the Issuer, the Borrower, and the Trustee have caused this Regulatory Agreement to be signed by their respective duly authorized representatives as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By

Its Mayor

By

Its City Manager

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) SS.

The foregoing instrument was acknowledged before me this ____ day of August, 2017, by Terry Schneider, the Mayor of the City of Minnetonka, Minnesota, a municipal corporation under the law of the State of Minnesota, on behalf of the Issuer.

____________________________________________
Notary Public

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) SS.

The foregoing instrument was acknowledged before me this ____ day of August, 2017, by Geralyn Barone, the City Manager of the City of Minnetonka, Minnesota, a municipal corporation under the law of the State of Minnesota, on behalf of the Issuer.

____________________________________________
Notary Public

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
Execution page of the Borrower to the Regulatory Agreement, dated the date and year first written above.

CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company

By: CHC Minnetonka Affordable Housing MM LLC
Its: Managing Member

By: ______________________________
Name: Richard Martin
Title: Administrative Manager

STATE OF MINNESOTA )
 ) ss
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ____ day of August, 2017, by Richard Martin, the Administrative Manager of CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, the managing member of CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company, on behalf of the Borrower.

_____________________________________
Notary Public

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
Execution page of the Trustee to the Regulatory Agreement, dated the date and year first written above.

U.S. BANK NATIONAL ASSOCIATION

By

Its Vice President

STATE OF MINNESOTA)
COUNTY OF HENNEPIN)

) ss.

The foregoing instrument was acknowledged before me this ____ day of August 2017, by Dan Sheff, the Vice President of U.S. Bank National Association, a national banking association, on behalf of the Trustee.

Notary Public

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
Execution page of the Bank to the Regulatory Agreement, dated the date and year first written above.

BRIDGEWATER BANK

By ________________________________
Nicholas Place
Its Senior Vice President and Chief Lending Officer

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ___ day of August, 2017, by Nicholas Place, the Senior Vice President and Chief Lending Officer of Bridgewater Bank, a Minnesota banking corporation, on behalf of the Bank.

____________________________________
Notary Public

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Tract B, Registered Land Survey No. 1530, Files of the Registrar of Title, County of Hennepin, State of Minnesota

Torrens Property
Torrens Certificate No. 1051689
EXHIBIT B

FORM OF INCOME CERTIFICATION

<table>
<thead>
<tr>
<th>TENANT INCOME CERTIFICATION</th>
<th>Effective Date: _________________________</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Initial Certification</td>
<td>Move-in Date: _____________________________</td>
</tr>
<tr>
<td>□ Recertification</td>
<td>(MM/DD/YY): ______________________________</td>
</tr>
<tr>
<td>□ Other</td>
<td></td>
</tr>
</tbody>
</table>

PART I. DEVELOPMENT DATA

<table>
<thead>
<tr>
<th>Property Name: Elmbrooke Apartments</th>
<th>County:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address: 5400 Smetana Drive, Minnetonka, Minnesota</td>
<td>BIN #:</td>
</tr>
<tr>
<td>Unit Number: ________________________</td>
<td># Bedrooms:</td>
</tr>
</tbody>
</table>

PART II. HOUSEHOLD COMPOSITION

<table>
<thead>
<tr>
<th>HH Br #</th>
<th>Last Name</th>
<th>First Name &amp; Middle Initial</th>
<th>Relationship to Head of Household</th>
<th>Date of Birth (MM/DD/YY)</th>
<th>F/T Student (Y or N)</th>
<th>Social Security or Alien Reg. No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>HEAD</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

<table>
<thead>
<tr>
<th>HH Br #</th>
<th>Employment or Wages</th>
<th>Soc. Security / Pensions</th>
<th>Public Assistance</th>
<th>Other Income</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(A)</td>
<td>(B)</td>
<td>(C)</td>
<td>(D)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

Add totals from (A) through (D) above TOTAL INCOME (E): $

PART IV. INCOME FROM ASSETS

<table>
<thead>
<tr>
<th>HH Mbr#</th>
<th>Type of Asset</th>
<th>Cash Value of Asset</th>
<th>Annual Income from Asset</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(F)</td>
<td>(G)</td>
<td>(H)</td>
</tr>
</tbody>
</table>

501610v2 JAE MN140-185
### TOTALS:

Enter Column (H) Total

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Passbook Rate

if over $5,000

<table>
<thead>
<tr>
<th>$</th>
<th>x 2.00 %</th>
<th>(J) Imputed Income</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Enter the greater of the total column I, or J: imputed income

TOTAL INCOME FROM ASSETS (K)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(L) Total Annual Household Income from all sources [Add (E) + (K)]

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full-time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

<table>
<thead>
<tr>
<th>Signature</th>
<th>(Date)</th>
<th>Signature</th>
<th>(Date)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### PART V. DETERMINATION OF INCOME ELIGIBILITY

<table>
<thead>
<tr>
<th>TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: $</th>
<th>Household Meets Income Restriction at:</th>
</tr>
</thead>
<tbody>
<tr>
<td>From Item (L) on page 1</td>
<td>60%</td>
</tr>
</tbody>
</table>

Current Income Limit per Family Size: $__________

Household Income at Move-in $__________

RECERTIFICATION ONLY:

<table>
<thead>
<tr>
<th>Current Income Limit x 140% $</th>
</tr>
</thead>
</table>

Household income exceeds 140% at recertification:

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Household Size at Move-in: __________
### PART VI. RENT

<table>
<thead>
<tr>
<th>Tenant Paid Rent</th>
<th>$</th>
<th>Rent Assistance:</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utility Allowance</td>
<td>$</td>
<td>Other non-optional charges:</td>
<td>$</td>
</tr>
</tbody>
</table>

**GROSS RENT FOR UNIT:**

Tenant paid rent plus Utility Allowance and other non-optional charges

Unit Meets Rent Restriction at:

- [ ] 60%
- [ ] 50%
- [ ] 40%
- [ ] 30%
- [ ] __% 

Maximum Rent Limit for this unit: $ 

### PART VII. STUDENT STATUS

<table>
<thead>
<tr>
<th>ARE ALL OCCUPANTS FULL-TIME STUDENTS?</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ] yes</td>
</tr>
</tbody>
</table>

If yes, enter student explanation**

(attach documentation)

Student explanation:

1. TANF assistance
2. Job training program
3. Single parent/dependent child
4. Married/joint return*

*Exception for married/joint return is the only exception available for units necessary to qualify tax-exempt bonds.

### PART VIII. PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household’s unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification.

<table>
<thead>
<tr>
<th>Program</th>
<th>Income Status</th>
<th>Income Status</th>
<th>Income Status</th>
<th>Income Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Tax Credit</td>
<td>[ ] ≤ 50% AMGI</td>
<td>[ ] 50% AMGI</td>
<td>[ ] ≤ 50% AMGI</td>
<td>[ ] __________</td>
</tr>
<tr>
<td>b. HOME</td>
<td>[ ] ≤ 60% AMGI</td>
<td>[ ] 60% AMGI</td>
<td>[ ] ≤ 80% AMGI</td>
<td>[ ] __________</td>
</tr>
<tr>
<td>c. Tax Exempt</td>
<td>[ ] ≤ 80% AMGI</td>
<td>[ ] 80% AMGI</td>
<td>[ ] ≤ 0I **</td>
<td>[ ] ≤ 0I **</td>
</tr>
<tr>
<td>d. AHDP</td>
<td>[ ] ≤ 0I **</td>
<td>[ ] 0I **</td>
<td>[ ] __________</td>
<td>[ ] __________</td>
</tr>
<tr>
<td>e. (Name of Program)</td>
<td>[ ] __________</td>
<td>[ ] __________</td>
<td>[ ] __________</td>
<td>[ ] __________</td>
</tr>
</tbody>
</table>

See Part V above.

** Upon recertification, household was determined over income (OI) according to eligibility requirements of the program(s) marked above.

### SIGNATURE OF OWNER / REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Regulatory Agreement (if applicable), to live in a unit in this Project.
INSTRUCTIONS FOR COMPLETING TENANT INCOME CERTIFICATION

This form is to be completed by the owner or an authorized representative.

Part I – Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

Move-in Date Enter the date the tenant has or will take occupancy of the unit.

Effective Date Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.

Property Name Enter the name of the development.

County Enter the county (or equivalent) in which the building is located.

BIN # Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).

Address Enter the unit number.

Unit Number Enter the unit number.

# Bedrooms Enter the number of bedrooms in the unit.

Part II – Household Composition

List all occupants of the unit. State each household member’s relationship to the head of the household by using one of the following coded definitions:

H Head of household S Spouse
A Adult co-tenant O Other family member
C Child F Foster child
L Live-in caretaker N None of the above

Enter the date of birth, student status, and Social Security number or alien registration number for each occupant.

If there are more than seven occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.
Part III – Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the 12 months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

Column (A) Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.

Column (B) Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.

Column (C) Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.)

Column (D) Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.

Row (E) Add the totals from columns (A) through (D) above. Enter this amount.

Part IV – Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the 12 months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

Column (F) List the type of asset (i.e., checking account, savings account, etc.)

Column (G) Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).

Column (H) Enter the cash value of the respective asset.

Column (I) Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).

TOTALS Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than $5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

Row (K) Enter the Greater of the total in Column (I) or (J)
**Row (L) Total Annual Household Income from All Sources**  Add (E) and (K) and enter the total

**HOUSEHOLD CERTIFICATION AND SIGNATURES**

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than five days prior to the effective date of the certification.

**Part V – Determination of Income Eligibility**

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Annual Household Income from all sources</td>
<td>Enter the number from item (L).</td>
</tr>
<tr>
<td>Current Income Limit per Family Size</td>
<td>Enter the Current Move-in Income Limit for the household size.</td>
</tr>
<tr>
<td>Household income at move-in</td>
<td>For recertifications only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.</td>
</tr>
<tr>
<td>Household size at move-in</td>
<td></td>
</tr>
<tr>
<td>Household Meets Income Restriction</td>
<td>Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.</td>
</tr>
<tr>
<td>Current Income Limit x 140%</td>
<td>For recertification only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.</td>
</tr>
</tbody>
</table>

**Part VI – Rent**

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenant Paid Rent</td>
<td>Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).</td>
</tr>
<tr>
<td>Rent Assistance</td>
<td>Enter the amount of rent assistance, if any.</td>
</tr>
<tr>
<td>Utility Allowance</td>
<td>Enter the utility allowance. If the owner pays all utilities, enter zero.</td>
</tr>
<tr>
<td>Other non-optional</td>
<td>Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.</td>
</tr>
<tr>
<td>charges</td>
<td></td>
</tr>
<tr>
<td>Gross Rent for Unit</td>
<td>Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.</td>
</tr>
<tr>
<td>Maximum Rent</td>
<td>Enter the maximum allowable gross rent for the unit.</td>
</tr>
</tbody>
</table>
Limit for this unit

Unit Meets Rent Requirement Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

Restriction at __%__

Part VII – Student Status

If all household members are full-time* students, check “yes.” If at least one household member is not a full-time student, check “no.”

If “yes” is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

* Full time is determined by the school the student attends.

Part VIII – Program Type

Mark the program(s) for which this unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit See Part V above.

HOME If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household’s designation.

Tax Exempt If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household’s designation.

AHDP If the property participates in the Affordable Housing Disposition Program (AHDP), and this household’s unit will count towards the set-aside requirements, mark the appropriate box indicating the household’s designation.

Other If the property participates in any other affordable housing program, complete the information as appropriate.

SIGNATURE OF OWNER / REPRESENTATIVE

It is the responsibility of the owner or the owner’s representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well-trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.
EXHIBIT C
CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

__________, 20__

TO: City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN  55345
Attn:  City Manager

and (prior to the discharge of the Series 2017A Bonds (hereinafter defined))

U.S. Bank National Association
60 Livingston Avenue
EP-MN-WS3C
St. Paul, MN 55107-2292
Attn: Corporate Trust Services

and (prior to the discharge of the Series 2017B Note (hereinafter defined))

Bridgewater Bank
3800 American Boulevard, Suite 100
Bloomington, MN  55431
Attn: Nicholas Place

Re: Multifamily Housing Revenue Refunding Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Series 2017A Bonds”) and Multifamily Housing Revenue Refunding Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Series 2017B Note,” and together with the Series 2017A Bonds, the “Combined Bonds”)

The undersigned, an authorized representative for CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Owner”), hereby certifies, represents, and warrants that:

1. The Owner owns the multifamily housing project located at 5400 Smetana Drive, Minnetonka, Minnesota commonly known as the Elmbrooke Apartments (the “Project”).

2. The undersigned and the Owner have read and are thoroughly familiar with the provisions of (1) the Regulatory Agreement, dated August ___, 2017 (the “Regulatory Agreement”), between the Owner, the City of Minnetonka, Minnesota (the “Issuer”), U.S. Bank National Association, as trustee with respect to the Series 2017A Bonds (the “Trustee”), and Bridgewater Bank, as purchaser of the Series 2017B Note; and (2) the Financing Agreement, dated as of August 1, 2017, between the Owner, the Issuer, the Trustee, and Dougherty Mortgage LLC with respect to the Series 2017A Bonds, and the Loan Agreement, dated as of August 1, 2017, between the Owner and the Issuer with respect to the Series 2017B Note (together, the “Loan Agreements”). The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Combined Bonds.
3. A review of the activities of the Owner and of the Owner’s performance under the Regulatory Agreement and the Loan Agreements during the year ending ____ has been made under the supervision of the undersigned.

4. The Project’s Qualified Project Period commenced on _________, ____ (the date on which ten percent (10%) of the residential units in the Project were occupied), and will end on the latest of:

   (i) _________, ____ (the date which is fifteen (15) years after the date on which fifty percent (50%) of the residential units in the Project were occupied);

   (ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or

   (iii) the date on which any assistance provided with respect to the Project under section 8 of the United States Housing Act of 1937 terminates.

5. As of the date of this Certificate, the following percentages of completed residential units in the Project are (i) occupied by Low Income Tenants or (ii) currently vacant and being held available for occupancy by Low Income Tenants and have been so held continuously since the date a Low Income Tenant vacated such unit, as indicated:

<table>
<thead>
<tr>
<th>Occupied by Low Income Tenants</th>
<th>_____ % Units</th>
<th>Nos.____</th>
</tr>
</thead>
</table>

   | Continuously held vacant for occupancy by Low Income Tenants since last occupied by Low Income Tenants | _____ % Units | Nos.____ |

6. At no time since the date of filing of the last Continuing Program Compliance Certificate (or since the issuance of the Combined Bonds, if this is the first such certificate) has less than nineteen (19) units (representing forty percent (40%) of the completed units in the Project) been occupied by or were last occupied by Low Income Tenants.

7. As of the date of this Certificate, at least _____% of the units in the Project are (i) occupied by persons or families with Adjusted Income which does not exceed _____% of the Median Income for the Area adjusted for household size; or (ii) held vacant for occupancy for persons or families with Adjusted Income which does not exceed _____% of the Median Income for the Area adjusted for household size. Project Units occupied or held vacant for persons or families with Adjusted Income which does not exceed _____% of the Median Income for the Area adjusted for household size include Unit numbers _______________________________.

8. At all times since the date of filing of the last Continuing Program Compliance Certificate the rent on at least twenty percent (20%) of the units in the Project has been equal to or less than applicable area fair market rents or exception fair market rents for existing housing as established by the federal Department of Housing and Urban Development from time to time.

9. To the knowledge of the undersigned, after due inquiry, all units were rented or available for rental on a continuous basis during the immediately preceding year to members of the general public, and the Owner is not now and has not been in default under the terms of the Regulatory Agreement and the Loan Agreements and, to the knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Combined Bonds.
10. **[CHOOSE ONE]**: None/One or more] of the Tenants in the Project are currently receiving assistance under Section 8 of the United States Housing Act of 1937.

11. Unless otherwise expressly provided herein or unless the context requires otherwise, the capitalized terms used but not defined herein shall have the meaning assigned to such terms in the Regulatory Agreement.

12. The Owner has not transferred any interest in the Project since the date of submission of the Continuing Program Compliance Certificate last submitted to the Trustee and the Issuer with respect to the Project. *(If the Owner has transferred any interest in the Project, such transfer should be detailed here.)*

Signature page of the Borrower to the Certificate of Continuing Program Compliance.

Dated: _____________, ________.

**CHC MINNETONKA AFFORDABLE HOUSING LLC**, a Minnesota limited liability company

By: CHC Minnetonka Affordable Housing MM LLC
Its: Managing Member

By: __________________________
Name: ________________________
Title: _________________________
FANNIE MAE RIDER
TO REGULATORY AGREEMENT

THIS FANNIE MAE RIDER TO REGULATORY AGREEMENT ("Rider") is attached to and forms a part of the Regulatory Agreement (Elmbrooke Apartments), dated August ___, 2017 ("Regulatory Agreement"), between CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company ("Borrower"), U.S. BANK NATIONAL ASSOCIATION, a national banking association ("Trustee"), BRIDGEWATER BANK, a Minnesota banking corporation ("Bank"), and the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota ("Issuer").

1. **Definitions.** All capitalized terms used in this Rider have the meanings given to those terms in the Regulatory Agreement, the Series 2017A Indenture, or the Series 2017A Financing Agreement, as applicable.

2. **Applicability.** This Rider shall amend and supplement the Regulatory Agreement. In the event any provision of this Rider conflicts with the Regulatory Agreement, this Rider shall supersede the conflicting provision of the Regulatory Agreement. This Rider shall apply in spite of the fact that the covenants, reservations and restrictions of the Regulatory Agreement run with the land and may be deemed applicable to any successor in interest to the Borrower.

3. **Obligations not Secured by the Mortgaged Property.** The Regulatory Agreement shall not constitute a mortgage, equitable mortgage, deed of trust, deed to secure debt or other lien or security interest in the real property described in the Regulatory Agreement ("Mortgaged Property"). None of the obligations of the Borrower or any subsequent owner of the Mortgaged Property under the Regulatory Agreement shall be secured by a lien on, or security interest in, the Mortgaged Property. All such obligations are expressly intended to be and shall remain unsecured obligations. The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

4. **Subordination.** The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Mortgage Loan Documents. Upon a conveyance or other transfer of title to the Mortgaged Property by foreclosure, deed in lieu of foreclosure or comparable conversion of the Mortgage Loan, the Person who acquires title to the Mortgaged Property pursuant to such foreclosure, deed in lieu of foreclosure or comparable conversion of the Mortgage Loan (unless such Person is the Borrower or a Person related to the Borrower within the meaning of Section 1.103-10(e) of the Regulations, in which event the Regulatory Agreement shall remain in full force and effect in its entirety) shall acquire such title free and clear of the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider and, from and after the date on which such Person acquires title to the Mortgaged Property, the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider shall automatically terminate and be of no force and effect; provided that Sections 3, 4, and 5 and this Rider shall also terminate and be of no force or effect under the circumstances set forth in Section 11 of the Regulatory Agreement.

5. **Obligations Personal.** The Issuer agrees that no owner of the Mortgaged Property (including Fannie Mae) subsequent to the Borrower will be liable for, assume or take title to the Mortgaged Property subject to:
(a) any failure of any prior owner of the Mortgaged Property to perform or observe any representation or warranty, affirmative or negative covenant or other agreement or undertaking under the Regulatory Agreement; and

(b) the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by any prior owner of the Mortgaged Property under the Regulatory Agreement.

The Borrower and each subsequent owner of the Mortgaged Property shall be responsible under the Regulatory Agreement for its own acts and omissions occurring during the period of its ownership of the Mortgaged Property. All such liability and obligations shall be and remain personal to such person even after such person ceases to be the owner of the Mortgaged Property.

6. **Sale or Transfer.**

   (a) **Restrictions Not Applicable to Certain Transfers.** All provisions of the Regulatory Agreement regarding the sale or transfer of the Mortgaged Property or of any interest in the Borrower, including any requirement, limitation or condition precedent for any of (i) the consent of the Issuer or the Trustee to such transfer, (ii) an agreement by any transferee to abide by the requirements and restrictions of the Regulatory Agreement, (iii) transferee criteria or other similar requirements, (iv) an opinion of legal counsel and (v) the payment of any assumption fee, transfer fee, penalty or other charges, shall not apply to any of the following:

   (1) any transfer of title to the Mortgaged Property to Fannie Mae or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Mortgaged Property or to any subsequent transfer by Fannie Mae (or a third party) following such foreclosure, deed in lieu of foreclosure or comparable conversion;

   (2) any execution and delivery of a mortgage, deed of trust, deed to secure debt or other lien by the Borrower to secure any additional indebtedness of the Borrower which is originated by a lender for sale to Fannie Mae or guaranteed or otherwise credit enhanced by Fannie Mae; and

   (3) provided that no Series 2017A Bonds are then Outstanding or all Series 2017A Bonds are to be simultaneously fully paid, redeemed or defeased, any execution and delivery of a mortgage, deed of trust, deed to secure debt or other lien by the Borrower to secure any indebtedness incurred by the Borrower which effectively refinances the Mortgage Loan.

   (b) **Fannie Mae Rights to Consent Not Impaired.** Nothing contained in the Regulatory Agreement shall affect any provision of the Mortgage, the ___________________ (the “Credit Facility Agreement”) or any Mortgage Loan Document which requires the Borrower to obtain the consent of Fannie Mae as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Mortgaged Property or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Security Instrument.

   (c) **Conclusive Evidence.** Any written consent to a sale or transfer obtained from the Issuer shall constitute conclusive evidence that the sale or transfer is not a violation of the transfer provisions of the Regulatory Agreement.

7. **Damage, Destruction or Condemnation of the Mortgaged Property.** In the event that the Mortgaged Property is damaged or destroyed or title to the property, or any part thereof, is taken
through the exercise or the threat of the exercise of the power of eminent domain, the Borrower shall comply with all applicable requirements of the Mortgage and the other Mortgage Loan Documents.

8. **Regulatory Agreement Default.** Notwithstanding anything contained in the Regulatory Agreement to the contrary:

   (a) The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

   (b) The occurrence of an event of default under the Regulatory Agreement shall not be or be deemed to be a default under the Mortgage Loan Documents, except as may be otherwise specified in the Mortgage Loan Documents.

   (c) Upon any default by the Borrower under the Regulatory Agreement, the ___________________________ (the “Assignment”) shall govern the remedies and other actions which the Issuer may take on account of such default.

9. **Amendments.** Unless the Assigned Rights (as that term is defined in the Assignment) are held solely by the Trustee pursuant to Section 2.6(2) of the Assignment, the Issuer shall not consent to any amendment, supplement to, or restatement of the Regulatory Agreement without the prior written consent of Fannie Mae.

10. **Termination.** The Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee, Fannie Mae, and the Borrower upon receipt of an opinion of a nationally recognized bond counsel acceptable to the Trustee that such termination will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income purposes. So long as the Bonds have been redeemed or are redeemed within a reasonable period thereafter, the Regulatory Agreement shall terminate and be of no further force or effect from and after the date of any transfer of title to the Mortgaged Property by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Mortgaged Property; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained in the Regulatory Agreement shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure or the delivery of a deed in lieu of foreclosure or a similar event, the Borrower or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Mortgaged Property for federal income tax purposes.

11. **Third-Party Beneficiary.** The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of Fannie Mae and are entered into for the benefit of various parties, including Fannie Mae. Fannie Mae shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Issuer and/or the Trustee, or to cause the Issuer or the Trustee to enforce, the terms of the Regulatory Agreement. In addition, the Borrower and the Issuer intend that Fannie Mae be a third-party beneficiary of the Regulatory Agreement.

12. **Copies of Notices under the Regulatory Agreement.** Copies of all notices under the Regulatory Agreement shall be sent to the Dougherty Mortgage LLC (the “Loan Servicer”) at the address set forth below or to such other address as the Loan Servicer may from time to time designate:

   [ADDRESS]
13. **Notices.** Any notice to be given to Fannie Mae shall be sent to Fannie Mae at the address set forth below or to such other address as Fannie Mae may from time to time designate:

    Fannie Mae
    3900 Wisconsin Avenue, NW
    Drawer AM
    Washington, DC 20016-2892
    Attention: Director, Multifamily Asset Management
    Telephone: (301) 204-8008
    Facsimile: (301) 280-2065

    **RE: [SPECIFY TRANSACTION NAME, PROPERTY NAME AND LOAN SERVICER]**

    with a copy to:

    Fannie Mae
    3900 Wisconsin Avenue, NW
    Drawer AM
    Washington, DC 20016-2892
    Attention: Vice President, Multifamily Operations
    Telephone: (301) 204-8422
    Facsimile: (202) 752-8369

    **RE: [SPECIFY TRANSACTION NAME, PROPERTY NAME AND LOAN SERVICER]**

    BORROWER’S INITIALS: _______
    ISSUER’S INITIALS: _______
    TRUSTEE’S INITIALS: _______
REGULATORY AGREEMENT
(GOLDEN VALLEY TOWNHOMES APARTMENTS)

between

CITY OF MINNETONKA, MINNESOTA,
as Issuer

CHC MINNETONKA AFFORDABLE HOUSING LLC,
as Borrower

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

and

BRIDGEWATER BANK,
as Bank

Dated August ___, 2017

Relating to:

$6,500,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Refunding Bonds
(Elmbrooke and Golden Valley Townhomes Project)
Series 2017A

$900,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Refunding Note
(Elmbrooke and Golden Valley Townhomes Project)
Series 2017B

This Instrument Drafted by:
Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN  55402
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Definitions</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>Representations by the Borrower</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>Qualified Residential Rental Project</td>
<td>6</td>
</tr>
<tr>
<td>4</td>
<td>Low Income Tenants</td>
<td>8</td>
</tr>
<tr>
<td>5</td>
<td>Restrictions Imposed by Minnesota Statutes, Chapter 474A</td>
<td>10</td>
</tr>
<tr>
<td>6</td>
<td>Covenants Run With the Land</td>
<td>11</td>
</tr>
<tr>
<td>7</td>
<td>Indemnification</td>
<td>11</td>
</tr>
<tr>
<td>8</td>
<td>Consideration</td>
<td>11</td>
</tr>
<tr>
<td>9</td>
<td>Reliance</td>
<td>11</td>
</tr>
<tr>
<td>10</td>
<td>Sale or Transfer of the Projects</td>
<td>12</td>
</tr>
<tr>
<td>11</td>
<td>Term</td>
<td>12</td>
</tr>
<tr>
<td>12</td>
<td>Burden and Benefit</td>
<td>13</td>
</tr>
<tr>
<td>13</td>
<td>Enforcement</td>
<td>13</td>
</tr>
<tr>
<td>14</td>
<td>The Trustee, the Bank, and the Issuer</td>
<td>14</td>
</tr>
<tr>
<td>15</td>
<td>Amendment</td>
<td>14</td>
</tr>
<tr>
<td>16</td>
<td>Right of Access to the Projects and Records</td>
<td>14</td>
</tr>
<tr>
<td>17</td>
<td>No Conflict with Other Documents</td>
<td>14</td>
</tr>
<tr>
<td>18</td>
<td>Severability</td>
<td>14</td>
</tr>
<tr>
<td>19</td>
<td>Notices</td>
<td>15</td>
</tr>
<tr>
<td>20</td>
<td>Governing Law</td>
<td>16</td>
</tr>
<tr>
<td>21</td>
<td>Payment of Fees</td>
<td>16</td>
</tr>
<tr>
<td>22</td>
<td>Limited Liability</td>
<td>16</td>
</tr>
<tr>
<td>23</td>
<td>Actions of Issuer</td>
<td>16</td>
</tr>
<tr>
<td>24</td>
<td>Counterparts</td>
<td>16</td>
</tr>
<tr>
<td>25</td>
<td>Recording and Filing</td>
<td>16</td>
</tr>
<tr>
<td>26</td>
<td>Fannie Mae Rider to Regulatory Agreement</td>
<td>16</td>
</tr>
<tr>
<td>27</td>
<td>Prior Regulatory Agreement Terminated</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>SIGNATURES</td>
<td>S-1</td>
</tr>
<tr>
<td></td>
<td>EXHIBIT A — LEGAL DESCRIPTION OF PROPERTY</td>
<td>A-1</td>
</tr>
<tr>
<td></td>
<td>EXHIBIT B — FORM OF INCOME CERTIFICATION</td>
<td>B-1</td>
</tr>
<tr>
<td></td>
<td>EXHIBIT C — CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE</td>
<td>C-1</td>
</tr>
<tr>
<td></td>
<td>FANNIE MAE RIDER TO REGULATORY AGREEMENT</td>
<td>Rider-1</td>
</tr>
</tbody>
</table>
REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT, dated August ___, 2017 (the “Regulatory Agreement”), is between the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Issuer”), CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (the “Borrower”) and the owner of the property described herein, U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “Trustee”), as trustee for the Series 2017A Bonds (hereinafter defined) and BRIDGEWATER BANK, a Minnesota banking corporation (the “Bank”), as the purchaser of the Series 2017B Note (hereinafter defined).

RECITALS

The Issuer is authorized to issue bonds to finance and refinance multifamily housing developments in accordance with the terms of Minnesota Statutes, Chapters 462C and 474A, as amended (collectively, the “Act”).

On August 18, 2016, the Issuer issued its Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Note”), in the original aggregate principal amount of $11,500,000, pursuant to the Act, Minnesota Statutes, Sections 471.59 and 471.656, as amended, and a resolution adopted by the City Council of the Issuer on August 8, 2016. In conjunction with the issuance of the Note, the Issuer, the Borrower and the Trustee entered into a Regulatory Agreement (Elmbrooke Apartments), dated August 18, 2016.

The Issuer sold the Note to Bridgewater Bank, and the Issuer loaned the proceeds thereof to CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), the managing member of which is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company (the “Managing Member”), pursuant to a Loan Agreement, dated as of August 1, 2016, between the Issuer and the Borrower. The Note was issued to, among other things, finance the acquisition and substantial rehabilitation of six (6) existing affordable townhome units at 2100 Douglas Drive North and two (2) existing affordable townhome units at 3354 Lilac Drive North, Golden Valley, Minnesota (the “Projects”).

The Issuer has agreed to issue the following obligations to refund the Note and finance the Project: (i) the Multifamily Housing Revenue Refunding Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Series 2017A Bonds”), in the original aggregate principal amount of $6,500,000, pursuant to the terms of resolutions adopted by the City Council of the Issuer on August 8, 2016 and July 24, 2017 (together, the “Bond Resolution”) and an Indenture of Trust, dated as of August 1, 2017 (the “Series 2017A Indenture”), between the Issuer and the Trustee; and (ii) the Multifamily Housing Revenue Refunding Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Series 2017B Note”), in the original aggregate principal amount of $900,000, pursuant to the terms of the Bond Resolution.

To refund the Note and finance the Project, the Issuer will (i) loan the proceeds derived from the sale of the Series 2017A Bonds to the Borrower pursuant to a Financing Agreement, dated as of August 1, 2017 (the “Series 2017A Financing Agreement”), between the Issuer, the Borrower, the Trustee, and Dougherty Mortgage LLC, a Delaware limited liability company, as the mortgage lender; and (ii) loan the proceeds derived from the sale of the Series 2017B Note to the Borrower pursuant to a Loan Agreement, dated as of August 1, 2017 (the “Series 2017B Loan Agreement”), between the Issuer and the Borrower.
For good and valuable consideration, the Borrower, the Trustee, the Bank, and the Issuer have determined to enter into this Regulatory Agreement in order to impose on each Project certain requirements of the Internal Revenue Code of 1986, as amended, and of the Act applicable to each Project. This Regulatory Agreement supersedes the Regulatory Agreement (Elmbrooke Apartments), dated August 18, 2016.

NOW, THEREFORE, the Borrower, the Trustee, the Bank, and the Issuer do hereby impose upon each Project the following covenants, restrictions, charges, and easements, which shall run with the land and shall be binding and a burden upon the Projects and all portions thereof, and upon any purchaser, grantee, owner, or lessee of any portion of either Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of either Project and any other person or entity having any right, title, or interest therein, for the length of time that this Regulatory Agreement shall be in full force and effect:

Section 1. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof.

“Act” means, collectively, Minnesota Statutes, Chapters 462C and 474A, as amended.

“Adjusted Income” means the adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one Dwelling Unit), as calculated in the manner prescribed under Section 142(d)(2)(B) of the Code.

“Bank” means Bridgewater Bank, a Minnesota banking corporation, as the purchaser of the Series 2017B Note, or any successor or assign.

“Bond Counsel” means Kennedy & Graven, Chartered, or any other attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds and other obligations issued by states and political subdivisions thereof, duly admitted to practice law before the highest court of any state of the United States of America.

“Borrower” means CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company, and its lawful successors and assigns to the extent permitted by the Loan Agreements.

“Certificate of Continuing Program Compliance” means the document substantially in the form set forth in EXHIBIT C attached hereto.

“Code” means the Internal Revenue Code of 1986, as amended, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Combined Bonds.

“Combined Bonds” means, collectively, the Series 2017A Bonds and the Series 2017B Note.

“County” means Hennepin County in the State.

“Dwelling Units” means the units of multifamily residential rental housing comprising the Projects.
“Event of Default” has the meaning specified in Section 13 hereof.

“Functionally Related and Subordinate” means and includes facilities for use by tenants, for example, laundry facilities, parking areas, and recreational facilities, provided that the same is of a character and size commensurate with the character and size of the Projects.

“Housing Act” means the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq.

“Issuer” means the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota.

“Loan Agreements” means, collectively, the Series 2017A Financing Agreement and the Series 2017B Loan Agreement.

“Loans” means, collectively, the Loans provided by the Issuer to the Borrower pursuant to the Loan Agreements to provide financing for the Projects.

“Low Income Tenants” means persons or families with Adjusted Income which does not exceed sixty percent (60%) of the Median Income for the Area adjusted for household size. In no event will the occupants of a unit be considered to be Low Income Tenants if all of such occupants are students (as defined in Section 152(f)(2) of the Code), unless the unit is occupied:

(i) by an individual who is (A) a student and receiving assistance under Title IV of the Social Security Act, (B) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under Part B or Part E of Title IV of the Social Security Act, or (C) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, State, or local laws; or

(ii) entirely by full-time students if such students are (A) single parents and their children and such parents are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual other than a parent of such children, or (B) married and entitled to file a joint return.

“Low Income Units” means the Dwelling Units in the Projects designated for occupancy by Low Income Tenants pursuant to Section 4(a) hereof.

“Median Income for the Area” means the median yearly income for households of an applicable size in the applicable Primary Metropolitan Statistical Area as most recently determined by the Secretary of Housing and Urban Development under Section 8(f)(3) of the Housing Act, or, if such figures are no longer available, the method of calculation is substantially altered, or the programs under Section 8(f) are terminated, the Issuer shall provide the Borrower with another income determination that is reasonably similar to the method used by the Secretary prior to such termination.

“Project” means, individually, (i) the approximately six (6) existing affordable townhome units located at 2100 Douglas Drive North, Golden Valley, Minnesota; or (ii) the approximately two (2) existing affordable townhome units located at 3354 Lilac Drive North, Golden Valley, Minnesota.
“Projects” means, collectively, the approximately six (6) existing affordable townhome units located at 2100 Douglas Drive North and the approximately two (2) existing affordable townhome units located at 3354 Lilac Drive North, Golden Valley, Minnesota, which will be acquired and substantially rehabilitated with a portion of the proceeds of the Combined Bonds.

“Qualified Project Period” means, for each Project, the period beginning on the later of the date of issuance of the Combined Bonds and the first day on which ten percent (10%) of the Dwelling Units in each Project are occupied and ending on the latest of:

(i) the date which is fifteen (15) years after the date on which fifty percent (50%) of the Dwelling Units in each Project are occupied;

(ii) the first day on which no tax-exempt private activity bond issued with respect to either Project is outstanding; or

(iii) the date on which any assistance provided with respect to each Project under Section 8 of the United States Housing Act of 1937 terminates.

“Regulatory Agreement” means this Regulatory Agreement, dated August ___, 2017, between the Issuer, the Borrower, and the Trustee, together with any amendments or supplements hereto.

“Section 474A Penalty” means the penalty described in Minnesota Statutes, Section 474A.047, subdivision 3, as applied to the Projects.

“Series 2017A Bonds” means the Issuer’s Multifamily Housing Revenue Refunding Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A, issued in the original aggregate principal amount of $6,500,000.


“Series 2017A Indenture” means the Indenture of Trust, dated as of August 1, 2017, between the Issuer and the Trustee, relating to the Series 2017A Bonds.

“Series 2017B Loan Agreement” means the Loan Agreement, dated as of August 1, 2017, between the Issuer and the Borrower, relating to the Series 2017B Note.

“Series 2017B Note” means the Issuer’s Multifamily Housing Revenue Refunding Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B, issued in the original aggregate principal amount of $900,000.

“State” means the State of Minnesota.

“Treasury Regulations” means the regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time or pursuant to any successor statute to the Code.

“Trustee” means U.S. Bank National Association, a national banking association, or any successor or assign.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate,
and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all of the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

**Section 2.** **Representations by the Borrower.** The Borrower covenants, represents, and warrants that:

(a) The Borrower is a limited liability company organized and existing under the laws of the State. The Borrower is in good standing in the State and has duly authorized, by proper action, the execution and delivery of this Regulatory Agreement. The Borrower is duly authorized by the laws of the State to transact business in the State and to perform all of its duties hereunder.

(b) Neither the execution and delivery of this Regulatory Agreement or any other document in connection with the financing of the Projects, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the terms and conditions hereof and thereof conflicts with or results in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Borrower is now a party or by which it is bound or constitutes a default (with due notice or the passage of time or both) under any of the foregoing or results in the creation or imposition of any prohibited lien, charge, or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any instrument or agreement to which the Borrower is now a party or by which it is bound.

(c) The execution, delivery, and performance of this Regulatory Agreement and all other documents to be delivered by the Borrower in connection with the consummation of the transactions contemplated hereby will not conflict with, or constitute a breach of or default under, any indenture, mortgage, deed of trust, lease, commitment, agreement, or other instrument or obligation to which the Borrower is a party or by which the Borrower or any of its property is bound, or under any law, rule, regulation, judgment, order, or decree to which the Borrower is subject or by which the Borrower or any of its property is bound.

(d) To the best of the Borrower’s knowledge, there is no action, suit, proceeding, inquiry, or investigation by or before any governmental agency, public board, or body pending or threatened against the Borrower (nor to the best of its knowledge is there any basis therefor), which:

(i) affects or seeks to enjoin, prohibit, or restrain the issuance, sale, or delivery of the Combined Bonds or the use of the proceeds of the Combined Bonds to finance the acquisition or construction, rehabilitation, and equipping of the Projects or the execution and delivery of this Regulatory Agreement,

(ii) affects or questions the validity or enforceability of the Combined Bonds or this Regulatory Agreement,

(iii) questions the tax-exempt status of the Combined Bonds, or

(iv) questions the power or authority of the Borrower to own, acquire, substantially rehabilitate, or operate the Projects or to execute, deliver, or perform the Borrower’s obligations under this Regulatory Agreement.

(e) The Projects will be located wholly within the boundaries of the City of Golden Valley, Minnesota
(f) On and after the date on which the Combined Bonds are executed and delivered to the Trustee, the Borrower will have title to the Projects sufficient to carry out the purposes of this Regulatory Agreement, and such title shall be in and remain in the name of the Borrower except as otherwise permitted by this Regulatory Agreement.

(g) Both Projects consist and will consist of those facilities described herein, which generally are described as residential townhome buildings and related facilities situated on the real property described in EXHIBIT A attached hereto. The Borrower shall make no changes to either Project or to the operation thereof which would affect the qualification of either Project under the Act or impair the exemption from federal income taxation of the interest on the Combined Bonds. The Borrower will utilize and operate the both Projects as multifamily rental housing projects during the term of the Combined Bonds in accordance with all applicable federal, State, and local laws, rules, and regulations applicable to each Project.

(h) The Borrower has obtained, or will obtain on or before the date required therefor, all necessary certificates, approvals, permits, and authorizations with respect to the operation of the Projects.

(i) The Borrower does not and will not own any of the Combined Bonds. The Borrower acknowledges and understands that during any period of time when the Borrower owns the Combined Bonds, the interest on the Combined Bonds shall not be tax-exempt pursuant to Section 147(a) of the Code.

(j) The Borrower does not own any buildings or structures which are proximate to either Project other than those buildings or structures which comprise each Project, which are being financed pursuant to a common plan under which the Projects are also being financed.

(k) The Borrower will incur rehabilitation expenditures (as defined in Section 147(d)(3) of the Code) with respect to each Project in an amount of at least fifteen percent (15%) of the acquisition cost of each Project financed with the proceeds of the Combined Bonds within two years from the later of (i) the date the Borrower acquires each Project; or (ii) the date of issuance of the Combined Bonds.

(l) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee on the date of issuance of the Combined Bonds are true and correct.

Section 3. Qualified Residential Rental Project. The Borrower shall acquire, rehabilitate, own, manage, and operate each Project as a “qualified residential rental project,” as such phrase is utilized in Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. To that end, the Borrower hereby represents, warrants, and covenants as follows:

(a) that a qualified residential rental project will be acquired and substantially rehabilitated on the real property described in EXHIBIT A hereto, and the Borrower shall own, manage and operate each Project as a qualified residential rental project containing Dwelling Units and facilities Functionally Related and Subordinate to such Dwelling Units, in accordance with Section 142(a)(7) and Section 142(d) of the Code and all applicable Treasury Regulations promulgated thereunder, as the same may be amended from time to time;

(b) that all of the Dwelling Units of each Project will be similarly constructed and each Dwelling Unit in each Project will contain complete facilities for living, sleeping, eating, cooking, and sanitation for a single person or a family;

(c) that:
(i) none of the Dwelling Units in either Project shall at any time in the future be utilized on a transient basis;

(ii) that none of the Dwelling Units in either Project shall at any time in the future be leased or rented for a period of less than thirty (30) days; and

(iii) that neither the Projects nor any portion thereof shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park or trailer court for use on a transient basis, or by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code);

(d) that, following the substantial rehabilitation thereof, once available for occupancy:

(i) each Dwelling Unit in each Project must be rented or available for rental on a continuous basis to members of the general public during the Qualified Project Period; and

(ii) the Borrower shall not give preference in renting Dwelling Units in either Project to any particular class or group of persons, other than Low Income Tenants as provided herein or as otherwise permitted by law;

(e) that the Dwelling Units in each Project shall be leased and rented to members of the general public in compliance with this Regulatory Agreement, except for any Dwelling Unit for a resident manager or maintenance personnel;

(f) that each Project consists of one or more discrete edifices and other man-made construction, each consisting of an independent foundation, outer walls and roof, all of which will be (i) owned by the same person for federal tax purposes, (ii) located on a common tract of land or two or more parcels of land which are contiguous except for being separated only by a road, street, stream, or a similar property and (iii) financed by the Loans or otherwise pursuant to a common plan of financing, and which consists entirely of:

(i) units which are similar in quality and type of construction and amenities; and

(ii) property Functionally Related and Subordinate in purpose and size to each Project, e.g., parking areas, laundries, swimming pools, tennis courts, and other recreational facilities (none of which may be unavailable to any person because such person is a Low Income Tenant) and other facilities which are reasonably required for each Project, e.g., heating and cooling equipment, trash disposal equipment, or units for residential managers or maintenance personnel;

(g) that no portion of either Project shall be used to provide any health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(h) that neither Project shall include a Dwelling Unit in a building where all Dwelling Units in such building are not also included in either Project;

(i) that the Borrower shall not convert either Project to condominium or cooperative ownership;
(j) that no Dwelling Unit in either Project shall be occupied by the Borrower (or any person related to the Borrower within the meaning of Section 147(a)(2) of the Code) at any time unless such person resides in a Dwelling Unit in a building or structure which contains at least five Dwelling Units and unless the resident of such Dwelling Unit is a resident manager or other necessary employee (e.g., maintenance and security personnel);

(k) that the Combined Bonds will not be “federally guaranteed,” as defined in Section 149(b) of the Code;

(l) that each Project shall at all times be used and operated as a “multifamily housing development,” as defined in the Act; and

(m) that the Borrower shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g., AFDC or SSI), physical disability, national origin, or marital status in the rental, lease, use, or occupancy of the Projects or in connection with the employment or application for employment of persons for the operation and management of each Project.

Section 4. Low Income Tenants. Pursuant to the requirements of the Act and Section 142(d) of the Code, the Borrower hereby represents, warrants, and covenants as follows:

(a) Upon completion of the substantial rehabilitation of each Project, at least forty percent (40%) of the units in each Project will be occupied or held for occupancy by Low Income Tenants. Throughout the Qualified Project Period, not less than forty percent (40%) of the completed units in each Project shall be continuously occupied or held for occupancy by Low Income Tenants. The Borrower will designate the Low Income Units and will make any revisions to such designations as necessary to comply with the applicable provisions of the Code and the Treasury Regulations. As set forth in subsection (e) below, the Borrower shall advise the Issuer and the Trustee by delivery of a certificate in writing of the status of the occupancy of each Project with respect to Low Income Tenants on an annual basis for the term of this Regulatory Agreement. An Annual Certification of a Residential Rental Project, Form 8703 (Rev. September 2013), or successor form, shall be prepared annually by the Borrower and filed with the United States Secretary of the Treasury pursuant to Section 142(d)(7) of the Code (currently with the Internal Revenue Service Center, Ogden, Utah 84201), with a copy to be filed by the Borrower with the Issuer and the Trustee. The percentage of units is measured by number of units in each Project, and not square footage of units.

For purposes of satisfying the occupancy requirements set forth above, a unit occupied by a person or family who at the commencement of their occupancy qualified as a Low Income Tenant shall be treated as occupied by a Low Income Tenant until such time as any recertification of such tenant’s income in accordance with subsections (c) and (h) below demonstrates that such tenant’s income exceeds one hundred forty percent (140%) of the income limitation applicable to Low Income Tenants.

A unit occupied by a Low Income Tenant shall be deemed, upon the termination of such tenant’s occupancy, to be continuously occupied by a Low Income Tenant until reoccupied, other than for a temporary period (not to exceed sixty (60) days), at which time the character of the unit shall be redetermined.

(b) The Borrower will notify the Issuer on an annual basis of any vacancy of any Low Income Units.

(c) The Borrower will obtain, complete, and maintain on file income certifications from each Low Income Tenant, obtained immediately prior to the initial occupancy of such tenant in each Project,
substantially in the form of the income certification set forth in EXHIBIT B hereto or another form approved by Bond Counsel (the “Income Certification”) and will provide such additional information as may be required by Section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Treasury Regulations now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service applicable to the Combined Bonds. If requested by the Trustee or Issuer, a copy of such Income Certification shall be filed with the Trustee and the Issuer prior to occupancy by the tenant whenever possible but in no event more than one month after initial occupancy by the tenant. A copy of each re-certification of income shall be attached to each report filed with the Issuer and the Trustee pursuant to subsection (a) above. The Borrower shall make a good-faith effort to verify that the income reported by an applicant in an income certification is accurate by taking at least one of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) conduct a credit or similar search, (4) obtain an income verification form from the applicant’s current employer, (5) obtain an income verification form from the Social Security Administration if the applicant receives assistance from such agency, or (6) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. If the Low Income Tenant is a Section 8 Certificate Holder, the Borrower shall retain a copy of the certificate or voucher for verification of income in lieu of an income verification.

The Borrower understands that failure to file the Annual Certification of a Residential Rental Project, Form 8703 (Rev. September 2013), or successor form, for each Project as required by Section 142(d)(7) of the Code at the times stated therein may subject it to the penalty described in Section 6652(j) of the Code.

(d) The Borrower will maintain complete and accurate records pertaining to the Low Income Units and will permit, upon reasonable prior notice, any duly authorized representative of the Issuer, the Trustee, the Department of the Treasury, or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to each Project, including those records pertaining to the occupancy of the Low Income Units. This section is not intended to create any additional duties to inspect records.

(e) The Borrower will prepare and submit to the Issuer and the Trustee, on or before May 1 of each year during the Qualified Project Period, beginning the first May 1 following commencement of the Qualified Project Period, a Continuing Program Compliance Certificate in the form of EXHIBIT C attached hereto and executed by the Borrower, and, if requested by the Trustee or Issuer the Income Certifications described in subsection (c) above.

(f) The Borrower, upon becoming aware of an Event of Default, will notify the Issuer and the Trustee, in writing, of the occurrence of any such Event of Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. Such notice shall be given promptly and in no event longer than ten (10) Business Days after the Borrower receives notice or gains knowledge of the occurrence of any such event. The Borrower further agrees that it will give prompt written notice to the Issuer and the Trustee if insurance proceeds or condemnation awards are received with respect to either Project and are not used to repair or replace either Project, which notice shall state the amount of such proceeds or award.

(i) Except as provided in clause (ii) below, the Borrower shall accept as tenants on the same basis as all other prospective tenants Low Income Tenants who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the Housing Act or its successor and shall not apply selection criteria to Section 8 certificate/voucher holders that are more burdensome than the criteria applied to all other prospective tenants.
(ii) The Borrower agrees to modify the leases for units in each Project as necessary to allow the rental of Low Income Units to Section 8 certificate/voucher holders.

(g) Each lease pertaining to a Low Income Unit shall contain a provision to the effect that the Borrower has relied on the income certification and supporting information supplied by the Low Income Tenant in determining qualification for occupancy of the Low Income Unit and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

(h) Throughout the Qualified Project Period, the Borrower shall re-certify each Low Income Tenant’s income on or before the anniversary of the Low Income Tenant’s tenancy, in any year in which a unit in either Project is occupied by a new resident whose income exceeds the applicable income limit, by obtaining a completed Income Certification. In the event the recertification demonstrates that any such tenant’s household income exceeds one hundred forty percent (140%) of the applicable income limit, the Borrower shall hold the next available unit or units of comparable or smaller size in each Project available for rental by new Low Income Tenants.

The Borrower in its sole discretion may notify, in writing, each tenant who is no longer a Low Income Tenant of such fact, and that the rent of such tenant(s) is subject to increase thirty (30) days after receipt of such notice. The Borrower shall be entitled to so increase any such tenant’s rent only if Borrower complies with any law applicable thereto and only after the Borrower has rented the next available unit or units in either Project on a one-for-one basis to a Low Income Tenant, or holds units vacant and available for occupancy by Low Income Tenants.

The Borrower agrees to inform all prospective Low Income Tenants of the requirements for recertification of income and of the provisions of the preceding paragraph.

Section 5. Restrictions Imposed by Minnesota Statutes, Chapter 474A. Because the Combined Bonds are issued by the Issuer as residential rental project bonds, as defined in Chapter 474A of the Act (“Chapter 474A”), and have received an allocation of tax-exempt bonding authority pursuant to applicable provisions of Chapter 474A, the restrictions imposed by Chapter 474A apply to each Project as described below.

(a) In addition to any other restrictions on rent or the income of tenants set forth in this Regulatory Agreement, during the Qualified Project Period, the Borrower shall restrict rents on at least twenty percent (20%) of the units in each Project (which shall consist of the same units as meet the requirements of Section 4) to an amount not exceeding the lesser of: (1) thirty percent (30%) of the adjusted income of a family whose gross income equals sixty percent (60%) of the median family income as most recently established by the United States Department of Housing and Urban Development for the Minneapolis/St. Paul standard metropolitan statistical area, as adjusted for family size; or (2) the area fair market rents or exception fair market rents, as applicable, for existing housing as established by the federal Department of Housing and Urban Development from time to time, which units shall be occupied, or held for occupancy, by Low Income Tenants.

(b) The annual certifications required to be made by the Borrower hereunder shall conform to the requirements of Section 474A.047, subdivision 3, and the Issuer shall have the authority to impose upon the Borrower any and all penalties described in Section 474A.047, subdivision 3, from time to time, in addition to any remedies otherwise available under this Regulatory Agreement.
(c) The Borrower must satisfy the requirements of Section 474A.047, subdivision 1(a), during the Qualified Project Period. The Borrower must annually certify to the Issuer over the term of this Regulatory Agreement that the rental rates for the rent-restricted units are within the limitations under Section 474A.047, subdivision 1(a). The Issuer may request individual certification of the income of residents of the income-restricted units. The Commissioner of Minnesota Management & Budget may request from the Issuer a copy of the annual certification prepared by the Borrower. The Commissioner of Minnesota Management & Budget may require the Issuer to request individual certification of all residents of the income-restricted units.

Section 6. Covenants Run With the Land. The Borrower hereby declares its express intent that the covenants, restrictions, charges, and easements set forth herein shall be deemed covenants running with the land and shall, except as otherwise provided in this Regulatory Agreement, pass to and be binding upon the Borrower’s successors in title including any purchaser, grantee, owner, or lessee of any portion of the Projects and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Projects and any other person or entity having any right, title, or interest therein. Except as otherwise provided in this Regulatory Agreement, each and every contract, deed, or other instrument hereafter executed covering or conveying the Projects or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges, and easements contained herein; provided, however, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.

Section 7. Indemnification. The Borrower hereby covenants and agrees that it shall indemnify and hold harmless the Issuer and its officers, agents, and employees (the “Indemnified Parties”) and the Trustee and the Bank and their respective officers, agents, members, directors, officials, and employees as provided in the Loan Agreements. All provisions of the Loan Agreements relating to indemnification are incorporated by reference herein and are considered provisions of this Regulatory Agreement, as if expressly set out herein.

Section 8. Consideration. The Issuer has issued the Combined Bonds in part to provide funds to make the Loans to finance the acquisition and substantial rehabilitation of the Projects all for the purpose, among others, of inducing the Borrower to acquire, substantially rehabilitate, and operate the Projects. In consideration of the issuance of the Combined Bonds by the Issuer, the Borrower has entered into this Regulatory Agreement and has agreed to restrict the uses to which each Project can be put on the terms and conditions set forth herein.

Section 9. Reliance. The Issuer and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Combined Bonds and in the exemption from federal income taxation of the interest on the Combined Bonds. In performing their duties and obligations hereunder, the Issuer, the Trustee, and the Bank may rely upon statements and certificates of the Borrower and the tenants and upon audits of the books and records of the Borrower pertaining to each Project. In addition, the Issuer, the Trustee, and the Bank may consult with counsel, and the written opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer, the Trustee, or the Bank hereunder in good faith and in conformity with such written opinion. A copy of any such opinion shall be furnished by the Issuer, the Trustee, or the Bank to the Borrower upon written request. In determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement, the Issuer, the Trustee, or the Bank shall not be required to conduct any investigation into or review of the operations or records of the Borrower and may rely solely on any notice or certificate
delivered to the Issuer, the Trustee, or the Bank by the Borrower with respect to the occurrence or absence of a default unless it knows, or in the exercise of reasonable care should have known, that the notice or certificate is erroneous or misleading.

The Trustee shall be under no duty to make any investigation or inquiry as to any statements or other matters contained or referred to in any documents or any instruments delivered to it in accordance with this Regulatory Agreement, but it may receive and accept the same as conclusive evidence of the truth and accuracy of such statements.

**Section 10. Sale or Transfer of the Projects.** The Borrower hereby covenants and agrees not to sell, transfer, or otherwise dispose of either Project, or any portion thereof, except as permitted under the terms of the Loan Agreements. Any attempted sale, transfer, or disposition which would cause or result in the violation of any of these covenants, provisions, reservations, restrictions, charges, or easements shall be null and void ab initio and of no force and effect. Nothing herein shall prohibit the transfer, sale or assignment of the interests in the Borrower or any direct or indirect ownership interests in the Borrower’s members.

**Section 11. Term.** This Regulatory Agreement and the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for a term and period equal to the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Combined Bonds and termination of the Loan Agreements and the Loans if the Qualified Project Period has not expired at the time of such retirement and expiration. Notwithstanding anything in this Regulatory Agreement to the contrary:

(a) The Projects may be transferred pursuant to a foreclosure, exercise of power of sale, or deed in lieu of foreclosure, or comparable proceedings without the consent of or fee of any kind payable to the Issuer or compliance with the provisions of this Regulatory Agreement. In connection with any such foreclosure, deed in lieu of foreclosure, or other proceedings, this Regulatory Agreement shall be terminated upon completion of the foreclosure and expiration of the applicable redemption period, or recording of a deed in lieu of foreclosure.

(b) The requirements of this Regulatory Agreement shall terminate and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire or other casualty, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law, or an action of a federal agency after the date of this Regulatory Agreement, which prevents the Issuer and the Trustee from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Combined Bonds are retired or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof (provided that this shall be deemed met if the Combined Bonds have been previously retired); provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, or the delivery of a deed in lieu of foreclosure, or a similar event, the Borrower or any related person (within the meaning of Section 1.103-10(e) of the Treasury Regulations) obtains an ownership interest in either Project for federal income tax purposes.

(c) This Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the Issuer and the Borrower, upon receipt of an opinion of Bond Counsel to the effect that such termination will not cause interest on the Combined Bonds to become included in gross income for federal income tax purposes or cause interest on the Combined Bonds to become included in the net taxable income of individuals, trusts, and estates for State income tax purposes.
Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver, and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

Section 12. Burden and Benefit. The Issuer and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Borrower’s legal interest in the Projects is rendered less valuable thereby. The Issuer and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of each Project by Low Income Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the Combined Bonds were issued. Notwithstanding the foregoing, the Low Income Tenants are not intended to be third-party beneficiaries of this Regulatory Agreement and shall have no rights to enforce any provision herein.

Section 13. Enforcement. If the Borrower defaults in the performance or observance of any covenant, agreement, or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days after written notice thereof shall have been given by the Issuer, the Bank or the Trustee to the Borrower, then the Issuer, the Trustee, acting upon the direction of the holders of the Series 2017A Bonds pursuant to the Series 2017A Indenture, or the Bank acting pursuant to the Series 2017B Loan Agreement, may declare an “Event of Default” to have occurred hereunder and, at its option, may take any one or more of the following steps:

(a) by mandamus or other suit, action, or proceeding at law or in equity require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer, the Trustee, the Bank, or the holders of the Combined Bonds hereunder;

(b) have access to and inspect, examine, and make copies of all the books and records of the Borrower pertaining to each Project;

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, and agreements of the Borrower hereunder; or

(d) with the consent of the Trustee or the Bank, respectively, declare a default under either of the Loans, accelerate the indebtedness evidenced by either of the Loans, and proceed to redeem the Series 2017A Bonds or the Series 2017B Note in accordance with their terms.

Notwithstanding anything to the contrary contained herein, the Issuer, the Trustee, and the Bank hereby agree that any cure of any default made or tendered by one or more of the Borrower’s members shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

All fees, costs, and expenses of the Trustee, the Bank, or the Issuer incurred in taking any action pursuant to this Section 13 shall be the sole responsibility of the Borrower and shall be paid to the Trustee, the Bank, or the Issuer, as the case may be, on demand.

After the Combined Bonds have been discharged, the Issuer may act on its own behalf to declare an “Event of Default” to have occurred and to take any one or more of the steps specified hereinabove to the same extent and with the same effect as if taken by the Trustee or the Bank at the direction of the holders of the Combined Bonds.
Section 14. The Trustee, the Bank, and the Issuer. The Trustee is entering into this Regulatory Agreement in its capacity as the Trustee with respect to the Combined Bonds and the Series 2017A Indenture. The Bank is entering into this Regulatory Agreement in its capacity as the purchaser of the Series 2017B Note. The Issuer may, at all times, assume the Borrower’s compliance with this Regulatory Agreement unless otherwise notified in writing by the Trustee or the Bank (but neither the Trustee nor the Bank shall have any obligation to so notify the Issuer), or unless the Issuer has actual knowledge of noncompliance. The Trustee and the Bank can rely on the accuracy of any certificates, instruments, opinions, or reports delivered to them by the Borrower. It is possible that the Combined Bonds will be discharged and the Series 2017A Indenture, the Series 2017A Financing Agreement, and the Series 2017B Loan Agreement will terminate prior to the expiration of the Qualified Project Period. Following the payment in full and the discharge of the Series 2017A Bonds and the termination of the Series 2017A Indenture and the Series 2017A Financing Agreement: (i) all obligations, rights, and duties of the Trustee under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Trustee will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Trustee will instead be delivered to the Issuer and all notices to be delivered by the Trustee will instead be delivered by the Issuer; and (iv) the Trustee shall no longer be parties to this Regulatory Agreement and shall be considered released from all obligations hereunder. Following the payment in full and the discharge of the Series 2017B Note and the termination of the Series 2017B Loan Agreement: (i) all obligations, rights, and duties of the Bank under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Bank will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Bank will instead be delivered to the Issuer and all notices to be delivered by the Bank will instead be delivered by the Issuer; and (iv) the Bank shall no longer be parties to this Regulatory Agreement and shall be considered released from all obligations hereunder.

Section 15. Amendment. The provisions hereof shall not be amended or revised prior to the stated term hereof except by an instrument in writing duly executed by the Issuer and the Borrower, and consented to by the Trustee and the Bank as may be required by the Loan Agreements, and duly recorded. The Issuer’s, the Trustee’s, and the Bank’s consent to any such amendment or revision (whether or not the Combined Bonds shall then be outstanding) shall be given only upon receipt of an opinion of Bond Counsel addressed to the Issuer, the Trustee, and the Bank that such amendment or revision will not adversely affect the exemption from federal income taxation of interest on the Combined Bonds. None of the Issuer, the Trustee, or the Bank shall have a duty to prepare any such consent, amendment, or revision.

Section 16. Right of Access to the Projects and Records. The Borrower agrees that during the term of this Regulatory Agreement, the Issuer, the Trustee, the Bank, and their duly authorized agents shall have the right at all reasonable times, and upon reasonable notice of at least twenty-four (24) hours, to enter upon the site of each Project during normal business hours to examine and inspect each Project and to have access to the books and records of the Borrower with respect to each Project, a copy of which shall be maintained at the site of each Project.

Section 17. No Conflict with Other Documents. The Borrower warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof.

Section 18. Severability. The invalidity of any clause, part, or provision of this Regulatory Agreement shall not affect the validity of the remaining portions thereof.
Section 19. Notices. All notices to be given pursuant to this Regulatory Agreement shall be in writing and shall be deemed given when sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods or when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

To the Issuer: City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN  55345
Attn:  City Manager

To the Trustee: U.S. Bank National Association
60 Livingston Avenue, 3rd Floor
EP-MN-WS3C
St. Paul, MN 55107-2292
Attn:  Corporate Trust Services

To the Bank: Bridgewater Bank
3800 American Boulevard, Suite 100
Bloomington, MN  55431
Attn:  Nicholas Place

To the Borrower: CHC Minnetonka Affordable Housing LLC
c/o Community Housing Corporation of America, Inc.
161 St. Anthony Avenue, Suite 820
St. Paul, MN  55103
Attn:  President

With copies to: Shelter Corporation
1600 Hopkins Crossroad
Minnetonka, MN  55305
Attn:  President

Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402-4629
Attention:  Jeffrey J. Koerselman, Esq.

To the Investor Member: Wincopin Circle LLLP
c/o Enterprise Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, MD  21044
Attn:  Asset Management
Telephone:  (410) 964-0552
Facsimile:  (410) 772-2630

With a copy to: Gallagher Evelius & Jones LLP
218 North Charles Street, Suite 400
Baltimore, MD  21201
Attn:  Natalie B. Sherman, Esq.
Section 20. Governing Law. This Regulatory Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as such laws may be preempted by any federal rules, regulations, and laws.

Section 21. Payment of Fees. Notwithstanding payment of the Loans, the termination of the Loan Agreements, and the defeasance or discharge of the Combined Bonds, throughout the term of the Qualified Project Period, the Borrower shall continue to pay:

(a) to the Issuer, reimbursement for all reasonable fees and expenses, including, but not limited to, financial advisory and legal fees and expenses necessary for the Issuer’s reviewing and, if necessary, enforcing compliance by the Borrower with the terms of this Regulatory Agreement; and

(b) the fees and expenses of any entity or person designated by the Issuer to perform the review of the Borrower’s compliance with this Regulatory Agreement; provided that such fees and expenses are not duplicative of any fees and expenses paid under subsection (a) above.

Section 22. Limited Liability. All obligations of the Issuer hereunder shall be special, limited obligations of the Issuer, payable solely and only from proceeds of the Combined Bonds and amounts derived by the Issuer from the Loans and the Loan Agreements.

Section 23. Actions of Issuer. The Issuer shall be entitled to rely conclusively on an opinion of counsel in the exercise or non-exercise of any of the rights or powers vested in the Issuer by virtue of this Regulatory Agreement or any other agreement or instrument executed in connection with the issuance of the Combined Bonds; it being the intent of the parties hereto that the Issuer, and any and all present and future trustees, members, commissioners, officers, employees, attorneys, and agents of the Issuer shall not incur any financial or pecuniary liability for the exercise or non-exercise of any rights or powers vested in the Issuer by this Regulatory Agreement or any other instrument or agreement executed in connection with the issuance of the Combined Bonds; or for the performance or nonperformance of any obligation under, or the failure to assert any right, power, or privilege under this Regulatory Agreement, the Combined Bonds, the Series 2017A Indenture, the Series 2017A Financing Agreement, the Series 2017B Loan Agreement, or any other instrument or agreement executed in connection with the issuance of the Combined Bonds. If the Issuer’s consent or approval is required under this Regulatory Agreement, or any other agreement or instrument executed in connection with the issuance of the Combined Bonds, the Issuer shall be entitled to rely conclusively on an opinion of counsel and shall not be responsible for any loss or damage resulting from any action or inaction in reliance upon such opinion.

Section 24. Counterparts. This Regulatory Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Regulatory Agreement, and, in making proof of this Regulatory Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 25. Recording and Filing. The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto to be recorded and filed in the real property records of the County, the State, and in such other places as the Issuer may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

Section 26. Fannie Mae Rider to Regulatory Agreement. The Fannie Mae Rider to Regulatory Agreement (the “Fannie Mae Rider”) attached hereto is hereby made a part of this Regulatory Agreement.
Agreement. In the event of a conflict between the provisions of the Fannie Mae Rider and the provisions of this Regulatory Agreement, the provisions of the Fannie Mae Rider shall control.

Section 27. Prior Regulatory Agreement Terminated. The Regulatory Agreement (Golden Valley Townhomes), dated August 18, 2016, is terminated.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Issuer, the Borrower, and the Trustee have caused this Regulatory Agreement to be signed by their respective duly authorized representatives as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By __________________________________________
Its Mayor

By __________________________________________
Its City Manager

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ____ day of August, 2017, by Terry Schneider, the Mayor of the City of Minnetonka, Minnesota, a municipal corporation under the law of the State of Minnesota, on behalf of the Issuer.

____________________________________________
Notary Public

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ____ day of August, 2017, by Geralyn Barone, the City Manager of the City of Minnetonka, Minnesota, a municipal corporation under the law of the State of Minnesota, on behalf of the Issuer.

____________________________________________
Notary Public

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
Execution page of the Borrower to the Regulatory Agreement, dated the date and year first written above.

CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company

By: CHC Minnetonka Affordable Housing MM LLC
Its: Managing Member

By: ____________________________________________
Name: Richard Martin
Title: Administrative Manager

STATE OF MINNESOTA )
) ss
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ____ day of August, 2017, by Richard Martin, the Administrative Manager of CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, the managing member of CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company, on behalf of the Borrower.

______________________________
Notary Public

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
Execution page of the Trustee to the Regulatory Agreement, dated the date and year first written above.

U.S. BANK NATIONAL ASSOCIATION

By

Its Vice President

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) ss.

The foregoing instrument was acknowledged before me this ___ day of August 2017, by Dan Sheff, the Vice President of U.S. Bank National Association, a national banking association, on behalf of the Trustee.

Notary Public

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
Execution page of the Bank to the Regulatory Agreement, dated the date and year first written above.

BRIDGEWATER BANK

By ________________________________

            Nicholas Place
            Its Senior Vice President and Chief Lending Officer

STATE OF MINNESOTA    )
COUNTY OF HENNEPIN    ) ss.

The foregoing instrument was acknowledged before me this ___ day of August, 2017, by
Nicholas Place, the Senior Vice President and Chief Lending Officer of Bridgewater Bank, a Minnesota
banking corporation, on behalf of the Bank.

______________________________

Notary Public

(Signature page with respect to Series 2017A Bonds and Series 2017B Note)
EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Parcel 1:

The West 404 feet of the South Half of Block 14, Yarnall’s Golden Valley Outlots, Hennepin County, Minnesota.

Abstract Property

Parcel 2:

The South Half of Lot 3, Block 3, Dahinden’s 3rd Addition, Hennepin County, Minnesota.

Abstract Property

Parcel 3:

Lot 1, Block 3, Rearrangement of Lots 15, 16 and 17, Yale Garden Homes.

Hennepin County, Minnesota
Torrens Property
Torrens Certificate No. 1051690
**EXHIBIT B**

**FORM OF INCOME CERTIFICATION**

<table>
<thead>
<tr>
<th>TENANT INCOME CERTIFICATION</th>
<th>Effective Date: _________________________</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Move-in Date: ___________________________</td>
</tr>
<tr>
<td></td>
<td>(MM/DD/YY): ______________________________</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Initial Certification</th>
<th>Recertification</th>
<th>Other</th>
</tr>
</thead>
</table>

**PART I. DEVELOPMENT DATA**

<table>
<thead>
<tr>
<th>Property Name: Golden Valley Townhomes</th>
<th>County:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address: [2100 Douglas Drive North] [3354 Lilac Drive North], Golden Valley, Minnesota</td>
<td>BIN #:</td>
</tr>
<tr>
<td></td>
<td>Unit Number:</td>
</tr>
<tr>
<td></td>
<td># Bedrooms:</td>
</tr>
</tbody>
</table>

**PART II. HOUSEHOLD COMPOSITION**

<table>
<thead>
<tr>
<th>HH Br #</th>
<th>Last Name</th>
<th>First Name &amp; Middle Initial</th>
<th>Relationship to Head of Household</th>
<th>Date of Birth (MM/DD/YY)</th>
<th>F/T Student (Y or N)</th>
<th>Social Security or Alien Reg. No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>HEAD</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)**

<table>
<thead>
<tr>
<th>HH Br #</th>
<th>(A) Employment or Wages</th>
<th>(B) Soc. Security / Pensions</th>
<th>(C) Public Assistance</th>
<th>(D) Other Income</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

Add totals from (A) through (D) above TOTAL INCOME (E): $ 

**PART IV. INCOME FROM ASSETS**

<table>
<thead>
<tr>
<th>HH Mbr#</th>
<th>(F) Type of Asset</th>
<th>(G) C/I</th>
<th>(H) Cash Value of Asset</th>
<th>(I) Annual Income from Asset</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full-time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

<table>
<thead>
<tr>
<th>Signature</th>
<th>(Date)</th>
<th>Signature</th>
<th>(Date)</th>
<th>Signature</th>
<th>(Date)</th>
</tr>
</thead>
</table>

### PART V. DETERMINATION OF INCOME ELIGIBILITY

<table>
<thead>
<tr>
<th>TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: $</th>
<th>Household Meets Income Restriction at:</th>
</tr>
</thead>
<tbody>
<tr>
<td>From Item (L) on page 1</td>
<td>60% [ ] 50% [ ] 40% [ ] 30% [ ] ___%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Current Income Limit per Family Size: $</th>
</tr>
</thead>
</table>

| Household Income at Move-in $                    |

<table>
<thead>
<tr>
<th>RECERTIFICATION ONLY: Current Income Limit x 140% $</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Household income exceeds 140% at recertification:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes [ ] No [ ]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Household Size at Move-in:</th>
</tr>
</thead>
</table>
PART VI. RENT

Tenant Paid Rent $ Rent Assistance: $ ___________________

Utility Allowance $ Other non-optional charges: $ ___________________

GROSS RENT FOR UNIT: Tenant paid rent plus Utility Allowance and other non-optional charges $ Unit Meets Rent Restriction at:

☑ 60% ☐ 50% ☐ 40% ☐ 30% ☐ ___%

Maximum Rent Limit for this unit: $ ___________________

PART VII. STUDENT STATUS

ARE ALL OCCUPANTS FULL-TIME STUDENTS?

☐ yes ☐ no If yes, enter student explanation**

(also attach documentation)

Student explanation:

1. TANF assistance
2. Job training program
3. Single parent/dependent child
4. Married/joint return*

**Exception for married/joint return is the only exception available for units necessary to qualify tax-exempt bonds.

PART VIII. PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household’s unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification

a. Tax Credit ☐ b. HOME ☐ c. Tax Exempt ☐ d. AHDP ☐ e. ____________ (Name of Program)

See Part V above.

<table>
<thead>
<tr>
<th>Income Status</th>
<th>Income Status</th>
<th>Income Status</th>
<th>Income Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ ≤ 50% AMGI</td>
<td>☐ 50% AMGI</td>
<td>☐ ≤ 50% AMGI</td>
<td>☐ ≤ 50% AMGI</td>
</tr>
<tr>
<td>☐ ≤ 60% AMGI</td>
<td>☐ 60% AMGI</td>
<td>☐ ≤ 80% AMGI</td>
<td>☐ ≤ 80% AMGI</td>
</tr>
<tr>
<td>☐ ≤ 80% AMGI</td>
<td>☐ 80% AMGI</td>
<td>☐ ≤ 0I **</td>
<td>☐ ≤ 0I **</td>
</tr>
<tr>
<td>☐ ≤ 0I **</td>
<td>☐ 0I **</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

** Upon recertification, household was determined over income (OI) according to eligibility requirements of the program(s) marked above.

SIGNATURE OF OWNER / REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Regulatory Agreement (if applicable), to live in a unit in this Project.
SIGNATURE OF OWNER / REPRESENTATIVE  DATE
INSTRUCTIONS FOR COMPLETING
TENANT INCOME CERTIFICATION

This form is to be completed by the owner or an authorized representative.

Part I – Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

Move-in Date Enter the date the tenant has or will take occupancy of the unit.

Effective Date Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.

Property Name Enter the name of the development.

County Enter the county (or equivalent) in which the building is located.

BIN # Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).

Address Enter the unit number.

Unit Number Enter the unit number.

# Bedrooms Enter the number of bedrooms in the unit.

Part II – Household Composition

List all occupants of the unit. State each household member’s relationship to the head of the household by using one of the following coded definitions:

H Head of household
A Adult co-tenant
C Child
L Live-in caretaker
S Spouse
O Other family member
F Foster child
N None of the above

Enter the date of birth, student status, and Social Security number or alien registration number for each occupant.

If there are more than seven occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.
Part III – Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the 12 months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

Column (A) Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.

Column (B) Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.

Column (C) Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.)

Column (D) Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.

Row (E) Add the totals from columns (A) through (D) above. Enter this amount.

Part IV – Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the 12 months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

Column (F) List the type of asset (i.e., checking account, savings account, etc.)

Column (G) Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).

Column (H) Enter the cash value of the respective asset.

Column (I) Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).

TOTALS Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than $5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

Row (K) Enter the Greater of the total in Column (I) or (J)
Row (L) Total Annual Household Income from All Sources Add (E) and (K) and enter the total

**HOUSEHOLD CERTIFICATION AND SIGNATURES**

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than five days prior to the effective date of the certification.

**Part V – Determination of Income Eligibility**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Annual Household Income from all sources</td>
<td>Enter the number from item (L).</td>
</tr>
<tr>
<td>Current Income Limit per Family Size</td>
<td>Enter the Current Move-in Income Limit for the household size.</td>
</tr>
<tr>
<td>Household income at move-in</td>
<td>For recertifications only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.</td>
</tr>
<tr>
<td>Household size at move-in</td>
<td></td>
</tr>
<tr>
<td>Household Meets Income Restriction</td>
<td>Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.</td>
</tr>
<tr>
<td>Current Income Limit x 140%</td>
<td>For recertification only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.</td>
</tr>
</tbody>
</table>

**Part VI – Rent**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenant Paid Rent</td>
<td>Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).</td>
</tr>
<tr>
<td>Rent Assistance</td>
<td>Enter the amount of rent assistance, if any.</td>
</tr>
<tr>
<td>Utility Allowance</td>
<td>Enter the utility allowance. If the owner pays all utilities, enter zero.</td>
</tr>
<tr>
<td>Other non-optional charges</td>
<td>Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.</td>
</tr>
<tr>
<td>Gross Rent for Unit</td>
<td>Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.</td>
</tr>
<tr>
<td>Maximum Rent</td>
<td>Enter the maximum allowable gross rent for the unit.</td>
</tr>
</tbody>
</table>
Limit for this unit

Unit Meets Rent Restriction at __\%  Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

**Part VII – Student Status**

If all household members are full-time* students, check “yes.” If at least one household member is not a full-time student, check “no.”

If “yes” is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

*Full time is determined by the school the student attends.*

**Part VIII – Program Type**

Mark the program(s) for which this unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit  See Part V above.

HOME  If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household’s designation.

Tax Exempt  If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household’s designation.

AHDP  If the property participates in the Affordable Housing Disposition Program (AHDP), and this household’s unit will count towards the set-aside requirements, mark the appropriate box indicating the household’s designation.

Other  If the property participates in any other affordable housing program, complete the information as appropriate.

**SIGNATURE OF OWNER / REPRESENTATIVE**

It is the responsibility of the owner or the owner’s representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well-trained in tax credit compliance.

*These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.*
EXHIBIT C
CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

_____________, 20__

TO: City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN  55345
Attn: City Manager

and (prior to the discharge of the Series 2017A Bonds (hereinafter defined))

U.S. Bank National Association
60 Livingston Avenue
EP-MN-WS3C
St. Paul, MN 55107-2292
Attn: Corporate Trust Services

and (prior to the discharge of the Series 2017B Note (hereinafter defined))

Bridgewater Bank
3800 American Boulevard, Suite 100
Bloomington, MN  55431
Attn: Nicholas Place

Re: Multifamily Housing Revenue Refunding Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Series 2017A Bonds”) and Multifamily Housing Revenue Refunding Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Series 2017B Note,” and together with the Series 2017A Bonds, the “Combined Bonds”)

The undersigned, an authorized representative for CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Owner”), hereby certifies, represents, and warrants that:

1. The Owner owns the multifamily housing project located at [2100 Douglas Drive North] [3354 Lilac Drive North], Golden Valley, Minnesota commonly known as the Golden Valley Townhomes (the “Project”).

2. The undersigned and the Owner have read and are thoroughly familiar with the provisions of (1) the Regulatory Agreement, dated August ___, 2017 (the “Regulatory Agreement”), between the Owner, the City of Minnetonka, Minnesota (the “Issuer”), U.S. Bank National Association, as trustee with respect to the Series 2017A Bonds (the “Trustee”), and Bridgewater Bank, as purchaser of the Series 2017B Note; and (2) the Financing Agreement, dated as of August 1, 2017, between the Owner, the Issuer, the Trustee, and Dougherty Mortgage LLC with respect to the Series 2017A Bonds, and the Loan Agreement, dated as of August 1, 2017, between the Owner and the Issuer with respect to the Series 2017B Note (together, the “Loan Agreements”). The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Combined Bonds.
3. A review of the activities of the Owner and of the Owner’s performance under the Regulatory Agreement and the Loan Agreements during the year ending ____ has been made under the supervision of the undersigned.

4. The Project’s Qualified Project Period commenced on _________, ____ (the date on which ten percent (10%) of the residential units in the Project were occupied), and will end on the latest of:
   
   (i) ____________, ____ (the date which is fifteen (15) years after the date on which fifty percent (50%) of the residential units in the Project were occupied);

   (ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or

   (iii) the date on which any assistance provided with respect to the Project under section 8 of the United States Housing Act of 1937 terminates.

5. As of the date of this Certificate, the following percentages of completed residential units in the Project are (i) occupied by Low Income Tenants or (ii) currently vacant and being held available for occupancy by Low Income Tenants and have been so held continuously since the date a Low Income Tenant vacated such unit, as indicated:

<table>
<thead>
<tr>
<th>Occupied by Low Income Tenants</th>
<th>_____ % Units</th>
<th>Nos.____</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continuously held vacant for occupancy by Low Income Tenants since last occupied by Low Income Tenants</td>
<td>_____ % Units</td>
<td>Nos.____</td>
</tr>
</tbody>
</table>

6. At no time since the date of filing of the last Continuing Program Compliance Certificate (or since the issuance of the Series 2016 Bonds, if this is the first such certificate) has less than [for Douglas Drive: three (3) units] [for Lilac Drive: one (1) unit] (representing forty percent (40%) of the completed units in the Project) been occupied by or were last occupied by Low Income Tenants.

7. As of the date of this Certificate, at least _____% of the units in the Project are (i) occupied by persons or families with Adjusted Income which does not exceed _____% of the Median Income for the Area adjusted for household size; or (ii) held vacant for occupancy for persons or families with Adjusted Income which does not exceed _____% of the Median Income for the Area adjusted for household size. Project Units occupied or held vacant for persons or families with Adjusted Income which does not exceed _____% of the Median Income for the Area adjusted for household size include Unit numbers _______________________________.

8. At all times since the date of filing of the last Continuing Program Compliance Certificate the rent on at least twenty percent (20%) of the units in the Project has been equal to or less than applicable area fair market rents or exception fair market rents for existing housing as established by the federal Department of Housing and Urban Development from time to time.

9. To the knowledge of the undersigned, after due inquiry, all units were rented or available for rental on a continuous basis during the immediately preceding year to members of the general public, and the Owner is not now and has not been in default under the terms of the Regulatory Agreement and the Loan Agreements and, to the knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Combined Bonds.
10. **[CHOOSE ONE]**: None/One or more] of the Tenants in the Project are currently receiving assistance under Section 8 of the United States Housing Act of 1937.

11. Unless otherwise expressly provided herein or unless the context requires otherwise, the capitalized terms used but not defined herein shall have the meaning assigned to such terms in the Regulatory Agreement.

12. The Owner has not transferred any interest in the Project since the date of submission of the Continuing Program Compliance Certificate last submitted to the Trustee and the Issuer with respect to the Project. *(If the Owner has transferred any interest in the Project, such transfer should be detailed here.)*

Signature page of the Borrower to the Certificate of Continuing Program Compliance.

Dated: _____________, ________.

**CHC MINNETONKA AFFORDABLE HOUSING LLC**, a Minnesota limited liability company

By: CHC Minnetonka Affordable Housing MM LLC  
Its: Managing Member

By: ________________________________  
Name: ________________________________  
Title: ________________________________
FANNIE MAE RIDER
TO REGULATORY AGREEMENT

THIS FANNIE MAE RIDER TO REGULATORY AGREEMENT (“Rider”) is attached to and forms a part of the Regulatory Agreement (Elmbrooke Apartments), dated August ___, 2017 (“Regulatory Agreement”), between CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (“Borrower”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (“Trustee”), BRIDGEWATER BANK, a Minnesota banking corporation (“Bank”), and the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (“Issuer”).

1. **Definitions.** All capitalized terms used in this Rider have the meanings given to those terms in the Regulatory Agreement, the Series 2017A Indenture, or the Series 2017A Financing Agreement, as applicable.

2. **Applicability.** This Rider shall amend and supplement the Regulatory Agreement. In the event any provision of this Rider conflicts with the Regulatory Agreement, this Rider shall supersede the conflicting provision of the Regulatory Agreement. This Rider shall apply in spite of the fact that the covenants, reservations and restrictions of the Regulatory Agreement run with the land and may be deemed applicable to any successor in interest to the Borrower.

3. **Obligations not Secured by the Mortgaged Property.** The Regulatory Agreement shall not constitute a mortgage, equitable mortgage, deed of trust, deed to secure debt or other lien or security interest in the real property described in the Regulatory Agreement (“Mortgaged Property”). None of the obligations of the Borrower or any subsequent owner of the Mortgaged Property under the Regulatory Agreement shall be secured by a lien on, or security interest in, the Mortgaged Property. All such obligations are expressly intended to be and shall remain unsecured obligations. The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

4. **Subordination.** The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Mortgage Loan Documents. Upon a conveyance or other transfer of title to the Mortgaged Property by foreclosure, deed in lieu of foreclosure or comparable conversion of the Mortgage Loan, the Person who acquires title to the Mortgaged Property pursuant to such foreclosure, deed in lieu of foreclosure or comparable conversion of the Mortgage Loan (unless such Person is the Borrower or a Person related to the Borrower within the meaning of Section 1.103-10(e) of the Regulations, in which event the Regulatory Agreement shall remain in full force and effect in its entirety) shall acquire such title free and clear of the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider and, from and after the date on which such Person acquires title to the Mortgaged Property, the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4, and 5 and this Rider, shall automatically terminate and be of no force and effect; provided that Sections 3, 4, and 5 and this Rider shall also terminate and be of no force or effect under the circumstances set forth in Section 11 of the Regulatory Agreement.

5. **Obligations Personal.** The Issuer agrees that no owner of the Mortgaged Property (including Fannie Mae) subsequent to the Borrower will be liable for, assume or take title to the Mortgaged Property subject to:
(a) any failure of any prior owner of the Mortgaged Property to perform or observe any representation or warranty, affirmative or negative covenant or other agreement or undertaking under the Regulatory Agreement; and

(b) the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by any prior owner of the Mortgaged Property under the Regulatory Agreement.

The Borrower and each subsequent owner of the Mortgaged Property shall be responsible under the Regulatory Agreement for its own acts and omissions occurring during the period of its ownership of the Mortgaged Property. All such liability and obligations shall be and remain personal to such person even after such person ceases to be the owner of the Mortgaged Property.

6. **Sale or Transfer.**

   (a) **Restrictions Not Applicable to Certain Transfers.** All provisions of the Regulatory Agreement regarding the sale or transfer of the Mortgaged Property or of any interest in the Borrower, including any requirement, limitation or condition precedent for any of (i) the consent of the Issuer or the Trustee to such transfer, (ii) an agreement by any transferee to abide by the requirements and restrictions of the Regulatory Agreement, (iii) transferee criteria or other similar requirements, (iv) an opinion of legal counsel and (v) the payment of any assumption fee, transfer fee, penalty or other charges, shall not apply to any of the following:

   (1) any transfer of title to the Mortgaged Property to Fannie Mae or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Mortgaged Property or to any subsequent transfer by Fannie Mae (or a third party) following such foreclosure, deed in lieu of foreclosure or comparable conversion;

   (2) any execution and delivery of a mortgage, deed of trust, deed to secure debt or other lien by the Borrower to secure any additional indebtedness of the Borrower which is originated by a lender for sale to Fannie Mae or guaranteed or otherwise credit enhanced by Fannie Mae; and

   (3) provided that no Series 2017A Bonds are then Outstanding or all Series 2017A Bonds are to be simultaneously fully paid, redeemed or defeased, any execution and delivery of a mortgage, deed of trust, deed to secure debt or other lien by the Borrower to secure any indebtedness incurred by the Borrower which effectively refinances the Mortgage Loan.

   (b) **Fannie Mae Rights to Consent Not Impaired.** Nothing contained in the Regulatory Agreement shall affect any provision of the Mortgage, the ___________________ (the “Credit Facility Agreement”) or any Mortgage Loan Document which requires the Borrower to obtain the consent of Fannie Mae as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Mortgaged Property or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Security Instrument.

   (c) **Conclusive Evidence.** Any written consent to a sale or transfer obtained from the Issuer shall constitute conclusive evidence that the sale or transfer is not a violation of the transfer provisions of the Regulatory Agreement.

7. **Damage, Destruction or Condemnation of the Mortgaged Property.** In the event that the Mortgaged Property is damaged or destroyed or title to the property, or any part thereof, is taken
through the exercise or the threat of the exercise of the power of eminent domain, the Borrower shall comply with all applicable requirements of the Mortgage and the other Mortgage Loan Documents.

8. **Regulatory Agreement Default.** Notwithstanding anything contained in the Regulatory Agreement to the contrary:

   (a) The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

   (b) The occurrence of an event of default under the Regulatory Agreement shall not be or be deemed to be a default under the Mortgage Loan Documents, except as may be otherwise specified in the Mortgage Loan Documents.

   (c) Upon any default by the Borrower under the Regulatory Agreement, the ________________ (the “Assignment”) shall govern the remedies and other actions which the Issuer may take on account of such default.

9. **Amendments.** Unless the Assigned Rights (as that term is defined in the Assignment) are held solely by the Trustee pursuant to Section 2.6(2) of the Assignment, the Issuer shall not consent to any amendment, supplement to, or restatement of the Regulatory Agreement without the prior written consent of Fannie Mae.

10. **Termination.** The Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee, Fannie Mae, and the Borrower upon receipt of an opinion of a nationally recognized bond counsel acceptable to the Trustee that such termination will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income purposes. So long as the Bonds have been redeemed or are redeemed within a reasonable period thereafter, the Regulatory Agreement shall terminate and be of no further force or effect from and after the date of any transfer of title to the Mortgaged Property by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Mortgaged Property; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained in the Regulatory Agreement shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure or the delivery of a deed in lieu of foreclosure or a similar event, the Borrower or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Mortgaged Property for federal income tax purposes.

11. **Third-Party Beneficiary.** The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of Fannie Mae and are entered into for the benefit of various parties, including Fannie Mae. Fannie Mae shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Issuer and/or the Trustee, or to cause the Issuer or the Trustee to enforce, the terms of the Regulatory Agreement. In addition, the Borrower and the Issuer intend that Fannie Mae be a third-party beneficiary of the Regulatory Agreement.

12. **Copies of Notices under the Regulatory Agreement.** Copies of all notices under the Regulatory Agreement shall be sent to the Dougherty Mortgage LLC (the “Loan Servicer”) at the address set forth below or to such other address as the Loan Servicer may from time to time designate:

[ADDRESS]
13. **Notices.** Any notice to be given to Fannie Mae shall be sent to Fannie Mae at the address set forth below or to such other address as Fannie Mae may from time to time designate:

Fannie Mae  
3900 Wisconsin Avenue, NW  
Drawer AM  
Washington, DC 20016-2892  
Attention: Director, Multifamily Asset Management  
Telephone: (301) 204-8008  
Facsimile: (301) 280-2065  

RE: [SPECIFY TRANSACTION NAME, PROPERTY NAME AND LOAN SERVICER]

with a copy to:

Fannie Mae  
3900 Wisconsin Avenue, NW  
Drawer AM  
Washington, DC 20016-2892  
Attention: Vice President, Multifamily Operations  
Telephone: (301) 204-8422  
Facsimile: (202) 752-8369  

RE: [SPECIFY TRANSACTION NAME, PROPERTY NAME AND LOAN SERVICER]

BORROWER’S INITIALS: ________  
ISSUER’S INITIALS: ________  
TRUSTEE’S INITIALS: ________
FINANCING AGREEMENT

between

CITY OF MINNETONKA, MINNESOTA,
as Issuer

U.S. BANK NATIONAL ASSOCIATION,
as Trustee,

DOUGHERTY MORTGAGE LLC,
as Lender

and

CHC MINNETONKA AFFORDABLE HOUSING LLC,
as Borrower

Dated as of August 1, 2017

Relating to:

$6,600,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Refunding Bonds
(Elmbrooke and Golden Valley Townhomes Project)
Series 2017A

This instrument drafted by:
Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN  55402
TABLE OF CONTENTS

ARTICLE I
DEFINITIONS AND INTERPRETATION

Section 1.01. Definitions ................................................................................................................... 2
Section 1.02. Rules of Construction .................................................................................................. 3
Section 1.03. Effective Date .............................................................................................................. 3

ARTICLE II
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.01. Representations, Warranties and Covenants by the Borrower .................................... 4
Section 2.02. Representations, Warranties and Covenants of the Issuer........................................... 7
Section 2.03. Representations, Warranties and Covenants of the Lender ......................................... 9

ARTICLE III
THE BONDS AND THE PROCEEDS THEREOF

Section 3.01. The Bonds and the Proceeds Thereof .......................................................................... 9

ARTICLE IV
THE MORTGAGE LOAN

Section 4.01. Amount and Source of Mortgage Loan ..................................................................... 10
Section 4.02. Payment of Fees and Expenses ................................................................................. 10
Section 4.03. Notification of Prepayment of Mortgage Note .......................................................... 11
Section 4.04. Term Sheet ................................................................................................................ 12
Section 4.05. Compliance with Issuer’s Private Activity Bond Policy ........................................... 12

ARTICLE V
COVENANTS, UNDERTAKINGS AND OBLIGATIONS OF THE BORROWER

Section 5.01. Taxes, Other Governmental Charges and Utility Charges ........................................ 13
Section 5.02. Compliance With Laws ............................................................................................. 13
Section 5.03. Maintenance of Legal Existence ............................................................................... 13
Section 5.04. Operation of Project .................................................................................................. 13
Section 5.05. Tax Covenants ........................................................................................................... 14
Section 5.06. Further Assurances and Corrective Instruments ....................................................... 16
Section 5.07. Compliance With Other Documents ........................................................................ 16
Section 5.08. Notice of Certain Events ........................................................................................... 16
Section 5.09. Indemnification ........................................................................................................ 17
Section 5.10. Right To Perform Borrower’s Obligations ................................................................. 18
Section 5.11. Nonrecourse Provisions ............................................................................................. 18
Section 5.12. Trust Indenture .......................................................................................................... 18

ARTICLE VI
MORTGAGE LOAN DOCUMENTS

Section 6.01. Assurances ................................................................................................................. 19
Section 6.02. Financial Obligations Personal to the Borrower ......................................................... 19
ARTICLE VII
TRUSTEE’S INTEREST IN AGREEMENT
Section 7.01. Issuer Assignment of This Financing Agreement ..................................................... 20

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES
Section 8.01. Events of Default....................................................................................................... 21
Section 8.02. Remedies Upon an Event of Default .......................................................................... 21
Section 8.03. Default Under Regulatory Agreements ..................................................................... 23
Section 8.04. Limitation on Waivers............................................................................................... 23
Section 8.05. Notice of Default: Rights To Cure ............................................................................ 24
Section 8.06. Rights Cumulative..................................................................................................... 24

ARTICLE IX
MISCELLANEOUS
Section 9.01. Notices....................................................................................................................... 25
Section 9.02. Amendment ............................................................................................................... 25
Section 9.03. Entire Agreement ...................................................................................................... 25
Section 9.04. Binding Effect ........................................................................................................... 25
Section 9.05. Severability ................................................................................................................ 25
Section 9.06. Execution in Counterparts........................................................................................ 25
Section 9.07. Governing Law .......................................................................................................... 25
Section 9.08. Limited Liability of the Issuer................................................................................... 25
Section 9.09. Term of This Financing Agreement .......................................................................... 27

SIGNATURES ......................................................................................................................................... S-1

EXHIBIT A Term Sheet .................................................................................................................. A-1
FINANCING AGREEMENT

THIS FINANCING AGREEMENT is made and entered into as of August 1, 2017 (the “Financing Agreement”), between the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (together with its successors and assigns, the “Issuer”), CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (together with its successors and assigns, the “Borrower”), the managing member of which is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, U.S. BANK NATIONAL ASSOCIATION, as trustee under the Indenture referred to below (together with its successors and assigns, the “Trustee”), and DOUGHERTY MORTGAGE LLC, a Delaware limited liability company (together with its successors and assigns, the “Lender”).

RECITALS:

A. Pursuant to the Act (as defined herein), the Issuer is authorized to issue revenue bonds for the purpose of, among other things, financing and refinancing the acquisition, construction, rehabilitation, and equipping of multifamily housing developments.

B. As more fully set forth in the Indenture of Trust, dated as of August 1, 2017 (the “Indenture”), between the Issuer and the Trustee, the Issuer is issuing its Multifamily Housing Revenue Refunding Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Bonds”), in the original aggregate principal amount of $6,600,000.

C. The parties hereto acknowledge the matters set forth in the Recitals to the Indenture.

NOW, THEREFORE, the parties hereto, in consideration of the premises and the mutual covenants and commitments of the parties set forth herein, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, hereby agree as follows:

(The remainder of this page is intentionally left blank.)
ARTICLE I
DEFINITIONS AND INTERPRETATION

Section 1.01. Definitions. Capitalized terms used herein without definition shall have the respective meanings set forth in the Indenture. In addition to the terms elsewhere defined in this Financing Agreement, the following terms used in this Financing Agreement (including the Recitals) shall have the following meanings unless the context indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined:

“Act” means collectively, Minnesota Statutes, Chapters 462C and 474A, as amended.

“Bond Documents” means, collectively, this Financing Agreement, the Regulatory Agreements, the Tax Certificate, the Indenture, the Cooperative Agreement, and the Bond Purchase Agreement.

“Bond Purchase Agreement” means the Bond Purchase Agreement, dated ____________, 2017, between the Issuer, the Borrower, and the Underwriter.

“Bond Resolution” means the resolution authorizing the issuance of the Bonds and adopted by the members of the Issuer on July 24, 2017.

“Bonds” means the Multifamily Housing Revenue Refunding Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A, issued by the Issuer pursuant to the Indenture in the original aggregate principal amount of $6,600,000.

“Closing Date” means August __, 2017.

“Combined Bonds” means, collectively, the Bonds and the Note.

“Event of Default” means any event of default specified and defined in Section 8.01 hereof.

“Investor Member” means Wincopin Circle LLLP, a Maryland limited liability limited partnership, its successors and assigns.

“Mortgage Loan Documents” means, collectively, the Mortgage Note, the Mortgage and all other documents evidencing, securing or otherwise relating to the Mortgage Loan, including all amendments, supplements, modifications and restatements thereof, excluding, however, the Bond Documents.

“Mortgage Note Rate” means a per annum rate of interest calculated in accordance with the Mortgage Note.

“Note” means the Multifamily Housing Revenue Refunding Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B, issued by the Issuer in the original aggregate principal amount of $900,000.

“Permitted Liens” means any easements and restrictions listed in a schedule of exceptions to coverage in the title insurance policy delivered with respect to the Project as required by the Mortgage Loan Documents.
“Person” means any natural person, firm, partnership, association, limited liability company, corporation or public body.

“Regulatory Agreements” means, collectively, the Regulatory Agreement with respect to the Elmbrooke Apartments, dated the Closing Date, between the Issuer, the Borrower, the Trustee, and the Note Lender, and the Regulatory Agreement with respect to the Golden Valley Townhomes, dated the Closing Date, between the Issuer, the Borrower, the Trustee, and the Note Lender, all as the same may be amended from time to time.

“Tax Certificate” means the Tax Certificate of the Borrower, dated the Closing Date.

“Underwriter” means Dougherty & Company LLC, a Delaware limited liability company, as the original purchaser of the Bonds.

Section 1.02. Rules of Construction.

(a) The singular form of any word used herein, including the terms defined in Section 1.01, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include correlative words of the other genders.

(b) All references herein to “Articles,” “Sections” and other subdivisions hereof are to the corresponding Articles, Sections or subdivisions of this Financing Agreement as originally executed; and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Financing Agreement as a whole and not to any particular Article, Section or subdivision hereof.

(c) The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not limit or otherwise affect the meaning, construction or effect of this Financing Agreement or describe the scope or intent of any provisions hereof.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with applicable generally accepted accounting principles as in effect from time to time.

(e) Every “request,” “order,” “demand,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent,” or similar action hereunder by any party shall, unless the form thereof is specifically provided, be in writing signed by a duly authorized representative of such party with a duly authorized signature.

(f) The parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Financing Agreement and the Indenture. Accordingly, the parties agree that any rule of construction which disfavors the drafting party shall not apply in the interpretation of this Financing Agreement or the Indenture or any amendment or supplement or exhibit hereto or thereto.

Section 1.03. Effective Date. The provisions of this Financing Agreement shall be effective on and as of the Closing Date, immediately upon the effectiveness of the Indenture.
ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.01. Representations, Warranties and Covenants by the Borrower. The Borrower represents, warrants and covenants to the Issuer, Trustee and Lender as follows:

(a) The Borrower is a limited liability company and is qualified to do business in the State. The Borrower has full power and authority to own its properties and to carry on its business as now being conducted and as contemplated to be conducted with respect to the Project, and to enter into, and to perform and carry out the transactions provided for in this Financing Agreement, all other Bond Documents contemplated hereby to be executed by the Borrower and the Mortgage Loan Documents. This Financing Agreement, the other Bond Documents to which the Borrower is a party, the Mortgage Loan Documents and all other documents to which the Borrower is a party and contemplated hereby or thereby have been duly authorized, executed and delivered by the Borrower and constitute the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general equitable principles. The officers of the Borrower executing this Financing Agreement, all other Bond Documents contemplated hereby to be executed by the Borrower and the Mortgage Loan Documents are duly and properly in office and fully authorized to execute the same.

(b) Neither the execution and delivery of this Financing Agreement, all other Bond Documents to be executed by the Borrower, the Mortgage Loan Documents or any other documents contemplated hereby or thereby, nor the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions of this Financing Agreement, all other Bond Documents to be executed by the Borrower, the Mortgage Loan Documents or any other documents contemplated hereby or thereby, will violate any provision of law, any order of any court or other agency of government, or any of the organizational or other governing documents of the Borrower, or any indenture, agreement or other instrument to which the Borrower is now a party or by which it or any of its properties or assets is bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement or other instrument or any license, judgment, decree, law, statute, order, rule or regulation of any governmental agency or body having jurisdiction over the Borrower or any of its activities or properties, or, except as provided hereunder, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, except for Permitted Liens.

(c) Each portion of the Project, the Elmbrooke Apartments, the Douglas Drive Golden Valley Townhomes, and the Lilac Drive Golden Valley Apartments, comprise three distinct multifamily housing developments as contemplated by the Act. The Borrower has and will have fee simple title to the Project, subject to the Permitted Liens. The Borrower is the sole borrower under the Mortgage Loan. The Borrower enjoys the peaceful and undisturbed possession of all of the premises upon which it is operating the Project.

(d) As of the Closing Date, no litigation or proceeding is pending or, to the knowledge of the Borrower or the Managing Member of the Borrower, threatened against the Borrower or its Managing Member or with respect to the Project which has a reasonable probability of having a material adverse effect on its financial condition or business, or the transactions contemplated by this Financing Agreement, the Indenture, the other Bond
(e) The Project comprises three distinct multifamily rental housing developments as contemplated by the Act. As of the Closing Date, the Project conforms in all material respects with all applicable zoning (or a legal non-conforming use), planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project, all necessary utilities are available to the Project, and the Borrower will obtain all requisite zoning, planning, building and environmental and other permits which may become necessary with respect to the Project. The Borrower has obtained all licenses, permits and approvals necessary for the ownership, operation and management of the Project, including all approvals essential to the transactions contemplated by this Financing Agreement, the Indenture, the other Bond Documents, the Mortgage Loan Documents and any other documents contemplated hereby or thereby.

(f) The financial statements which have been furnished by or on behalf of the Borrower to the Issuer, are complete and accurate in all material respects and present fairly the financial condition of the Borrower as of their respective dates in accordance with generally accepted accounting methods applied by the Borrower on a consistent basis, and since the date of the most recent of such financial statements there has not been any material adverse change, financial or otherwise, in the condition of the Borrower, and there has not been any material transaction entered into by the Borrower other than transactions in the ordinary course of business, and the Borrower does not have any material contingent obligations which are not otherwise disclosed in its financial statements. There (i) is no completed, pending or threatened bankruptcy, reorganization, receivership, insolvency or like proceeding, whether voluntary or involuntary, affecting the Project, the Borrower, or any managing member of the Borrower; and (ii) has been no assertion or exercise of jurisdiction over the Project, the Borrower or any managing member of the Borrower by any court empowered to exercise bankruptcy powers.

(g) No event has occurred and no condition exists with respect to the Borrower or the Project that would constitute an Event of Default or which, with the lapse of time, if not cured, or with the giving of notice, or both, would become an Event of Default. The Borrower is not in default under the any of the Regulatory Agreements.

(h) The Borrower is not in default under the Tax Certificate, including the terms and conditions of the exhibits thereto, and the representations set forth in the Tax Certificate pertaining to the Borrower and the Project are true and accurate.

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

(j) Each portion of the Project is, as of the Closing Date, in compliance with all requirements of the respective Regulatory Agreement, including all applicable requirements of the Act and the Code. The Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreements, including all applicable requirements of the Act and the Code. All leases will
comply with all applicable laws and the Regulatory Agreements. The Project meets the requirements of this Financing Agreement, the Regulatory Agreements, the Act and the Code with respect to multifamily rental housing.

(k) No information, statement or report furnished in writing to the Issuer, Fannie Mae, the Lender or the Trustee by the Borrower in connection with this Financing Agreement, the other Bond Documents or the Mortgage Loan Documents or the consummation of the transactions contemplated hereby and thereby (including, without limitation, any information furnished by the Borrower in connection with the preparation of any materials related to the issuance delivery or offering of the Bonds on the Closing Date) contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and the representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower’s closing certificates, as of the Closing Date, are true, correct and complete, do not contain any untrue statement or misleading statement of a material fact, and do not omit to state a material fact required to be stated therein or necessary to make the certifications, representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and the estimates and the assumptions contained herein and in any certificate of the Borrower delivered as of the Closing Date are reasonable and based on the best information available to the Borrower.

(l) To the best knowledge of the Borrower, no member, officer, agent or employee of the Issuer has been or is in any manner interested, directly or indirectly, in that person’s own name or in the name of any other person, in the Bonds, the Bond Documents, the Mortgage Loan Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Bond Documents or the Mortgage Loan Documents.

(m) No authorization, consent, approval, order, registration declaration or withholding of objection on the part of or filing of or with any governmental authority not already obtained or made (or to the extent not yet obtained or made the Borrower has no reason to believe that such authorizations, consents, approvals, orders, registrations or declarations will not be obtained or made in a timely fashion) is required for the execution and delivery or approval, as the case may be, of this Financing Agreement, the other Bond Documents, the Mortgage Loan Documents or any other documents contemplated by this Financing Agreement, the other Bond Documents or the Mortgage Loan Documents, or the performance of the terms and provisions hereof or thereof by the Borrower.

(n) The Borrower is not presently under any cease or desist order or other orders of a similar nature, temporary or permanent, of any federal or state authority which would have the effect of preventing or hindering performance of its duties hereunder, nor are there any proceedings presently in progress or to its knowledge contemplated which would, if successful, lead to the issuance of any such order.

(o) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the refinancing and financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or the Issuer is a party or of which it is a beneficiary including, without limitation, the Indenture; that it approves the initial appointment of the Trustee under the Indenture; that it understands the risks inherent in such transactions, including, without limitation,
the risk of loss of the Project; and that it has not relied on the Issuer, the Lender or Fannie Mae for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Financing Agreement and the Indenture or otherwise relied on the Issuer, the Lender or Fannie Mae in any manner.

(p) The Borrower has not received any notice that it is not in compliance with all provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"); the Resource Conservation and Recovery Act; the Superfund Amendments and Reauthorization Act of 1986; the Toxic Substances Control Act and all environmental laws of the State (the “Environmental Laws”), or with any rules, regulations and administrative orders of any governmental agency, or with any judgments, decrees or orders of any court of competent jurisdiction with respect thereto; and the Borrower has not received any assessment, notice (primary or secondary) of liability or financial responsibility, and no notice of any action, claim or proceeding to determine such liability or responsibility, or the amount thereof, or to impose civil penalties with respect to a site listed on any federal or state listing of sites containing or believed to contain “hazardous materials” (as defined in the Environmental Laws), nor has the Borrower received notification that any hazardous substances (as defined under CERCLA) that it has disposed of have been found in any site at which any governmental agency is conducting an investigation or other proceeding under any Environmental Law.

(q) The Borrower has not received any notice that it is not in full compliance with the Employment Retirement Income Security Act of 1974, as amended, and the Department of Labor regulations thereunder, with the Code and Regulations thereunder and with terms of such plan or plans with respect to each pension or welfare benefit plan to which the Borrower is a party or makes any employer contributions with respect to its employees, for the current or prior plan years of such plans.

(r) The average maturity of the Combined Bonds does not exceed one hundred twenty percent (120%) of the average reasonably expected economic life of the facilities of the Project financed with the original net proceeds of the Combined Bonds.

(s) The Combined Bonds are not and shall not be “federally guaranteed” as defined in Section 149(b) of the Code.

(t) The Borrower intends to hold the Project for its own account and has no current plans to sell and has not entered into any agreement to sell all or any portion of the Project, except for any purchase option at the end of the “compliance period” (as defined in Section 42 of the Code) as set forth in the Borrower’s operating agreement.

(u) All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein.

Section 2.02. Representations, Warranties and Covenants of the Issuer. The Issuer represents, warrants and covenants as follows:

(a) **Authority.** The Issuer is a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State and is authorized to issue the Bonds to refinance the Project pursuant to the Act and
Minnesota Statutes, Sections 471.59 and 471.656, as amended. The Issuer is authorized and empowered by the provisions of the Bond Resolution to enter into the transactions contemplated by this Financing Agreement and the Indenture and to carry out its obligations hereunder and thereunder, and by proper action of its governing body has been duly authorized to execute and deliver the Bond Documents to which it is a party, and the Bond Documents to which it is a party have been duly executed and delivered by the Issuer and are valid and binding obligations of the Issuer enforceable in accordance with their terms.

(b) **Pledge.** The Bonds are to be issued and secured by the Indenture, pursuant to which certain of the Issuer’s interests in this Financing Agreement and the Indenture, and the revenues and income to be derived by the Issuer pursuant to this Financing Agreement and the Indenture, will be pledged and assigned to the Trustee as security for payment of the principal, premium, if any, and interest on the Bonds. The Issuer covenants that it has not and will not pledge or assign its interest in the Indenture or this Financing Agreement, or the revenues and income derived pursuant to this Financing Agreement or the Indenture, excepting the Reserved Rights of the Issuer, other than to the Trustee under the Indenture to secure the Bonds. The Issuer will comply with all provisions of the Act (and the rules promulgated thereunder) applicable to the Bonds and the transactions contemplated by this Financing Agreement and the Indenture.

(c) **Purpose.** The Issuer finds and determines that the refinancing of the Project will promote the public welfare of the Issuer, the City of Golden Valley, and their residents by providing multifamily housing developments for low and moderate income residents of the Issuer and the City of Golden Valley and otherwise furthering the purposes and policies of the Act.

(d) **Conflicts.** To the best knowledge of the Issuer, neither the execution and delivery of the Bond Documents to which it is a party, the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of or compliance with the terms and conditions of the Bond Documents to which it is a party conflicts with or results in a breach of the terms, conditions or provisions of any material restriction, agreement or instrument to which the Issuer is a party, or by which it or any of its property is bound, or constitutes a default under any of the foregoing.

**Section 2.03. Representations, Warranties and Covenants of the Lender.** The Lender hereby represents, warrants and covenants as follows:

(a) The Lender is a limited liability company organized under the laws of the State of Delaware. The Lender has duly authorized the execution and delivery of this Financing Agreement.

(b) The Lender has complied with the provisions of the laws of the State which are prerequisite to the consummation of, and has all necessary power and authority to consummate, all transactions described in this Financing Agreement and all other agreements relating hereto.

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

THE BONDS AND THE PROCEEDS THEREOF

Section 3.01. The Bonds and the Proceeds Thereof. The Issuer has authorized the issuance of
the Bonds in the aggregate principal amount of $________________, and Bonds in such amount shall be
issued and Outstanding as of the Closing Date. The obligations of the Issuer, the Trustee and the
Borrower under this Financing Agreement are expressly conditioned upon (i) the issuance, sale and
delivery of the Bonds, (ii) receipt by the Trustee of the proceeds thereof, and (iii) the making of the
Mortgage Loan by the Issuer and the assignment thereof to the Lender (i.e., the Assigned Loan) and the
delivery of the payment therefor by the Lender to the Trustee. None of the Issuer, the Lender, the Trustee
or Fannie Mae shall have any liability for any fees, costs or expenses, including, without limitation,
issuance costs relating to the Bonds; all of such fees, costs and expenses shall be paid by the Borrower.

(The remainder of this page is intentionally left blank.)
ARTICLE IV
THE MORTGAGE LOAN

Section 4.01. Amount and Source of Mortgage Loan. Upon the issuance and delivery of the Bonds, pursuant to Sections 2.01 and 2.06 of the Indenture, the Issuer will make the Mortgage Loan to the Borrower, and the Borrower will apply the proceeds of the Bonds as provided in Section 4.02 of the Indenture to pay Project costs. The Trustee shall apply the proceeds of the Assigned Loan as provided in Section 5.13(b)(i) of the Indenture to secure the Bonds until the Purchase Date and then to purchase the Pass-Through Certificate. The Borrower accepts the Mortgage Loan from the Issuer, upon the terms and conditions set forth herein, in the Mortgage Loan Documents and in the Indenture, and subject to the terms and conditions of the Regulatory Agreements. The Issuer has caused the proceeds of the Assigned Loan to be provided to the Trustee for deposit to the Collateral Security Principal Account of the Collateral Security Fund. The Borrower acknowledges its obligation to pay all amounts necessary to pay principal of and interest on the Bonds. The Borrower has made arrangements for the delivery to the Trustee of the Pass-Through Certificate and of certain other Preference Proof Moneys as contemplated herein and in the Indenture. Payments on the Pass-Through Certificate received by the Trustee shall be credited to amounts due from the Borrower for payment of principal of and interest on the Bonds.

Section 4.02. Payment of Fees and Expenses. In addition to all fees, costs, expenses and other amounts required to be paid by the Borrower under the Mortgage Note, the Borrower shall pay, without duplication, the following fees and expenses:

(a) All amounts required to (i) pay the fees of the Trustee for its duties and services as Trustee in connection with the Bonds (as such duties and services are set out in the Indenture), and (ii) reimburse the Trustee for all out-of-pocket expenses, fees, costs and other charges, including reasonable counsel fees and taxes (excluding income, value added and single business taxes), reasonably and necessarily incurred by the Trustee in performing its duties as Trustee under the Indenture. All payments for fees and expenses shall be made by the Borrower not later than ten (10) days after receipt of invoices or other statements rendered to the Borrower by the Trustee.

(b) The administrative fee of the Issuer equal to one-eighth of one percent (0.125%) of the principal amount of the Bonds and which shall be payable by the Borrower on the Closing Date, and the reasonable fees and expenses of the Issuer or any agents, attorneys, accountants, consultants selected by the Issuer to act on its behalf in connection with the Bond Documents, the Loan Agreement, the Mortgage Loan Documents or the Bonds, including, without limitation, any and all reasonable expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds or in connection with any litigation which may at any time be instituted involving the Bond Documents, the Loan Agreement, the Mortgage Loan Documents or the Bonds or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing.

(c) Any costs incurred by the Issuer, including reasonable fees of Issuer’s counsel, as a result of the Issuer’s compliance with an audit or inquiry of any kind, random or otherwise, by the Internal Revenue Service, the Minnesota Department of Revenue, the Minnesota Office of the State Auditor, or any other governmental agency with respect to the Bonds or the Project.

(d) All taxes and assessments of any type or character charged to the Issuer or to the Trustee affecting the amount available to the Issuer or the Trustee from payments to be received
hereunder or under the Loan Agreement or in any way arising due to the transactions contemplated hereby or thereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Trustee and taxes based upon or measured by the net income of the Trustee; provided, however, that the Borrower shall have the right to protest any such taxes or assessments and to require the Issuer or the Trustee, at the Borrower’s expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Issuer or the Trustee.

(e) The fees of the rebate monitor as required by the Tax Certificate and, upon receipt of an appropriately completed invoice, all out-of-pocket expenses of the rebate monitor.

(f) The annual rating maintenance fee, if any, of any Rating Agency then rating the Bonds.

(g) All Costs of Issuance of the Bonds, including, but not limited to, Rating Agency fees, printing expenses, attorneys’ fees and underwriters’ fees, and all expenses of originating the Mortgage Loan by the Lender and assigning and delivering the Mortgage Loan to Fannie Mae, the Borrower acknowledging that all such fees, costs and expenses (excluding the portions of the ongoing trust administration fees of the Trustee and the rebate monitor’s fee to the extent included in the Mortgage Note Rate) must be paid by the Borrower separate and apart from payments due under the Mortgage Loan and will not be included in the Mortgage Note Rate.

(h) The Costs of Issuance deposit to be made to the Costs of Issuance Fund on the Closing Date pursuant to Section 4.01 of the Indenture.

(i) These obligations and those in Sections 5.09 and 9.08 shall remain valid and in effect notwithstanding repayment of the Mortgage Loan hereunder or termination of this Financing Agreement or the Indenture.

The Borrower shall either pay the foregoing items directly or, to the extent such items are to be paid by the Trustee under the Indenture, shall pay as Operating Revenue to the Trustee for deposit to the Operating Fund under the Indenture amounts sufficient to enable the Trustee to pay the foregoing items in a timely manner.

The Borrower shall pay through the Lender all fees and expenses not included within the Mortgage Note Rate. All fees and expenses not included in the Mortgage Note Rate shall not be secured by the Mortgage, and shall be subordinate to the Borrower’s obligations under the Mortgage Loan in all respects. No such fees or expenses payable to the Issuer or the Trustee shall be paid from the proceeds of the Pass-Through Certificate, except with respect to the Trustee to the extent set forth in Section 9.02 of the Indenture.

**Section 4.03. Notification of Prepayment of Mortgage Note.** The Lender shall notify the Trustee promptly of the receipt of any prepayment of the Mortgage Note, whether upon acceleration, by reason of application of insurance or condemnation proceeds, optional prepayment or otherwise, unless the Lender has received written evidence that the Borrower has notified the Trustee of such prepayment. If such prepayment results in revisions to the amortization schedule included in the Term Sheet, Lender shall provide the revised amortization schedule to the Trustee.
Section 4.04. Term Sheet. The Lender has delivered on the Closing Date the Term Sheet in the form attached as EXHIBIT A hereto and certifies that the information set forth therein is accurate as of the Closing Date. The Lender agrees that it will promptly advise the Issuer, the Trustee and the Underwriter in writing of any material changes which occur in the information set forth in the Term Sheet after the Closing Date and before the date on which the Pass-Through Certificate is acquired by the Trustee pursuant to the provisions of Section 4.03 of the Indenture; provided, however, that except as set forth in Section 4.03, such changes may only be made to cure any ambiguity, supply any omission or cure or correct any defect or inconsistent provision in the Term Sheet.

Section 4.05. Compliance with Issuer’s Private Activity Bond Policy. The Borrower agrees to comply with the Issuer’s Policy Number 2.5 related to Tax Exempt Financing.

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

COVENANTS, UNDERTAKINGS AND OBLIGATIONS OF THE BORROWER

Section 5.01. Taxes, Other Governmental Charges and Utility Charges. The Borrower shall pay, or cause to be paid, promptly as the same become due and payable and prior to delinquency thereof, every lawful cost, expense and obligation of every kind and nature, foreseen or unforeseen, for the payment of which the Issuer, the Trustee, the Lender or Fannie Mae is or shall become liable by reason of its or their estate or interest in the Project or any portion thereof, by reason of any right or interest of the Issuer, the Trustee, the Lender or Fannie Mae in or under this Financing Agreement, or by reason of or in any manner connected with or arising out of the possession, operation, maintenance, alteration, repair, rebuilding, use or occupancy of the Project or any portion thereof, including, without limitation, all taxes (except income and similar taxes of such entities), assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any machinery, equipment or other property installed or brought by the Borrower therein or thereon; provided that any amounts payable hereunder that are also required to be paid by the terms of the Mortgage shall be paid without duplication on the terms provided in the Mortgage.

Upon request, the Borrower shall furnish to the Issuer, the Trustee, Fannie Mae and the Lender proof of the payment of any such tax, assessment or other governmental or similar charge, or any other charge which is payable by the Borrower as set forth above.

Section 5.02. Compliance With Laws. The Borrower shall, throughout the term of this Financing Agreement and at no expense to the Issuer, the Trustee or Fannie Mae promptly comply or cause compliance with all laws, ordinances, rules, regulations and requirements of duly constituted public authorities which may be applicable to the Project or to the repair and alteration thereof, or to the use or manner of use of the Project, including, but not limited to, the applicable provisions of the Americans With Disabilities Act and all applicable federal, State and local environmental, labor, health and safety laws, rules and regulations.

Section 5.03. Maintenance of Legal Existence. During the term of this Financing Agreement, the Borrower shall maintain its existence as set forth in Section 2.01(a) hereof and shall not terminate, dissolve or dispose of all or substantially all of its assets; provided, however, that the Borrower may, with the written permission of the Issuer, consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, or transfer all or substantially all of its assets to another entity, but only on the condition that the assignee entity or the entity resulting from or surviving such merger or consolidation (if other than the Borrower), or the entity to which such transfer shall be made, shall be duly organized and existing, in good standing and qualified to do business under the laws of the State, shall remain so continuously during the term hereof, and shall expressly assume in writing and agree to perform all of the Borrower’s obligations hereunder and under all other documents executed by the Borrower in connection with the issuance of the Bonds; provided, further, that (i) the Borrower delivers an opinion of Bond Counsel to the effect that such consolidation or merger shall not cause interest on the Bonds to be included in gross income for federal income tax purposes, and (ii) any transfer of the Project shall be effected in accordance with the Mortgage. Nothing in this Section 5.03 shall be deemed to relieve the Borrower of its obligations to comply with the provisions of the Mortgage Loan Documents.

Section 5.04. Operation of Project. The Borrower will not sell, transfer or otherwise dispose of the Project except as provided in the Regulatory Agreements, the Mortgage and Section 5.03 hereof.
Section 5.05. Tax Covenants. In order to assure that the interest on the Bonds shall at all times be excluded from gross income for the purposes of federal income taxation, the Borrower represents and covenants with the Issuer, Trustee and all Holders of the Bonds as follows:

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

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

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

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

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

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

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

(h) The Borrower understands that the Code imposes a penalty for failure to file with the Secretary of the Treasury an annual certification of compliance with low income occupancy requirements, and if the requirements for a “qualified residential rental project” are not met, does not allow deduction for interest paid on the Bonds which accrues during the period beginning on the first day of the taxable year in which the Project ceases to meet such requirements and ending on the date the Project again meets such requirements.
(i) The average maturity of the Combined Bonds will not exceed one hundred twenty percent (120%) of the average reasonably expected economic life of the Project financed with the proceeds of the Combined Bonds within the meaning of Section 147(b) of the Code.

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

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

(l) The rehabilitation expenditures, within the meaning of Section 147(d) of the Code, with respect to the rehabilitation of each of the Elmbrooke Apartments, the Douglas Drive Golden Valley Townhomes, and the Lilac Drive Golden Valley Townhomes will equal or exceed fifteen percent (15%) of the portion of the cost of acquiring each such project financed with proceeds of the Combined Bonds.

(m) The Borrower on behalf of the Issuer shall pay to the United States, as a rebate, an amount equal to the sum of (a) the excess of (i) the aggregate amount earned on all nonpurpose investments (other than investments attributable to an excess described in this clause), over (ii) the amount which would have been earned if all nonpurpose investments were invested at a rate equal to the yield on the Bonds, plus (b) any income attributable to the excess described in clause (a), at the times and in the amounts required by Section 148(f) of the Code, all within the meaning of Section 148(f) of the Code. The Borrower and the Trustee shall maintain detailed records of the interest rate borne by the Bonds and the investments of the Proceeds Fund and the Bond Fund (and any other Fund created under the Indenture) and earnings thereon. The Borrower shall engage a qualified firm selected by the Borrower (the “Rebate Consultant”) to calculate the amount of any rebate required to be made to the United States at times and in installments which satisfy Section 148(f) of the Code and the Regulations, at least once every five (5) years and within sixty (60) days after the day on which the last of the Bonds is redeemed, and the Trustee shall be immediately furnished with such calculations. If the Trustee is not furnished with such calculations, the Trustee may undertake to have such calculations made by the Rebate Consultant at the expense of the Borrower. Such calculations shall be retained until six (6) years after the retirement of the last Bond. The rebate shall be calculated as provided in Section 148(f) of the Code and Sections 1.148-0 through 1.148-9 of the Regulations, including taking into account the gain or loss on the disposition of nonpurpose investments but not gross earnings of up to $100,000 on the portion, if any, of the Bond Fund constituting a bona fide debt service fund. The Borrower shall acquire, and shall cause the Trustee to acquire all nonpurpose investments at their fair market value in arm’s length transactions.
(n) The Borrower will not permit more than two percent (2%) of the proceeds of the Combined Bonds to be expended (or to be used to reimburse any person for an expenditure) to pay Costs of Issuance as provided by Section 147(g) of the Code.

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

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

(q) The Borrower further covenants and agrees that, pursuant to the requirements of Section 1.148-1(b) of the Regulations, it (or any related person contemplated by such Regulations) will not purchase Bonds in an amount related to the amount of the Mortgage Loan.

Section 5.06. Further Assurances and Corrective Instruments. The parties hereto agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and to the other documents contemplated hereby as may reasonably be required to carry out the intention of or to facilitate the performance of this Financing Agreement, the Mortgage Loan Documents or the other Bond Documents or to perfect or give further assurances of any of the rights granted or provided for herein, the Mortgage Loan Documents or the other Bond Documents.

Section 5.07. Compliance With Other Documents. The Borrower shall make all payments and shall observe and perform all covenants, conditions and agreements required to be paid, observed or performed by the Borrower under the Mortgage Note, the Mortgage, the other Mortgage Loan Documents and the Regulatory Agreements. The Indenture has been submitted to the Borrower for examination, and the Borrower, by execution of this Financing Agreement, acknowledges and agrees that it has participated in the negotiation of the Indenture that it has approved and agreed to each of the provisions of the Indenture and that it is bound by, shall adhere to the provisions of, and shall have the rights set forth by the terms and conditions of, the Indenture and covenants and agrees to perform all obligations required of the Borrower pursuant to the terms of the Indenture.

The Borrower hereby grants to the Trustee for the benefit of Fannie Mae and the Bondholders a security interest in all of its rights in and to all funds created or established by the Trustee under the Indenture in the manner and subject to the terms and conditions of the Indenture.

Section 5.08. Notice of Certain Events. The Borrower hereby covenants to advise the Lender, the Issuer and the Trustee promptly in writing of the occurrence of any default by the Borrower in the performance or observance of any covenant, agreement, representation, warranty or obligation of the Borrower set forth in this Financing Agreement, in any of the other Bond Documents or any other documents contemplated hereby or thereby, or of any Event of Default hereunder known to it or of which it has received notice, or any event which, with the passage of time or service of notice, or both, would
constitute an Event of Default hereunder, specifying the nature and period of existence of such event and
the actions being taken or proposed to be taken with respect thereto. Such notice shall be given promptly,
and in no event less than ten (10) Business Days after the Borrower receives notice or has knowledge of
the occurrence of any such event. The Borrower further agrees that it will give prompt written notice
to the Trustee and the Lender if insurance proceeds or condemnation awards are received with respect to the
Project and are not used to repair or replace the Project, which notice shall state the amount of such
proceeds or award.

The Borrower further covenants to provide such parties notice of the Placed in Service Date
promptly upon its occurrence.

Section 5.09. Indemnification. The Borrower covenants and agrees to indemnify, hold
harmless and defend the Issuer, the Trustee, the Lender and their respective officers, members, directors,
officials, agents and employees and each of them (each an “indemnified party”) from and against, (a) any
and all claims, joint or several, by or on behalf of any person arising from any cause whatsoever in
connection with transactions contemplated hereby or otherwise in connection with the Project, the Bonds
or the execution or amendment of any document relating thereto, including, but not limited to, the Bond
Documents; (b) any and all claims, joint or several, arising from any cause whatsoever in connection
with the approval of financing for the Project or the making of the Mortgage Loan, its assignment to Lender
or the execution or amendment of any document related thereto, including, but not limited to, the Loan
Agreement and the Mortgage Loan Documents; (c) any and all claims, joint or several, arising from any
act or omission of the Borrower or any of its agents, servants, employees or licensees, in connection with
the Project or the Mortgage Loan, including but not limited to, the Loan Agreement and the Mortgage
Loan Documents; (d) all reasonable costs, counsel fees, expenses or liabilities incurred in connection with
any such claim, or proceeding brought thereon; (e) any and all claims arising in connection with the
issuance and sale, resale or remarketing of any Bonds or any certifications or representations made by any
Person other than the party seeking indemnification in connection therewith and the carrying out by the
Borrower of any of the transactions contemplated by the Bonds, the Bond Documents, the Loan
Agreement and the Mortgage Loan Documents; (f) any and all claims arising in connection with the
operation of the Project, or the conditions thereof, environmental or otherwise, occupancy, use,
possession, conduct or management of work done in or about, or from the planning, design, acquisition,
installation or construction of, the Project or any part thereof; and (g) any and all losses, claims, damages,
liabilities or expenses, joint or several, arising out of or connected with the Trustee’s acceptance or
administration of the trusts created by the Indenture and the exercise of its powers or duties thereunder or
under this Financing Agreement, the Regulatory Agreements or any other agreements in connection
therewith to which it is a party; except (i) in the case of the foregoing indemnification of the Trustee or
the Lender or any of their respective officers, members, directors, officials and employees, to the extent
such damages are caused by the negligence or willful misconduct of such Person; or (ii) in the case of the
foregoing indemnification of the Issuer or any of its officers, members, directors, officials and employees,
to the extent such damages are caused by the willful misconduct of such Person. In the event that any
action or proceeding is brought against any indemnified party with respect to which indemnity may be
sought hereunder, the Borrower, upon written notice from the indemnified party, shall assume the
investigation and defense thereof, including the employment of counsel selected by the Borrower, subject
to the approval of the indemnified party in such party’s sole but reasonable discretion, and shall assume
the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in
its sole discretion; provided that the Trustee and the Lender shall have the right to review and approve or
disapprove any such compromise or settlement. Each indemnified party shall have the right to employ
separate counsel in any such action or proceeding and participate in the investigation and defense thereof,
and the Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however,
that unless such separate counsel is employed with the approval of the Borrower, which approval shall not
be unreasonably withheld, the Borrower shall not be required to pay the fees and expenses of such separate counsel.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of the Regulatory Agreements, the Borrower shall remain obligated to indemnify each indemnified party pursuant to this Section if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless such indemnified party has consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

During any period that Fannie Mae owns the Project and that this Section 5.09 is applicable to Fannie Mae, Fannie Mae’s obligations under this Section 5.09 shall be limited to acts and omissions of Fannie Mae occurring during the period of Fannie Mae’s ownership of the Project.

Section 5.10. Right To Perform Borrower’s Obligations. In the event the Borrower fails to perform any of its obligations under this Financing Agreement, the Issuer, the Lender, Fannie Mae and/or the Trustee, after giving the requisite notice, if any, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced by the Issuer, the Lender, Fannie Mae or the Trustee shall become an additional obligation of the Borrower hereunder, payable on demand with interest thereon at the default rate of interest payable under the Mortgage Loan Documents.

Section 5.11. Nonrecourse Provisions. Notwithstanding anything to the contrary, the obligations of the Borrower pursuant to this Financing Agreement shall not be secured by or create a lien or charge on in any manner the property of the Borrower or its members, including the Project or the rents, issues and profits thereof, and except with respect to Sections 4.02 and 5.09 hereof shall be non-recourse to the Borrower and its members. Sections 4.02 and 5.09 hereof shall be recourse to the Borrower but non-recourse to the members of the Borrower.

Section 5.12. Trust Indenture. The provisions of the Indenture concerning the Bonds and other matters therein are an integral part of the terms and conditions of the Mortgage Loan, and this Financing Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower to the extent it relates to the Borrower. Additionally, the Borrower agrees that, whenever the Indenture by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Indenture, and the Borrower agrees to carry out and perform all of its obligations under the Indenture as fully as if the Borrower were a party to the Indenture.

(The remainder of this page is intentionally left blank.)
ARTICLE VI  
MORTGAGE LOAN DOCUMENTS

Section 6.01. Assurances. The Borrower, the Issuer and the Trustee mutually agree that no party hereto shall enter into any contract or agreement, perform any act, or request any other party hereto to enter into any contracts or agreements or perform any acts, which shall adversely affect the Mortgage Loan Documents.

Section 6.02. Financial Obligations Personal to the Borrower. The Issuer acknowledges that the Project shall be encumbered by the Mortgage Loan Documents. Notwithstanding any provisions of this Financing Agreement or the Regulatory Agreements to the contrary, all obligations of the Borrower under this Financing Agreement and the Regulatory Agreements for the payment of money and all claims for damages against the Borrower occasioned by breach or alleged breach by the Borrower of its obligations under any of the Regulatory Agreements or this Financing Agreement, including indemnification obligations, shall not be secured by or in any manner constitute a lien on the Project and no Person shall have the right to enforce such obligations other than directly against the Borrower. No subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior owner under the Regulatory Agreements or this Financing Agreement, including but not limited to any payment or indemnification obligation. Such obligations are personal to the Person who was the owner at the time the default or breach was alleged to have occurred and such Person shall remain liable for any and all damages occasioned thereby even after such Person ceases to be the owner.

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

TRUSTEE’S INTEREST IN AGREEMENT

Section 7.01. Issuer Assignment of This Financing Agreement.

(a) Pursuant to the Indenture, the Issuer shall pledge, assign and transfer all of its right, title and interest in this Financing Agreement (other than the Reserved Rights of the Issuer), and the revenues, receipts and collections hereunder and thereunder, to the Trustee in the manner and to the extent provided in the Indenture as security for the payment of the principal of, premium, if any, and interest on the Bonds, and the parties hereby acknowledge that the covenants and agreements contained herein are for the benefit of the registered owners from time to time of the Bonds and may be enforced on their behalf by the Trustee. The Issuer shall execute and deliver from time to time, in addition to the instruments of assignment herein specifically provided for, such other and further instruments and documents as may be reasonably requested by the Trustee from time to time to further evidence, effect or perfect such pledge and assignment for the purposes contemplated in the Indenture.

(b) The Borrower hereby acknowledges and consents to the assignment and pledge (subject to the reservation by the Issuer of its Reserved Rights) by the Issuer to the Trustee in the manner and to the extent provided in the Indenture. The Borrower further acknowledges and consents to the right of the Trustee to enforce all rights of the Issuer and the Bondholders assigned under the Indenture.

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

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. Each of the following shall constitute an event of default under this Financing Agreement, and the term “Event of Default” shall mean, whenever used in this Financing Agreement, any one or more of the following events:

(a) Failure by the Borrower to pay any amounts due under this Financing Agreement at the times and in the amounts required hereby or thereby; or

(b) Failure by the Borrower to observe or perform any covenants, agreements or obligations in this Financing Agreement on its part to be observed or performed (other than as provided in clause (i) above) for a period of thirty (30) days after receipt of written notice specifying such failure and requesting that it be remedied, given to the Borrower by any party to this Financing Agreement; provided, however, that if said failure shall be such that it cannot be corrected within such period, it shall not constitute an Event of Default if the failure is correctable without material adverse effect on the Bonds and if corrective action is instituted by the Borrower within such period and diligently pursued until the failure is corrected, and provided further that any such failure shall have been cured within ninety (90) days of receipt of notice of such failure; or

(c) Breach of any of the covenants, agreements or obligations of the Borrower under or the occurrence of a default which is continuing under any of the Regulatory Agreements, including any exhibits to any of the foregoing, which breach or default is not cured within the applicable notice and cure period thereunder, if applicable; or

(d) Occurrence of an Event of Default caused by the Borrower under and as defined in the Indenture or under any of the other Bond Documents.

Nothing contained in this Section 8.01 is intended to amend or modify any of the provisions of the Mortgage Loan Documents or to bind the Borrower, the Lender or Fannie Mae to any notice and cure periods other than as expressly set forth in the Mortgage Loan Documents.

Section 8.02. Remedies Upon an Event of Default.

(a) Subject to Section 8.02(d), whenever any Event of Default shall have occurred and be continuing, the Issuer or the Trustee may take any one or more of the following remedial steps:

(i) By any suit, action or proceeding, pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Financing Agreement, to enforce the performance of any covenant, obligation or agreement of the Borrower under this Financing Agreement (subject to the nonrecourse provisions of this Financing Agreement and the Regulatory Agreements) or to enjoin acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee.

(ii) Take whatever other action at law or in equity may appear necessary or desirable to enforce any monetary obligation of the Borrower under this Financing
Agreement or to enforce any other covenant, obligation or agreement of the Borrower under (1) this Financing Agreement, or (2) the Regulatory Agreements.

(iii) Have access to and inspect, examine, audit and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Borrower.

(b) The provisions of subsection (a) hereof are subject to the condition that if, after any Event of Default, except a default under any of the Regulatory Agreements, (i) all amounts which would then be payable hereunder by the Borrower if such Event of Default had not occurred and was not continuing shall have been paid by or on behalf of the Borrower, and (ii) the Borrower shall have also performed all other obligations in respect of which it is then in default hereunder and shall have paid the reasonable charges and expenses of the Issuer and the Trustee, including reasonable attorney fees and expenses paid or incurred in connection with such default, then and in every such case, such Event of Default may be waived and annulled by the Trustee, but no such waiver or annulment shall extend to or affect any subsequent Event of Default or impair any right or remedy consequent thereon.

(c) Subject to the limitations of the Regulatory Agreements and this Financing Agreement, the Issuer, without the consent of the Trustee, but only after written notice to the Trustee, the Borrower, the Lender and Fannie Mae, may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any Reserved Right of the Issuer; provided that, the Issuer may not (i) terminate this Financing Agreement or cause the Mortgage Loan to become due and payable, (ii) cause the Trustee to declare the principal of all Bonds then Outstanding and the interest accrued thereon to be immediately due and payable, or cause the Trustee to accelerate, foreclose or take any other action or seek other remedies under the Bond Documents, the Mortgage Loan Documents or any other documents contemplated hereby or thereby to obtain such performance or observance, (iii) cause the acceleration, foreclosure or taking of any other action or the seeking of any remedies under the Mortgage Loan Documents, (iv) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal, interest and other amounts due under the Mortgage Loan, or (v) interfere with or attempt to influence the exercise by Fannie Mae of any of its rights under the Bond Documents or the Mortgage Loan Documents.

(d) Except as required to be deposited in the Rebate Fund pursuant to the Tax Certificate, any amounts collected pursuant to action taken under this Section 8.02 shall, after the payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, the Issuer, the Lender or Fannie Mae and their respective counsel, be applied in accordance with the provisions of the Indenture. No action taken pursuant to this Section shall relieve the Borrower from the Borrower’s obligations pursuant to Sections 5.09 and 9.08 hereof.

(e) No remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing pursuant to any other agreement at law or in equity or by statute.

(f) Notwithstanding any other provision of this Financing Agreement to the contrary, after the Purchase Date, so long as Fannie Mae is not in default under the Pass-Through Certificate, none of the Issuer, the Trustee or any Person under their control shall exercise any remedies or direct any proceedings under this Financing Agreement or the Mortgage Loan
Documents, other than to (i) enforce rights under the Pass-Through Certificate, (ii) enforce the tax covenants in the Indenture and this Financing Agreement, or (iii) enforce rights of specific performance under the Regulatory Agreements; provided, however, that any enforcement under (ii) or (iii) above shall not include seeking monetary damages.

Section 8.03. Default Under Regulatory Agreements.

(a) If the Borrower fails, at any time for any reason, to comply with the requirements of any of the Regulatory Agreements, then within thirty (30) days after the earlier of the date the violation is discovered by the Issuer or the Trustee or the date the Issuer or the Trustee received notice thereof, the Issuer (if necessary to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes) or the Trustee, on behalf and at the request of the Issuer, shall institute an action for specific performance to correct the violation. The Borrower hereby acknowledges and agrees that were money damages a remedy under the Regulatory Agreements, money damages alone would not be an adequate remedy at law for a default by the Borrower arising from a failure to comply with the Regulatory Agreements, and therefore the Borrower agrees that the remedy of specific performance (subject to the provisions of Section 8.02(c) hereof) shall be available to the Issuer and/or the Trustee in any such case.

(b) Notwithstanding the availability of the remedy of specific performance provided for in subsection (a) of this Section, promptly upon determining that a violation of any of the Regulatory Agreements has occurred, the Issuer shall, by notice in writing to the Lender, inform the Lender that a violation of such Regulatory Agreements has occurred; notwithstanding the occurrence of such violation, neither the Issuer nor the Trustee shall have, and each of them acknowledges that they shall not have, any right to cause or direct acceleration of the Mortgage Loan, to enforce the Mortgage Note or to foreclose on the Mortgage.

Section 8.04. Limitation on Waivers.

(a) No delay or omission to exercise any right or power occurring upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed appropriate. The Issuer and the Trustee agree to give only such notices as may be herein expressly required.

(b) In the event any covenant, agreement or condition contained in this Financing Agreement shall be breached by a party and thereafter waived by another party, such waiver shall not bind any party which has not waived the breach and shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder nor be a waiver of the same breach on a future occasion. By reason of the assignment and pledge of certain of the Issuer’s rights and interests in this Financing Agreement to the Trustee, the Issuer shall have no power to waive or release the Borrower from any Event of Default or the performance or observance of any obligation or condition of the Borrower under this Financing Agreement without first requesting and receiving the prior written consent of the Trustee, but shall do so if, requested by the Trustee; provided that the Issuer shall not be required to grant such waiver or release unless it shall have been provided with (i) if deemed necessary in the sole discretion of the Issuer an Opinion of Counsel that such action will not result in any pecuniary liability to it and an opinion of Bond Counsel that such waiver shall not cause interest on the Bonds to be included in the gross income of the Holders thereof for federal income tax purposes, (ii) such indemnification as the Issuer shall deem reasonably necessary, and (iii) written notice from the Trustee of the request for such waiver or release.
Section 8.05. Notice of Default: Rights To Cure. The Issuer and the Trustee shall each give notice to the other and to the Managing Member, the Investor Member, and the Lender of the occurrence of any Event of Default by the Borrower hereunder of which it has actual knowledge. The Lender, the Managing Member, and the Investor Member shall each have the right, but not the obligation, to cure any such default by the Borrower, and upon performance by the Lender, the Managing Member, or the Investor Member to the satisfaction of the Issuer and the Trustee of the covenant, agreement or obligation of the Borrower with respect to which an Event of Default has occurred, the parties hereto shall be restored to their former respective positions, it being agreed that the Lender, the Managing Member, and the Investor Member shall each have the right to repayment from the Borrower of moneys it has expended and any other appropriate redress for actions it has taken to cure any default by the Borrower; provided that the Borrower’s reimbursement obligation shall be nonrecourse to the same extent as the underlying obligation is nonrecourse to the Borrower.

Section 8.06. Rights Cumulative. All rights and remedies herein given or granted to the Issuer and the Trustee are cumulative, nonexclusive and in addition to any and all rights and remedies that the Issuer and the Trustee may have or may be given by reason of any law, statute, ordinance or otherwise. Notwithstanding anything to the contrary contained in this Financing Agreement, neither the Trustee nor the Issuer may commence any action against the Borrower for specific performance or any other remedy at law or in equity, other than to enforce performance and observance of any Reserved Right of the Issuer and its rights under Section 8.03, without first obtaining the prior written consent of Fannie Mae.

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

Section 9.01. Notices. All notices, certificates or other communications herein provided shall be given in writing to the Issuer, the Borrower, the Trustee, Fannie Mae, the Lender and, for notices under Section 8.05 only, the Managing Member and the Investor Member, and shall be sufficiently given and shall be deemed given if given in the manner provided in the Indenture. Except as otherwise provided in the preceding sentence, copies of each notice, certificate or other communication given hereunder by any party hereto shall be given to all parties hereto. By notice given hereunder, any party may designate further or different addresses to which subsequent notices, certificates or other communications are to be sent. A duplicate copy of each notice, certificate, request or other communication given hereunder to the Issuer, the Borrower, the Lender or the Trustee shall also be given to Fannie Mae.

Section 9.02. Amendment. This Financing Agreement and all other documents contemplated hereby to which the Issuer is a party may be amended or terminated only if permitted by the Indenture, and no amendment to this Financing Agreement shall be binding upon, any party hereto until such amendment is reduced to writing and executed by the parties hereto; provided that no amendment, supplement or other modification to this Financing Agreement or any other Bond Document shall be effective without the prior written consent of Fannie Mae.

Section 9.03. Entire Agreement. Except as provided in the other Bond Documents and the Mortgage Loan Documents, this Financing Agreement contains all agreements among the parties hereto, and there are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties hereto, unless reference is made thereto in this Financing Agreement or the Indenture.

Section 9.04. Binding Effect. This Financing Agreement shall be binding upon the Issuer, the Borrower and the Trustee and their respective successors and assigns. Notwithstanding anything herein to the contrary, to the extent Fannie Mae or its designee shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure or similar conveyance, Fannie Mae, and its designee, if applicable, shall not be liable for any breach or default or any of the obligations of any prior owner of the Project under this Financing Agreement, and shall only be responsible for defaults and obligations incurred during the period Fannie Mae or its designee, if applicable, is the owner of the Project.

Section 9.05. Severability. If any clause, provision or section of this Financing Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections.

Section 9.06. Execution in Counterparts. This Financing 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 9.07. Governing Law. This Financing Agreement shall be construed in accordance with and governed by the laws of the State applicable to contracts made and performed in the State.

Section 9.08. Limited Liability of the Issuer.

(a) Reliance by Issuer on Facts or Certificates. Anything in this Financing Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion,
notice, or other instrument furnished to the Issuer by the Lender, the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer.

(b) **Waiver of Personal Liability.** No member, officer, agent or employee of the Issuer or any of its members or any director, officer, agent or employee of the Borrower shall be individually or personally liable for the payment of any principal (or Redemption Price) or interest on the Bonds or any other sum hereunder or under the Loan Agreement or be subject to any personal liability or accountability by reason of the execution and delivery of this Financing Agreement or the Loan Agreement; but nothing herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Financing Agreement or the Loan Agreement.

(c) **Non-Liability of Issuer.** The obligations of the Issuer under this Financing Agreement are special, limited obligations of the Issuer, payable solely out of the revenues and income derived under this Financing Agreement and otherwise provided under this Financing Agreement. The obligations of the Issuer hereunder will not be deemed to constitute an indebtedness or an obligation of the Issuer, the State or any other political subdivision thereof within the purview of any constitutional limitation or statutory provision, or a charge against the credit or general taxing powers, if any, of any of them. Neither the Issuer nor any member, director, officer, employee or agent of the Issuer nor any person executing the Bonds will be liable personally for the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds. No recourse will be had for the payment of the principal of, redemption premium, if any, and interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Indenture or this Financing Agreement or a bond purchase agreement against any past, present or future member, officer, agent or employee of the Issuer, or any incorporator, member, officer, employee, director or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, officer, employee, director, agent or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the Indenture or this Financing Agreement and the issuance of the Bonds.

(d) **Expenses.** The Borrower shall pay and indemnify the Issuer and the Trustee against all reasonable fees, costs and charges, including reasonable fees and expenses of attorneys, accountants, consultants and other experts, incurred in good faith (and with respect to the Trustee, without negligence) and arising out of or in connection with the Bond Documents, the Loan Agreement and the Mortgage Loan Documents. These obligations and those in Section 5.09 hereof shall remain valid and in effect notwithstanding repayment of the Mortgage Loan hereunder or termination of the Financing Agreement, the Loan Agreement or the Indenture.

(e) **No Warranty by Issuer.** The Borrower recognizes that, because the components of the Project have been and are to be designated and selected by it, THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE
BORNE BY THE OWNER. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OF THE STATE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

Section 9.09. Term of This Financing Agreement. This Financing Agreement shall be in full force and effect from its date to and including such date as all of the Bonds shall have been fully paid or retired (or provision for such payment shall have been made as provided in the Indenture); provided, however, that the provisions of Sections 2.01, 5.05, 5.09, and 9.08 hereof shall survive the termination hereof.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Issuer, the Borrower, the Trustee, and the Lender have caused this Financing Agreement to be executed by their duly authorized representatives as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By

Its Mayor

By

Its City Manager

(Signature Page with respect to the Series 2017A Bonds)
Execution page of the Borrower to the Financing Agreement, dated as of the date and year first written above.

CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company

By: CHC Minnetonka Affordable Housing MM LLC
Its: Managing Member

By: ________________________________
Name: Richard Martin
Title: Administrative Manager

(Signature Page with respect to the Series 2017A Bonds)
Execution page of the Trustee to the Financing Agreement, dated as of the date and year first written above.

U.S. BANK NATIONAL ASSOCIATION

By __________________________________________
Its Vice President

(Signature Page with respect to the Series 2017A Bonds)
Execution page of the Lender to the Financing Agreement, dated as of the date and year first written above.

DOUGHERTY MORTGAGE LLC

By _________________________________
Its _________________________________

(Signature Page with respect to the Series 2017A Bonds)
EXHIBIT A
TERM SHEET

[Insert Term Sheet]
INDENTURE OF TRUST

between

CITY OF MINNETONKA, MINNESOTA,
   as Issuer

and

U.S. BANK NATIONAL ASSOCIATION,
   as Trustee

Dated as of August 1, 2017

Relating to:

$6,600,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Refunding Bonds
(Elmbrooke and Golden Valley Townhomes Project)
Series 2017A

This instrument drafted by:
Kennedy & Graven, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN  55402
# TABLE OF CONTENTS

## ARTICLE I  DEFINITIONS AND INTERPRETATION

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.01</td>
<td>Definitions</td>
<td>5</td>
</tr>
<tr>
<td>1.02</td>
<td>Rules of Construction</td>
<td>13</td>
</tr>
</tbody>
</table>

## ARTICLE II  THE BONDS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.01</td>
<td>Authorization of Bonds</td>
<td>14</td>
</tr>
<tr>
<td>2.02</td>
<td>Terms of Bonds</td>
<td>14</td>
</tr>
<tr>
<td>2.03</td>
<td>Execution; Special, Limited Obligation</td>
<td>15</td>
</tr>
<tr>
<td>2.04</td>
<td>Authentication</td>
<td>16</td>
</tr>
<tr>
<td>2.05</td>
<td>Form of Bonds</td>
<td>16</td>
</tr>
<tr>
<td>2.06</td>
<td>Delivery of Bonds</td>
<td>16</td>
</tr>
<tr>
<td>2.07</td>
<td>Bonds Mutilated, Lost, Destroyed or Stolen</td>
<td>17</td>
</tr>
<tr>
<td>2.08</td>
<td>Registration, Transfer and Exchange of Bonds; Persons Treated as Owners</td>
<td>17</td>
</tr>
<tr>
<td>2.09</td>
<td>Cancellation of Bonds</td>
<td>18</td>
</tr>
<tr>
<td>2.10</td>
<td>Pledge Effected by Indenture</td>
<td>18</td>
</tr>
<tr>
<td>2.11</td>
<td>Book-Entry System; Limited Obligation</td>
<td>18</td>
</tr>
<tr>
<td>2.12</td>
<td>Representation Letter</td>
<td>19</td>
</tr>
<tr>
<td>2.13</td>
<td>Transfers Outside Book-Entry System</td>
<td>20</td>
</tr>
<tr>
<td>2.14</td>
<td>Payments and Notices to the Nominee</td>
<td>20</td>
</tr>
<tr>
<td>2.15</td>
<td>Initial Depository and Nominee</td>
<td>20</td>
</tr>
</tbody>
</table>

## ARTICLE III  REDEMPTION OF BONDS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.01</td>
<td>Terms of Redemption</td>
<td>21</td>
</tr>
<tr>
<td>3.02</td>
<td>Notice of Redemption</td>
<td>21</td>
</tr>
<tr>
<td>3.03</td>
<td>Payment of Redemption Price</td>
<td>22</td>
</tr>
<tr>
<td>3.04</td>
<td>Cancellation</td>
<td>22</td>
</tr>
</tbody>
</table>

## ARTICLE IV  APPLICATION OF BOND PROCEEDS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.01</td>
<td>Initial Deposit</td>
<td>23</td>
</tr>
<tr>
<td>4.02</td>
<td>Proceeds Fund</td>
<td>23</td>
</tr>
<tr>
<td>4.03</td>
<td>Delivery of Pass-Through Certificate</td>
<td>23</td>
</tr>
</tbody>
</table>

## ARTICLE V  REVENUES AND FUNDS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.01</td>
<td>Pledge of Revenues and Assets</td>
<td>25</td>
</tr>
<tr>
<td>5.02</td>
<td>Establishment of Funds</td>
<td>25</td>
</tr>
<tr>
<td>5.03</td>
<td>Application of Revenues</td>
<td>25</td>
</tr>
<tr>
<td>5.04</td>
<td>Application of Operating Fund</td>
<td>25</td>
</tr>
<tr>
<td>5.05</td>
<td>Application of Bond Fund</td>
<td>25</td>
</tr>
<tr>
<td>5.06</td>
<td>Investment of Funds</td>
<td>25</td>
</tr>
<tr>
<td>5.07</td>
<td>Moneys Held for Particular Bonds</td>
<td>26</td>
</tr>
<tr>
<td>5.08</td>
<td>Funds Held in Trust</td>
<td>26</td>
</tr>
<tr>
<td>5.09</td>
<td>Accounting Records</td>
<td>26</td>
</tr>
<tr>
<td>5.10</td>
<td>Amounts Remaining in Funds</td>
<td>27</td>
</tr>
<tr>
<td>5.11</td>
<td>Rebate Fund</td>
<td>27</td>
</tr>
<tr>
<td>5.12</td>
<td>Costs of Issuance Fund</td>
<td>27</td>
</tr>
<tr>
<td>5.13</td>
<td>Collateral Security Fund</td>
<td>27</td>
</tr>
</tbody>
</table>
Section 5.14. Reports From the Trustee ................................................................. 28

ARTICLE VI COVENANTS OF ISSUER

Section 6.01. Payment of Bonds ........................................................................ 29
Section 6.02. Performance of Covenants by Issuer ............................................. 29
Section 6.03. Tax Covenants .............................................................................. 30
Section 6.04. Compliance with Conditions Precedent .......................................... 30
Section 6.05. Extension of Payment of Bonds ..................................................... 30
Section 6.06. Further Assurances ....................................................................... 31
Section 6.07. Powers as to Bonds and Pledge ....................................................... 31
Section 6.08. Preservation of Revenues; Amendment of Agreements ..................... 31
Section 6.09. Assignment .................................................................................... 31
Section 6.10. Request and Indemnification ......................................................... 31
Section 6.11. Limitations on Liability ................................................................. 32

ARTICLE VII DISCHARGE OF INDENTURE

Section 7.01. Defeasance ................................................................................... 33
Section 7.02. Unclaimed Moneys ....................................................................... 34
Section 7.03. No Release of Pass-Through Certificate ........................................ 34
Section 7.04. Transfer of Pass-Through Certificate ............................................. 34
Section 7.05. Issuance of Additional Obligations ............................................... 34
Section 7.06. Modification of Mortgage Terms .................................................. 34

ARTICLE VIII DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

Section 8.01. Events of Default .......................................................................... 35
Section 8.02. Acceleration; Rescission of Acceleration ....................................... 35
Section 8.03. Other Remedies; Rights of Bondholders ....................................... 36
Section 8.04. Mandatory Exchange of Bonds .................................................... 37
Section 8.05. Representation of Bondholders by Trustee ..................................... 37
Section 8.06. Action by Trustee .......................................................................... 37
Section 8.07. Accounting and Examination of Records After Default .................. 37
Section 8.08. Restriction on Bondholder Action ................................................. 38
Section 8.09. Application of Moneys After Default ........................................... 38
Section 8.10. Control of Proceedings ................................................................. 39
Section 8.11. Waivers of Events of Default ....................................................... 39
Section 8.12. Subordination ................................................................................ 40
Section 8.13. Termination of Proceedings ........................................................... 40
Section 8.14. No Interference or Impairment of Pass-Through Certificate ............ 40

ARTICLE IX THE TRUSTEE

Section 9.01. Acceptance of the Trusts ............................................................... 41
Section 9.02. Fees, Charges and Expenses of Trustee .......................................... 43
Section 9.03. Intervention By Trustee .................................................................. 44
Section 9.04. Merger or Consolidation of Trustee ............................................... 44
Section 9.05. Resignation by Trustee ................................................................. 44
Section 9.06. Removal of Trustee ...................................................................... 44
Section 9.07. Appointment of Successor Trustee ............................................... 44
Section 9.08. Transfer of Rights and Property to Successor Trustee ..................... 45
Section 9.09. Successor Trustee as Bond Registrar, Custodian of Funds and Paying Agent ................................................................. 45
Section 9.11. Requests from Rating Agency .............................................................. 46
Section 9.12. Arbitrage Covenants ......................................................................... 46
Section 9.13. Compliance of Borrower Under Regulatory Agreements .................... 46

ARTICLE X SUPPLEMENTAL INDENTURES

Section 10.01. Supplemental Indentures Effective Upon Acceptance ....................... 47
Section 10.02. Supplemental Indentures Requiring Consent of Bondholders .......... 47
Section 10.03. Consent of Bondholders ................................................................. 48
Section 10.04. Modification By Unanimous Consent ............................................. 48
Section 10.05. Exclusion of Bonds ....................................................................... 49
Section 10.06. Notation on Bonds ......................................................................... 49
Section 10.07. Additional Contracts or Indentures .................................................. 49
Section 10.08. Opinion of Bond Counsel Concerning Supplemental Indentures ...... 49
Section 10.09. Modification to Mortgage Loan Documents ..................................... 49

ARTICLE XI MISCELLANEOUS

Section 11.01. Evidence of Signatures of Bondholders and Ownership of Bonds ................................................................. 50
Section 11.02. Details of Documents Delivered to Trustee ...................................... 50
Section 11.03. Preservation and Inspection of Documents ...................................... 50
Section 11.04. No Recourse on Bonds ................................................................. 50
Section 11.05. Severability .................................................................................. 51
Section 11.06. Notices ......................................................................................... 51
Section 11.07. Action Required to be Taken on a Non-Business Day .............. 53
Section 11.08. Parties Interested Herein ................................................................. 53
Section 11.09. Counterparts ................................................................................ 53
Section 11.10. Tax Certificate ............................................................................... 53
Section 11.11. Applicable Provisions of Law ........................................................ 53

SIGNATURES ........................................................................................................... S-1

EXHIBIT A FORM OF BOND .................................................................................. A-1
EXHIBIT B FORM OF REQUISITION ................................................................. B-1
INDENTURE OF TRUST

THIS INDENTURE OF TRUST is made and entered into as of August 1, 2017 (the “Indenture”), between the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Issuer”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America and authorized to accept and execute trusts of the character herein set forth, including such entity’s successors or any other corporation or association resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at any time serving as successor trustee hereunder (the “Trustee”).

W I T N E S S E T H:

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

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

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

WHEREAS, on August 18, 2016, the Issuer issued its Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Series 2016 Note”), in the original aggregate principal amount of $11,500,000, pursuant to the Act, Minnesota Statutes, Sections 471.59 and 471.656, as amended, and a resolution adopted by the City Council of the Issuer on August 8, 2016; and

WHEREAS, the Issuer sold the Series 2016 Note to Bridgewater Bank, and the Issuer loaned the proceeds thereof to CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), the Managing Member of which is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company (the “Managing Member”), pursuant to a Loan Agreement, dated as of August 1, 2016, between the Issuer and the Borrower; and

WHEREAS, the Series 2016 Note was issued to (i) finance all or a portion of (a) the acquisition, construction, and equipping of approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road, Minnetonka, Minnesota (the “Music Barn Apartments”); (b) the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive, Minnetonka, Minnesota (the “Elmbrooke Apartments”); and (c) the acquisition and substantial rehabilitation of six (6) existing affordable townhome units at 2100 Douglas Drive North and two (2) existing affordable townhome units at 3354 Lilac Drive North, Golden Valley, Minnesota (the “Golden Valley Townhomes”); and (ii) pay costs of issuance of the Series 2016 Note; and
WHEREAS, the Series 2016 Note was drawn down in the principal amount of $________ for the purposes of financing the Elmbrooke Apartments and the Golden Valley Townhomes, and the Music Barn Apartments were not financed with proceeds of the Series 2016 Note; and

WHEREAS, pursuant to the Act, Minnesota Statutes, Sections 471.59 and 471.656, as amended, resolutions adopted by the City Council of the Issuer on August 8, 2016 and July 24, 2017, and this Indenture, the Issuer will issue its Multifamily Housing Revenue Refunding Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Bonds”), in the original aggregate principal amount of $6,600,000, to (i) refund a portion of the Series 2016 Note; (ii) fund required reserves; (iii) pay capitalized interest; and (iv) pay costs of issuance of the Bonds; and

WHEREAS, the remaining portion of the principal amount of the Series 2016 Note will be refunded with the proceeds of the Multifamily Housing Revenue Refunding Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Note”), issued by the Issuer in the original aggregate principal amount of $900,000 pursuant to separate financing with Bridgewater Bank, as purchaser of the Note (the “Note Lender”); and

WHEREAS, a portion of transferred proceeds of the Series 2016 Note will be deposited in funds created hereunder for the purposes of financing all or a portion of (i) the acquisition and substantial rehabilitation of the Elmbrooke Apartments; and (ii) the acquisition and substantial rehabilitation of the Golden Valley Townhomes (collectively, the “Project”); and

WHEREAS, the Issuer, the Borrower, Dougherty Mortgage LLC, a Delaware limited liability company (the “Lender”), and the Trustee have entered into a Financing Agreement, dated as of August 1, 2017 (as it may from time to time be amended, the “Financing Agreement”), pursuant to which the Issuer has agreed to use the proceeds of the Bonds to make a mortgage loan (the “Mortgage Loan”) to the Borrower to assist in financing the Project; and

WHEREAS, the Borrower has agreed to use the proceeds of the Mortgage Loan to finance the Project with disbursements of the proceeds of the Mortgage Loan to be made pursuant to the provisions of this Indenture and the Financing Agreement; and

WHEREAS, the Borrower’s repayment obligations in respect of the Mortgage Loan will be evidenced by (i) a Multifamily Note, dated the Closing Date (hereinafter defined) (the “Mortgage Note”), delivered to the Issuer, which Mortgage Note will be endorsed by the Issuer to the Lender; and (ii) a Multifamily Loan and Security Agreement (Non-Recourse), dated the Closing Date (the “Loan Agreement”), between the Borrower and the Issuer, which will be assigned by the Issuer to the Lender; and

WHEREAS, to secure the Borrower’s obligations under the Mortgage Note, the Borrower will execute and deliver to the Issuer a mortgage on the Project, which will be assigned to the Lender and recorded in the real property records of Hennepin County, Minnesota; and

WHEREAS, pursuant to the terms hereof, Fannie Mae, as trustee under the Fannie Mae Trust Indenture, shall provide to the Lender the Pass-Through Certificate for sale to the Trustee at the Pass-Through Certificate Purchase Price (all as such terms are defined herein); and

WHEREAS, the Pass-Through Certificate is to be held in trust by the Trustee and pledged under the terms of this Indenture to secure payment of the Bonds; and
WHEREAS, in connection with the issuance of the Bonds and the Note, the Issuer, the Borrower, the Trustee, and the Note Lender will enter into separate Regulatory Agreements, each dated the Closing Date, related to each of the Elmbrooke Apartments and the Golden Valley Townhomes, relating to compliance with certain federal and state requirements applicable to the Project; and

WHEREAS, the Issuer has authorized the execution of this Indenture in order to secure the payment of the principal of, premium, if any, and interest on the Bonds and the observance of the covenants and conditions herein contained; and

WHEREAS, the Issuer has determined that all things necessary to make the Bonds, when executed by the Issuer and authenticated by the Trustee and issued as provided in this Indenture, the valid, binding and legal obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid assignment and pledge of the Revenues and other amounts pledged to the payment of the principal of and interest on the Bonds and a valid and binding agreement for the uses and purposes herein set forth, have been duly taken, and the creation, execution and delivery of this Indenture and the creation, execution and delivery of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, THIS INDENTURE OF TRUST WITNESSETH:

The Issuer, in order to secure the payment of the principal of, the premium, if any, and the interest on all Bonds at any time issued and outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the purchase and acceptance of the Bonds by the owners thereof, and for other valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, warrant, convey, confirm, assign, transfer in trust, grant a security interest in, pledge and set over unto the Trustee, the property of the Issuer, real and personal, hereinafter described, for the benefit of the Bondholders, subject only to the provisions hereof permitting the application thereof for or to the purposes and on the terms and conditions set forth herein (said property being herein sometimes referred to as the “Trust Estate”):

GRANTING CLAUSES

I.

All right, title and interest of the Issuer in and to amounts on deposit in the Collateral Security Fund to be funded at closing in an amount equal to the principal amount of the Bonds;

II.

The Pass-Through Certificate, if issued by Fannie Mae and acquired by the Trustee in exchange for amounts on deposit in the Collateral Security Fund;

III.

All right, title and interest of the Issuer now owned or hereafter acquired in, to and under the Financing Agreement (except Reserved Rights, as hereinafter defined);

IV.

3
All Revenues; and

V.

All other property which by the express provisions of this Indenture is required to be subject to the lien hereof, and any additional property that, from time to time, by delivery or by writing of any kind, may be subjected to the lien hereof, by the Issuer or by anyone on its behalf, and the Trustee is hereby authorized to receive the same at any time as additional security hereunder;

TO HAVE AND TO HOLD all and singular with all privileges and appurtenances hereby given, granted, bargained, sold, conveyed, assigned, pledged, mortgaged and transferred or agreed or intended so to be, whether now owned or hereafter acquired, including any and all additional property that by virtue of any provision hereof or of any indenture supplemental hereto shall hereafter become subject to this Indenture and to the trusts hereby created, unto the Trustee and its successors in trust and assigns forever;

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of the registered owners from time to time of any of the Bonds authenticated and delivered under this Indenture and issued by the Issuer and Outstanding, without preference, priority or distinction as to lien, or otherwise of any one Bond over any other Bond by reason of priority in the issue, sale or negotiation thereof, or of any other cause, and for the benefit of Fannie Mae as herein provided;

PROVIDED, HOWEVER, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of, premium, if any, and interest on the Bonds due or to become due thereon, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay, cause to be paid or make provision for payment to the Trustee of all sums of money due or to become due in accordance with the terms and provisions hereof, then upon such final payment this Indenture and the rights hereby granted shall cease, determine and be void; otherwise this Indenture shall remain in full force and effect;

AND IT IS HEREBY COVENANTED that all of the Bonds shall be issued, authenticated and delivered, and that the Trust Estate shall be held by the Trustee, subject to the further covenants, conditions, uses and trusts hereinafter set forth, and the Issuer agrees and covenants with the Trustee and with the registered owners from time to time of the Bonds, as follows:

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

DEFINITIONS AND INTERPRETATION

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Indenture and of any indenture supplemental hereto, have the following meanings:

“Act” means, collectively, Minnesota Statutes, Chapters 462C and 474A, as amended.

“Actual/360” means a computation of interest accrual on the basis of a three hundred sixty (360) day year and the actual number of calendar days during the applicable month, calculated by multiplying the unpaid principal balance of the Bonds by the Pass-Through Rate, dividing the product by three hundred sixty (360), and multiplying the quotient obtained by the actual number of days elapsed in the applicable month.

“Assigned Loan” means the Mortgage Loan assigned to the Lender by the Issuer on the Closing Date.

“Attesting Officer” means such officer or official of the Issuer who in accordance with the Bond Resolution, the laws of the State, the City’s Charter or practice or custom, regularly certifies official acts and records of the Issuer, and includes any assistant or deputy officer to the principal officer or officers exercising such responsibilities.

“Authorized Borrower Representative” means any officer of the Managing Member of the Borrower and such additional persons or entities duly designated by the Borrower in writing to act on its behalf.

“Authorized Officer” means the Mayor, City Manager, or City Clerk of the Issuer or any other person designated to act on behalf of the Issuer, as evidenced by a written certificate furnished to the Trustee containing the specimen signature of such person and signed for the Issuer by its Mayor, City Manager, or City Clerk.


“Beneficial Owner” means the purchaser of a beneficial interest in the Bonds.

“Bond Counsel” means an attorney at law or a firm of attorneys of recognized expertise in the field of federal income tax matters relating to municipal securities selected by the Issuer and acceptable to the Trustee.

“Bond Documents” shall have the meaning assigned to such term in the Financing Agreement.

“Bond Fund” means the Fund created and so designated in Section 5.02 hereof.

“Bondholder” or “holder” or “owner” of any Bond or any similar term shall mean the person in whose name any Bond is registered.

“Bond Register” means the registration books of the Issuer maintained by the Trustee as provided in this Indenture on which registration and transfer of the Bonds is to be recorded.
“Bond Registrar” has the meaning given to such term in Section 2.08 hereof.

“Bond Resolution” means the resolution adopted by the City Council of the Issuer on July 24, 2017, authorizing the issuance and sale of the Bonds.

“Bonds” means the Multifamily Housing Revenue Refunding Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A, issued by the Issuer in the original aggregate principal amount of $6,500,00, including any bond or bonds, as the case may be, authorized under and secured by this Indenture and issued pursuant to this Indenture.

“Book Entry Bonds” means the Bonds for which a Depository or its Nominee is the Bondholder.

“Borrower” means CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company, its successors and assigns.

“Business Day” means, with respect to the Pass-Through Certificate and the Bonds, any day other than a Saturday or Sunday, a day when the fiscal agent or paying agent for the Pass-Through Certificate is closed, a day when the Federal Reserve Bank of New York is closed, or a day when the Federal Reserve Bank is closed in a district where a certificate account is located if the related withdrawal is being made from that certificate account, and, with respect to the Bonds, any such day that is also a day on which the Trustee is open for business.

“Calculation Date” means ________________________________.

“Closing Date” means August ___, 2017, which is the date the Bonds are initially issued and delivered to the original purchaser or purchasers thereof.

“Code” means the United States Internal Revenue Code of 1986, as amended, and the Regulations thereunder, or any successor statute, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the Treasury Department or Internal Revenue Service of the United States.

“Collateral Security Fund” means the fund of that name established by Section 5.02 hereof.

“Collateral Security Interest Account” means the account of that name established by Section 5.13(a) hereof.

“Collateral Security Principal Account” means the account of that name established by Section 5.13(a) hereof.

“Cooperative Agreement” means the Cooperative Agreement, dated August 18, 2016, between the Issuer and the City of Golden Valley, Minnesota, entered into in accordance with Minnesota Statutes, Sections 471.59 and 471.656, as amended.

“Costs of Issuance” means costs to the extent incurred in connection with, and allocable to, the issuance of the Bonds within the meaning of Section 147(g) of the Code. For example, “issuance costs” include the following costs, but only to the extent incurred in connection with, and allocable to, the borrowing: underwriters’ spread; counsel fees; financial advisory fees; fees paid to an organization to evaluate the credit quality of an issue; trustee fees; paying agent fees; bond registrar, certification and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval
process costs; engineering and feasibility study costs; guarantee fees, other than qualified guarantees; and similar costs.

“Costs of Issuance Fund” means the Fund created and so designated in Section 5.02 hereof.

“Counsel’s Opinion” means a written opinion, including opinions supplemental thereto, signed by an attorney or firm of attorneys (who may be counsel for the Issuer, the Borrower or Fannie Mae) acceptable to the Trustee.

“Depository” means, initially, DTC and any replacement securities depository appointed under this Indenture.

“Douglas Drive Golden Valley Townhomes” means the approximately six (6) existing affordable townhome units located at 2100 Douglas Drive North, Golden Valley, Minnesota.

“DTC” means The Depository Trust Company, New York, New York.

“Electronic Means” means a facsimile transmission or any other electronic means of communication approved in writing by Fannie Mae.

“Elmbrooke Apartments” means the forty-six (46) existing affordable apartment units located at 5400 Smetana Drive, Minnetonka, Minnesota.

“Event of Default” means any occurrence or event specified in Section 8.01 hereof.

“Extension Deposit” means the deposit of Preference Proof Moneys described in Section 5.13(f) hereof.


“Fannie Mae Trust Indenture” means that certain Trust Indenture of Fannie Mae in its corporate capacity and Fannie Mae in its trustee capacity, dated as of October 1, 2010 (for fully fixed rate mortgage loans) as amended and supplemented, pursuant to which the Pass-Through Certificate is issued.

“Financing Agreement” means the Financing Agreement, dated as of August 1, 2017, between the Issuer, the Trustee, the Lender, and the Borrower, as it may be amended from time to time.

“First Payment Date” means ______________, 20____.

“Fund” or “Account” means a fund or account created by or pursuant to this Indenture.

“Golden Valley Townhomes” means the Douglas Drive Golden Valley Townhomes and the Lilac Drive Golden Valley Townhomes.

“Government Obligations” means direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, the full faith and credit of the United States of America.

“Highest Rating Category” has the meaning, with respect to an Investment, given in this definition. If the Bonds are rated by a Rating Agency, the term “Highest Rating Category” means, with
respect to an Investment, that the Investment is rated by each Rating Agency in the highest rating given by that Rating Agency for that general category of security. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the term “Highest Rating Category” means, with respect to an Investment, that the Investment is rated by S&P or Moody’s in the highest rating given by that rating agency for that general category of security. By way of example, the Highest Rating Category for tax-exempt municipal debt established by S&P is “A-1+” for debt with a term of one year or less and “AAA” for a term greater than one year, with corresponding ratings by Moody’s of “MIG-1” (for fixed rate) or “VMIG-1” (for variable rate) for one year or less and “Aaa” for greater than one year. If at any time (i) the Bonds are not rated, (ii) both S&P and Moody’s rate an Investment and (iii) one of those ratings is below the Highest Rating Category, then such Investment will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency. For example, an Investment rated “AAA” by S&P and “Aa3” by Moody’s is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that rating agency, then the Investment will be deemed to be rated below the Highest Rating Category. For example, an Investment rated “AAA” by S&P and “A1” by Moody’s is not rated in the Highest Rating Category.

“Indenture” means this Indenture of Trust, dated as of August 1, 2017, between the Issuer and the Trustee, as it may from time to time be amended, modified or supplemented by Supplemental Indentures.

“Initial Mandatory Redemption Date” means as provided in Section 3.01(c) hereof.

“Investment” means any Permitted Investment and any other investment held under this Indenture that does not constitute a Permitted Investment.

“Investor Member” means Wincopin Circle LLLP, a Maryland limited liability limited partnership, its permitted successors and assigns.

“Issuer” means the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State, and any successors and assigns.

“Lender” means Dougherty Mortgage LLC, a Delaware limited liability company, and its successors and assigns.

“Lilac Drive Golden Valley Townhomes” means the approximately two (2) existing affordable townhome units located at 3354 Lilac Drive North, Golden Valley, Minnesota.

“Loan Agreement” means the Multifamily Loan and Security Agreement (Non-Recourse), dated the Closing Date, between the Borrower and the Issuer, which will be assigned by the Issuer to the Lender.

“Managing Member” means CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, its permitted successors and assigns.

“Mandatory Redemption Date” means the date on which the Bonds are subject to mandatory redemption pursuant to Section 3.01 hereof, including the Initial Mandatory Redemption Date, as such date may be extended pursuant to Section 5.13 hereof.
“Maturity Date” means ______________ , 20___, subject to final payment of principal with respect to the Pass-Through Certificate (______________ , 20___) which will be passed through to the Bondholders on ______________ , 20___.

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, and its successors and assigns, or if it is dissolved or no longer assigns credit ratings, then any other nationally recognized statistical rating agency, designated by Fannie Mae, as assigns credit ratings.

“Mortgage” means the Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated the Closing Date, together with all riders and exhibits, securing the Mortgage Note, executed by the Borrower with respect to the property described in the Mortgage, as it may be amended, supplemented or restated from time to time, or any security instrument executed in substitution therefor, as such substitute security instrument may be amended, supplemented or restated from time to time.

“Mortgage Loan” means the mortgage loan made to the Borrower by the Issuer with respect to the Project on the Closing Date and assigned to the Lender.

“Mortgage Loan Documents” means, collectively, the Mortgage Note, the Mortgage and all other documents, agreements and instruments evidencing, securing or otherwise relating to the Mortgage Loan, as each such document, agreement or instrument may be amended, supplemented or restated from time to time. Neither the Financing Agreement nor the Regulatory Agreements are Mortgage Loan Documents, and these documents are not secured by the Mortgage.

“Mortgage Note” means that certain note from the Borrower payable to the order of the Issuer and endorsed by the Issuer, without recourse, to the order of the Lender, evidencing the Borrower’s obligation to repay the Mortgage Loan.

“Nominee” means the nominee of the Depository, which may be the Depository, as determined from time to time pursuant hereto.

“Note” means the Multifamily Housing Revenue Refunding Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B, issued by the Issuer in the original aggregate principal amount of $900,000.

“Note Lender” means Bridgewater Bank, a Minnesota banking corporation, as the purchaser of the Note.

“Officer’s Certificate” means a certificate signed by an Authorized Officer or, if such certificate pertains to official action taken by the Issuer or official records of the Issuer, by an Attesting Officer.

“Operating Fund” means the Fund created and so designated in Section 5.02 hereof.

“Operating Revenues” means all amounts deposited into the Operating Fund from amounts paid under the Financing Agreement.

“Original Issue Price” means the price of $____________ paid upon the issuance of the Bonds.

“Outstanding” means, when used with reference to the Bonds and as of any particular date, all Bonds theretofore and thereupon being delivered except (a) any Bond cancelled by the Trustee or delivered to the Trustee for cancellation; (b) any Bond for the payment or redemption of which either (i) moneys equal to the principal amount or Redemption Price thereof, as the case may be, with interest to
the date of maturity or redemption date, or (ii) specified types of Permitted Investments or moneys in the amounts, of the maturities and otherwise as described and required under the provisions of Sections 3.01 and 3.03 hereof, shall have theretofore been deposited with the Trustee in trust (whether upon or prior to maturity or the redemption date of such Bond) and, except in the case of a Bond to be paid at maturity, as to which a redemption notice shall have been given or provided for in accordance with Section 3.02 hereof, and (c) any Bond in lieu of or in substitution for which another Bond shall have been delivered pursuant to this Indenture.

“Participant” means a member of, or a participant in, the Depository.

“Pass-Through Certificate” means the Guaranteed Mortgage Pass-Through Certificate with respect to the Mortgage Loan bearing interest at the Pass-Through Rate, to be issued to and registered in the name of the Trustee by Fannie Mae pursuant to Section 4.03 hereof.

“Pass-Through Certificate Purchase Price” means the principal amount outstanding on the Mortgage Loan plus accrued interest on the Pass-Through Certificate at the Pass-Through Rate. Such amount shall equal the original principal amount of the Mortgage Loan ($__________) less any scheduled principal payments on or prepayments of the Mortgage Loan prior to the Purchase Date.

“Pass-Through Certificate Revenues” means all payments made under and pursuant to the Pass-Through Certificate.

“Pass-Through Rate” means the interest rate established with respect to the Pass-Through Certificate, which is ___________% per annum.

“Payment Date” means (i) the First Payment Date, (ii) prior to the Purchase Date and prior to the Initial Mandatory Redemption Date, as such date may be extended pursuant to this Indenture, the 26th day of the month (or the next Business Day if the 26th is not a Business Day), and (iii) after the Purchase Date, one Business Day after each date principal, interest, or premium, if any, payment is made pursuant to the Pass-Through Certificate (which shall be the 25th day of the month (or the next Business Day if the 25th is not a Business Day) after payment is due on the underlying Mortgage Loan). The payment of interest on a Payment Date shall relate to the interest accrued during the preceding calendar month. There shall be no further accrual of interest from the Maturity Date to the final Payment Date.

“Permitted Investments” means, to the extent authorized by law for investment of moneys of the Issuer:

(a) Government Obligations; and

(b) Subject to the ratings requirements set forth in this definition, shares in any money market mutual fund (including those of the Trustee or any of its affiliates) registered under the Investment Company Act of 1940, as amended, that have been rated AAAm-G or AAAm by S&P or Aaa by Moody’s so long as the portfolio of such money market mutual fund is limited to Government Obligations and agreements to repurchase Government Obligations. If the Bonds are rated by a Rating Agency, the money market mutual fund must be rated AAAm-G or AAAm by S&P, if S&P is a Rating Agency, or Aaa by Moody’s, if Moody’s is a Rating Agency. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the money market mutual fund must be rated AAAm-G or AAAm by S&P or Aaa by Moody’s. If at any time (i) the Bonds are not rated, (ii) both S&P and Moody’s rate a money market mutual fund and (iii) one of those ratings is below the level required by this paragraph, then such money market mutual fund will, nevertheless, be deemed to be rated in the Highest
Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency.

“Placed in Service Date” means the date the Project is placed in service for purposes of Section 42 of the Code.

“Preference Proof Moneys” means (i) moneys drawn on a letter of credit, (ii) proceeds of the Bonds, (iii) proceeds of the Assigned Loan, or (iv) moneys in connection with which the Trustee shall have been delivered an opinion of bankruptcy counsel acceptable to it to the effect that the use of such moneys would not be avoidable as a preference under Section 547 of the United States Bankruptcy Code or give rise to a stay under Section 362(a) of the United States Bankruptcy Code.

“Proceeds Fund” means the Fund created and so designated in Section 4.02 hereof.

“Project” means, collectively, the (a) acquisition and substantial rehabilitation of the Elmbrooke Apartments; and (b) acquisition and substantial rehabilitation of the Golden Valley Townhomes, located on the sites described in the Mortgage.

“Purchase Date” means the date on which funds in the Collateral Security Principal Account are applied by the Trustee to the purchase of the Pass-Through Certificate.

“Qualified Financial Institution” means any of: (i) bank or trust company organized under the laws of any state of the United States of America, (ii) national banking association, (iii) savings bank, a savings and loan association, or an insurance company or association chartered or organized under the laws of any state of the United States of America, (iv) federal branch or agency pursuant to the International Banking Act of 1978 or any successor provisions of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, (v) government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, (vi) securities dealer approved in writing by Fannie Mae the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation and (vii) any other entity which is acceptable to Fannie Mae.

“Rating Agency” means _______ or any other nationally recognized securities rating agency rating the Bonds, or such rating agency’s successors or assigns.

“Rebate Fund” means the Fund created and so designated in Section 5.02 hereof.

“Record Date” means the fifteenth day of the month (regardless of whether a Business Day) immediately preceding each Payment Date.

“Redemption Price,” when used with respect to a Bond or portion thereof redeemed pursuant to Section 3.01(b), means the principal amount of the Pass-Through Certificate or portion prepaid, plus premium, if any, paid and interest received pursuant to the Pass-Through Certificate as provided in Section 3.01(b), and with respect to a Bond or portion thereof redeemed pursuant to Section 3.01(c), means the principal amount thereof to be redeemed plus interest thereon as provided in Section 3.01(c) to be paid from amounts in the Collateral Security Interest Account.

“Regulations” means the Income Tax Regulations promulgated or proposed under the Code by the Department of the Treasury, as the same may hereafter be amended, including without limitation
regulations promulgated by the Department of the Treasury to implement the requirements of Section 148 of the Code.

“Regulatory Agreements” means, collectively, the Regulatory Agreement with respect to the Elmbrooke Apartments, dated the Closing Date, between the Issuer, the Borrower, the Trustee, and the Note Lender, and the Regulatory Agreement with respect to the Golden Valley Townhomes, dated the Closing Date, between the Issuer, the Borrower, the Trustee, and the Note Lender, all as the same may be amended from time to time.

“Rehabilitation Account” means the Account of that name created within the Proceeds Fund in Section 4.02 hereof.

“Representation Letter” has the meaning given to such term in Section 2.12 hereof.

“Reserved Rights” means those certain rights of the Issuer under the Financing Agreement to indemnification and to payment or reimbursement of fees and expenses of the Issuer, its right to receive notices and to enforce notice and reporting requirements, its right to inspect and audit the books, records and premises of the Borrower and of the Project, its right to collect attorneys’ fees and related expenses, its right to specifically enforce the Borrower’s covenant to comply with applicable federal tax law and State law (including the Act and the rules and regulations of the Issuer, if any), and its right to give or withhold consent to amendments, changes, modifications and alterations to the Financing Agreement relating to the Reserved Rights.

“Responsible Officer” means any Vice President or Assistant Vice President of the Trustee having regular responsibility for corporate trust matters.


“S&P” means S&P Global Ratings, and its successors and assigns, or if it is dissolved or no longer assigns credit ratings, then any other nationally recognized statistical rating agency, designated by Fannie Mae, that assigns credit ratings.

“State” means the State of Minnesota.

“Substitute Depository” means a securities depository appointed as successor to DTC hereunder.

“Supplemental Indenture” means any indenture hereafter duly authorized and entered into between the Issuer and the Trustee amending or supplementing this Indenture in accordance with the provisions hereof.

“Tax Certificate” means the Borrower Tax Certificate executed by the Borrower as of the Closing Date with the endorsement of the Issuer.

“Term Sheet” means the Term Sheet relating to the terms of the Mortgage Loan, the Assigned Loan and, when and if issued, the Pass-Through Certificate, dated the Closing Date and attached as Exhibit A to the Financing Agreement.

“Trust Estate” means all the property, rights, moneys, securities and other amounts pledged and assigned to the Trustee pursuant to the Granting Clauses hereof.
“Trustee” means U.S. Bank National Association, a national banking association, its successors and assigns.

“Underwriter” means Dougherty & Company LLC, a Delaware limited liability company, its successors and assigns.

Section 1.02. Rules of Construction.

(a) The singular form of any word used herein, including the terms defined in Section 1.01 hereof, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include the correlative words of other genders.

(b) All references herein to “Articles,” “Sections” and other subdivisions hereof are to the corresponding Articles, Sections or subdivisions of this Indenture as originally executed; and the words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

(c) The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not limit or otherwise affect the meaning, construction or effect of this Indenture or describe the scope or intent of any provisions hereof.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time.

(e) Every “request,” “order,” “demand,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent” or similar action hereunder by any party shall, unless the form thereof is specifically provided, be in writing signed by a duly authorized representative of such party with a duly authorized signature.

(f) The parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Indenture and the Financing Agreement. Accordingly, the parties agree that any rule of construction which disfavors the drafting party shall not apply in the interpretation of this Indenture or the Financing Agreement or any amendment or supplement or exhibit hereto or thereto.

(g) Whenever Fannie Mae is required to give its consent or approval to any matter, whether stated as “consent,” “written consent,” “prior written consent,” “approval,” “written approval,” “prior written approval” or otherwise, the giving of such consent or approval by Fannie Mae shall be in its sole and complete discretion.

(h) Whenever Fannie Mae shall have any right or option to exercise any discretion, to determine any matter, to accept any presentation or to approve or consent to any matter, such exercise, determination, acceptance, approval or consent shall, without exception, be in Fannie Mae’s sole and absolute discretion.
ARTICLE II

THE BONDS

Section 2.01. Authorization of Bonds. Bonds of the Issuer, to be entitled Multifamily Housing Revenue Refunding Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A, are hereby authorized to be issued in an aggregate principal amount of $_______ and shall be issued subject to the terms, conditions and limitations established in this Indenture as hereinafter provided. The Bonds may be executed by or on behalf of the Issuer, authenticated by the Trustee and delivered or caused to be delivered by the Trustee to the original purchasers thereof upon compliance with the requirements set forth in this Indenture.

Section 2.02. Terms of Bonds.

(a) The Bonds shall be dated as of August 1, 2017, and shall bear interest at the Pass-Through Rate in the amounts as accrued and for the periods interest is paid (except as described below in connection with a redemption of Bonds under Section 3.01(c) hereof) pursuant to the terms of the Pass-Through Certificate, payable on each Payment Date, and shall mature (subject to prior redemption as herein set forth) on the Maturity Date. Interest shall be calculated on the basis of a year of Actual/360. The payment of interest on a Payment Date is the interest accrued during the preceding calendar month. There shall be no further accrual of interest on the Bonds during the period from the Maturity Date to the final Payment Date. Notwithstanding anything herein to the contrary, on and after the Purchase Date, the principal, interest and premium, if any, payable on the Bonds will be calculated at the same rate and for the same periods as interest, principal and premium, if any, payable on the Pass-Through Certificate, and will be paid one Business Day following receipt by the Trustee pursuant to the Pass-Through Certificate.

(b) The Bonds shall be issued as registered bonds without coupons in the denominations of $1.00 or any integral multiples of $1.00 in excess thereof. The Bonds shall be lettered “R” and shall be numbered separately from “1” consecutively upwards. The Bonds shall be issued initially as Book Entry Bonds.

(c) Payment of the principal of and interest or premium, if any, on any Bond shall be made to the person appearing on the Bond Register as the registered owner thereof, one Business Day following receipt by the Trustee of the interest, principal and premium, if any, paid on the Pass-Through Certificate at the Pass-Through Rate. The principal of and the interest on the Bonds shall be payable in coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts of the United States of America. Unless the Bonds are Book Entry Bonds, the principal of the Bonds shall be payable to the registered owners thereof upon presentation (except in connection with a redemption of Bonds pursuant to Section 3.01(b) hereof) at the designated corporate trust office of the Trustee or its successors. Unless the Bonds are Book Entry Bonds, payments of interest on the Bonds and redemption of the Bonds pursuant to Section 3.01(b) hereof shall be paid by check or draft mailed to the registered owner thereof at such owner’s address as it appears on the registration books maintained by the Trustee on the applicable Record Date or at such other address as is furnished to the Trustee in writing by such owner. The Trustee shall cause CUSIP number identification with appropriate dollar amounts for each CUSIP number to accompany all payments of interest, principal or Redemption Price made to such owners, whether such payment is made by check or wire transfer. All payments of principal of and interest on Book Entry Bonds shall be made and
given at the times and in the manner set out in the Representation Letter, as more fully specified in Sections 2.11 and 2.12 hereof.

(d) The Bonds shall be subject to redemption prior to maturity as provided in Article III hereof.

(e) The date of authentication of each Bond shall be the date such Bond is registered.

(f) Prior to the Purchase Date, the terms of the Bonds, including, without limitation, the dated date, the Pass-Through Rate, Payment Dates and prepayment provisions, shall be the same as would have been the case if the Pass-Through Certificate had already been purchased by the Trustee and had been in place as of the Closing Date.

Section 2.03. Execution; Special, Limited Obligation. The Bonds shall be executed on behalf of the Issuer by the signatures of the officers of the Issuer designated to sign the Bonds in a resolution of the Issuer and be sealed with the seal of the Issuer; provided, however, that the seal of the Issuer may be a printed facsimile or may be omitted; provided further that all of such signatures may be printed or photocopied facsimiles, in which event the Bonds shall also be executed manually by the Responsible Agent as authenticating agent as provided in Section 2.04 hereof and Minnesota Statutes, Section 475.55, as amended. In case any one or more of the officers of the Issuer who shall have signed any of the Bonds or whose signature appears on any of the Bonds shall cease to be such officer before the Bonds so signed shall have been actually authenticated or delivered or caused to be delivered by the Trustee or issued by the Issuer, such Bonds may, nevertheless, be authenticated and issued and, upon such authentication, delivery and issue, shall be as binding upon the Issuer as if the persons who signed such Bonds or whose signatures appear on any of the Bonds had not ceased to hold such offices until such delivery. Any Bond may be signed on behalf of the Issuer by such persons as at the actual time of execution of the Bonds shall be duly authorized or hold the proper office in the Issuer, although at the date of issuance and delivery of the Bonds such persons may not have been so authorized or have held such office.


The foregoing statement of limitation shall appear on the face of each Bond.
Section 2.04. Authentication. The Bonds shall each bear thereon a certificate of authentication, substantially in the form set forth in EXHIBIT A attached hereto and executed by the Trustee. Only Bonds which bear thereon such executed certificates of authentication shall be entitled to any right or benefit under the Indenture, and no Bond shall be valid for any purpose under this Indenture until such certificate of authentication shall have been duly executed by the Trustee. Such certificate of authentication upon any Bond shall be conclusive evidence that the Bond so authenticated has been duly issued under this Indenture and that the holder thereof is entitled to the benefits of this Indenture. The Trustee’s certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer or signatory of the Trustee, but it shall not be necessary that the same officer or signatory sign the certificate of authentication on all of the Bonds issued hereunder. The certificate of authentication on all Bonds delivered by the Trustee hereunder shall be dated the date of its authentication.

Section 2.05. Form of Bonds. The form of the Bonds issued pursuant to this Indenture shall be in substantially the form set forth in EXHIBIT A attached hereto, with such variations, omissions or insertions as are permitted by this Indenture.

Section 2.06. Delivery of Bonds. After the execution and delivery of this Indenture, the Issuer shall execute and deliver to the Trustee, and the Trustee shall authenticate, the Bonds and deliver them to the original purchaser or purchasers thereof as directed by the Issuer.

Prior to the delivery by the Trustee of any of the Bonds, there shall be filed with the Trustee:

(a) a copy of the Bond Resolution duly certified by an Authorized Officer;

(b) executed counterparts of this Indenture, the Financing Agreement, the Cooperative Agreement, the Regulatory Agreements, and all other financing documents to which the Issuer is a party;

(c) an opinion of Bond Counsel stating that the Issuer has duly adopted the Bond Resolution and has duly executed and delivered this Indenture and that this Indenture and the Bonds each constitute a valid and binding special, limited obligation of the Issuer, subject to any applicable bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors;

(d) an opinion of Bond Counsel to the effect that, except as to any exceptions therein, the interest on the Bonds is not included in gross income for federal income tax purposes under existing laws and is exempt from State income taxation;

(e) an executed Tax Certificate;

(f) an opinion of counsel for the Borrower in form and content acceptable to the Issuer and Bond Counsel;

(g) a request and authorization to the Trustee by the Issuer and signed by an Authorized Officer to authenticate and deliver the Bonds to or at the direction of the purchasers thereof upon payment to the Trustee, but for the account of the Issuer, of a sum specified in such request and authorization, plus accrued interest thereon, if any, to the date of delivery. The proceeds of such payment shall be paid over to the Trustee and deposited in the various Funds and Accounts pursuant to, and as specified in, Article IV hereof; and
Upon receipt of these documents, the Trustee shall authenticate and deliver the Bonds to or upon the order of the purchaser thereof but only upon payment to the Trustee of the purchase price of the Bonds, together with accrued interest thereon, if any.

Section 2.07. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Issuer, at the expense of the owner of such Bond shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be cancelled by it and delivered to, or upon the order of, the Issuer. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence shall be satisfactory to it and indemnity satisfactory to the Trustee shall be given, the Issuer, at the expense of the owner of such Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor. The Trustee may require payment of a sum not exceeding the actual cost of preparing each new Bond authenticated and delivered under this Section and of the expenses which may be incurred by the Issuer and the Trustee in the premises. Any Bond authenticated and delivered under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Issuer whether or not the Bond so alleged to be lost, destroyed or stolen shall be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds secured by this Indenture. If any such Bond shall have matured, or is about to mature, instead of issuing a new Bond the Trustee may pay the same without surrender thereof upon receipt of the aforementioned indemnity.

Section 2.08. Registration, Transfer and Exchange of Bonds; Persons Treated as Owners. The Issuer shall cause books for the registration, transfer and exchange of the Bonds as provided in this Indenture to be kept by the Trustee, which is hereby constituted and appointed the bond registrar with respect to the Bonds (the “Bond Registrar”). At reasonable times and under reasonable regulations established by the Trustee, said books may be inspected and copied by the Issuer or by owners (or a designated representative thereof) of a majority in aggregate principal amount of the Bonds then Outstanding.

The registration of each Bond is transferable by the registered owner thereof in person or by its attorney duly authorized in writing at the designated corporate trust office of the Trustee. Upon surrender for registration of transfer of any Bond at such office, the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond of the same maturity or maturities and authorized denomination for the same aggregate principal amount. Bonds to be exchanged shall be surrendered at said designated corporate trust office of the Trustee, and the Trustee shall authenticate and deliver in exchange therefore a Bond of equal aggregate principal amount of the same maturity and authorized denomination.

All Bonds presented for registration of transfer, exchange or payment (if so required by the Issuer or the Trustee) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Trustee, duly executed by the registered owner or by its duly authorized attorney.

The Issuer, the Bond Registrar and the Trustee shall not be required (i) to issue, register the transfer of or exchange any Bonds during a period beginning at the Trustee’s opening of business on the applicable Record Date and ending at the Trustee’s close of business on the applicable Payment Date; or (ii) to register the transfer of or exchange any Bond selected, called or being called for redemption as
provided herein. No charge shall be made to any Bondholder for the privilege of registration of transfer as herein provided, but any Bondholder requesting any such registration of transfer shall pay any tax or governmental charge required to be paid therefor.

New Bonds delivered upon any registration of transfer or exchange shall be valid special, limited obligations of the Issuer, evidencing the same debt as the Bonds surrendered, shall be secured by this Indenture and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

The person in whose name any Bond is registered shall be deemed the owner thereof by the Issuer and the Trustee, and any notice to the contrary shall not be binding upon the Issuer or the Trustee. Notwithstanding anything herein to the contrary, to the extent the Bonds are Book Entry Bonds, the provisions of Section 2.11 shall govern the exchange and registration of Bonds.

Section 2.09. Cancellation of Bonds. Whenever any Outstanding Bond shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount and interest represented thereby, for replacement pursuant to Section 2.07 or for transfer or exchange pursuant to Section 2.08, such Bond shall be canceled and destroyed by the Trustee and, upon written request of the Issuer, counterparts of a certificate of destruction evidencing such destruction shall be furnished by the Trustee to the Issuer.

Section 2.10. Pledge Effected by Indenture. The Pass-Through Certificate held pursuant to the Indenture, all amounts that may be received under a Fannie Mae trust agreement, all rights of the Issuer or the Trustee under a Fannie Mae trust agreement, the Pass-Through Certificate Revenues and all amounts held in any Fund or Account under this Indenture are hereby ratably pledged to secure the payment of the principal of and the interest on the Bonds, subject only to the provisions of this Indenture permitting the application thereof for other purposes. Such pledge shall be valid and binding and immediately effective, upon its being made or granted, without any physical delivery, filing, recording or further act, and shall be valid and binding as against, and superior to any claims of all others having claims of any kind against the Issuer or any other person, irrespective of whether such other parties have notice of the pledge.

Section 2.11. Book-Entry System; Limited Obligation. The Bonds shall be initially issued in the form of a separate single fully registered Bond (which may be typewritten) for each maturity of the Bonds. Upon initial execution, authentication and delivery, the ownership of each such global Bond shall be registered in the Bond Register in the name of the Nominee as nominee of the Depository. Except as provided in Section 2.13, all of the Outstanding Bonds shall be registered in the Bond Register kept by the Trustee in the name of the Nominee and the Bonds may be transferred, in whole but not in part, only to the Depository, to a Substitute Depository or to another nominee of the Depository or of a Substitute Depository. Each global Bond shall bear a legend substantially to the following effect: “UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE INDENTURE OF TRUST) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.”

With respect to Bonds registered in the Bond Register in the name of the Nominee, the Issuer and the Trustee shall have no responsibility or obligation to any Participant or to any person on behalf of
which such a Participant holds a beneficial interest in the Bonds. Without limiting the immediately preceding sentence, the Issuer and the Trustee shall have no responsibility or obligation with respect to (a) the accuracy of the records of the Depository, the Nominee or any Participant with respect to any beneficial ownership interest in the Bonds, (b) the delivery to any Participant, Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any redemption notice with respect to the Bonds, including any redemption notice following a failure to purchase the Pass-Through Certificate, (c) the selection by the Depository and the Participants of the beneficial interests in the Bonds to be redeemed in part, or (d) the payment to any Participant, Beneficial Owner or any other person, other than the Depository, of any amount with respect to principal of, premium, if any, or interest on the Bonds. The Issuer and the Trustee may treat and consider the person in whose name each Bond is registered in the Bond Register as the holder and absolute owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on such Bond, for the purpose of giving redemption notices pursuant to Section 3.02 and other notices with respect to such Bond, and for all other purposes whatsoever, including, without limitation, registering transfers with respect to the Bonds.

The Trustee shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective Bondholders, as shown in the Bond Register kept by the Trustee, or their respective attorneys duly authorized in writing, and all such payments shall be valid hereunder with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than a Bondholder, as shown in the Bond Register, shall receive a Bond evidencing the obligation to make payments of principal of, premium, if any, and interest pursuant to this Indenture. Upon delivery by the Depository to the Trustee and the Issuer of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee, and subject to the provisions herein with respect to Record Dates, the word Nominee in this Indenture shall refer to such new nominee of the Depository.

The Issuer and the Trustee will recognize the Depository or its nominee as the Bondholder of Book Entry Bonds for all purposes, including receipt of payments, notices and voting, provided the Trustee may recognize votes by or on behalf of Beneficial Owners as if such votes were made by Bondholders of a related portion of the Bonds when such votes are received in compliance with an omnibus proxy of the Depository or otherwise pursuant to the rules of the Depository or the provisions of the Representation Letter or other comparable evidence delivered to the Trustee by the Bondholders.

SO LONG AS A BOOK ENTRY SYSTEM OF EVIDENCE OF TRANSFER OR OWNERSHIP OF ALL THE BONDS IS MAINTAINED IN ACCORDANCE HEREWIT, THE PROVISIONS OF THIS INDENTURE RELATING TO THE DELIVERY OF PHYSICAL BOND CERTIFICATES SHALL BE DEEMED TO GIVE FULL EFFECT TO SUCH BOOK ENTRY SYSTEM AND ALL DELIVERIES OF ANY SUCH BONDS SHALL BE MADE PURSUANT TO THE DELIVERY ORDER PROCEDURES OF DTC, AS IN EFFECT FROM TIME TO TIME.

Section 2.12. Representation Letter. In order to qualify the Bonds for the Depository’s book-entry system, if necessary, any Authorized Officer is hereby authorized to execute, countersign and deliver on behalf of the Issuer to such Depository a letter from the Issuer in substantially the Depository’s standard form representing such matters as shall be necessary to so qualify the Bonds (the “Representation Letter”). The Representation Letter includes such letter as it may be amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor. The execution by the Issuer and delivery of the Representation Letter shall not in any way limit the provisions of Section 2.11 hereof or in any other way impose upon the Issuer any obligation whatsoever with respect to persons having beneficial interests in the Bonds other than the registered owners, as shown in the Bond Register kept by the Trustee. In the written acceptance by the Trustee of the Representation Letter, the
Trustee shall agree, and hereby agrees, to take all actions necessary for all representations of the Issuer in the Representation Letter with respect to the Trustee to at all times be complied with. In addition to the execution and delivery of the Representation Letter, any Authorized Officer is hereby authorized to take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository’s book-entry program.

The terms and provisions of the Representation Letter shall govern in the event of any inconsistency between the provisions of this Indenture and the Representation Letter. The Representation Letter may be amended without Bondholder consent.

Section 2.13. Transfers Outside Book-Entry System. If at any time the Issuer determines that continuation of the book entry system through DTC (or a successor securities Depository) is not in the best interest of the owners of the Bonds, if at any time the Depository notifies the Issuer and the Trustee that it is unwilling or unable to continue as Depository with respect to the Bonds or if at any time the Depository shall no longer be registered or in good standing under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation and a Substitute Depository is not appointed by the Issuer within ninety (90) days after the Issuer and the Trustee receive notice or become aware of such condition, as the case may be, Section 2.11 hereof shall no longer be applicable and the Issuer shall execute and the Trustee shall authorize and deliver bonds representing the Bonds as provided below. In addition, the Issuer may determine at any time that the Bonds shall no longer be represented by global bonds and that the provisions of Section 2.11 hereof shall no longer apply to the Bonds. In any such event, the Issuer shall execute and the Trustee shall authenticate and deliver bonds representing the Bonds as provided below. Bonds issued in exchange for global bonds pursuant to this Section shall be registered in such names and delivered in such authorized denominations as the Depository, pursuant to instructions from the Participants or otherwise, shall instruct the Issuer and the Trustee. The Trustee shall deliver such bonds representing the Bonds to the persons in whose names such Bonds are so registered.

If the Issuer determines to replace the Depository with another qualified securities depository, the Issuer shall prepare or cause to be prepared a new fully registered global bond for each of the maturities of each type of Bond, registered in the name of such successor or substitute securities depository or its nominee, or make such other arrangements as are acceptable to the Issuer, the Trustee and such securities depository and not inconsistent with the terms of this Indenture.

Section 2.14. Payments and Notices to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the Representation Letter or as otherwise instructed by the Depository.

Section 2.15. Initial Depository and Nominee. The initial Depository under this Indenture shall be DTC. The initial Nominee shall be Cede & Co., as nominee of DTC.

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

REDEMPTION OF BONDS

Section 3.01. Terms of Redemption.

(a) Redemption. The Bonds shall be subject to redemption prior to the stated maturity thereof only as set forth in this Section.

(b) Mandatory Redemption from Principal Payments or Prepayments. The Bonds are subject to mandatory redemption, in whole or in part, in the amounts and one Business Day after the dates (i) principal payments are received pursuant to the Pass-Through Certificate at a price equal to one hundred percent (100%) of the principal amount received pursuant to the Pass-Through Certificate, plus interest received pursuant to the Pass-Through Certificate, (ii) prepayments are received with respect to the Pass-Through Certificate, at a price equal to one hundred percent (100%) of the principal amount received pursuant to the Pass-Through Certificate, plus interest and premium, if any, received pursuant to the Pass-Through Certificate, or (iii) prior to the Purchase Date, redemption is otherwise required under the provisions of Section 5.13(h) hereof. Notwithstanding Section 3.02 hereof, no prior notice shall be a prerequisite to the effectiveness of any redemption under Section 3.01(b)(i) or (b)(ii), which redemption shall occur and be effective irrespective of whether the Trustee fulfills its obligation to provide the notice with respect to Section 3.01(b)(ii) required by Section 3.02 hereof.

(c) Mandatory Redemption upon Failure to Purchase the Pass-Through Certificate. The Bonds are subject to mandatory redemption in whole on ________________, 20___ (the “Initial Mandatory Redemption Date”) at a redemption price equal to the Original Issue Price plus interest accrued to the Initial Mandatory Redemption Date (as such date may be extended hereunder) upon five Business Days’ notice if (i) a Purchase Date has not occurred by the last date on which timely notice of such redemption may be given preceding such Initial Mandatory Redemption Date (as such date may be extended hereunder) and (ii) an Extension Deposit has not been made pursuant to Section 5.13(f) hereof, such that the balance in the Collateral Security Fund is equal to the Original Issue Price plus interest accrued on the Bonds to the Initial Mandatory Redemption Date (as such date may be extended hereunder). The notice for any such mandatory redemption may be conditional, to the effect that if a Purchase Date occurs not later than the close of business on the second Business Day preceding such Initial Mandatory Redemption Date (as such date may be extended hereunder), the noticed mandatory redemption shall not occur. In the event that the Pass-Through Certificate has not been purchased by the Trustee ten (10) Business Days prior to the Initial Mandatory Redemption Date (as such date may be extended hereunder), the Trustee shall provide written notice to the Borrower and the Issuer of such non-purchase.

Section 3.02. Notice of Redemption.

(a) When the Trustee shall receive notice of a prepayment under Section 3.01(b)(ii) hereof, that the Pass-Through Certificate will be prepaid, the Trustee, in accordance with the provisions of this Indenture, shall use its best efforts to give not less than twenty (20) nor more than thirty (30) days’ notice, in the name of the Issuer, of the redemption of the Bonds, which notice shall specify the following: (i) the maturity and principal amounts of the Bonds to be redeemed; (ii) the CUSIP number, if any, of the Bonds to be redeemed; (iii) the date of such notice; (iv) the issuance date for such Bonds; (v) the interest rate on the Bonds to be redeemed; (vi) the redemption date; (vii) any conditions to the occurrence of the redemption; (viii) the place
or places where amounts due upon such redemption will be payable; (ix) the Redemption Price; (x) the Trustee’s name and address with a contact person and a phone number; and (xi) that on the redemption date, the Redemption Price shall be paid. Neither the giving of such notice by the Trustee nor the receipt of such notice by the Bondholders shall be a condition precedent to the effectiveness of any such redemption.

(b) The Bonds to be redeemed pursuant to Section 3.01 hereof will be selected in accordance with the operational arrangements of DTC or any successor Substitute Depository, and any partial prepayments pursuant thereto shall be made in accordance with the “Pro Rata Pass-Through Distributions of Principal” procedures of DTC or comparable procedures of any successor Substitute Depository.

Section 3.03. Payment of Redemption Price. With respect to any redemption pursuant to Section 3.01(b) hereof, notice having been given in the manner provided in Section 3.02 hereof (or not required to be given as a result of a redemption pursuant to Section 3.01(b)(i) or (b)(ii) hereof), and all conditions to the redemption contained in such notice, if applicable, having been met, the Bonds so called for redemption shall become due and payable on the redemption date so designated at the Redemption Price specified in Section 3.01(b) hereof, and upon presentation and surrender thereof at the offices specified in such notice, together with, in the case of Bonds presented by other than the registered owner, a written instrument of transfer duly executed by the registered owner or its duly authorized attorney; provided, however, that so long as the Bonds are registered in the name of the Depository, payment for such redeemed Bonds shall be made in accordance with the Representation Letter of the Issuer. If, on the redemption date, moneys for the redemption of all the Bond or the Bonds to be redeemed, together with all accrued interest on such Bonds, which shall equal all interest accrued on the Pass-Through Certificate to the redemption date, shall be held by the Trustee so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date, interest on the Bonds so called for redemption shall cease to accrue.

Section 3.04. Cancellation. All Bonds which have been redeemed, paid or retired or received by the Trustee for exchange shall not be reissued but shall be canceled and held by the Trustee in accordance with Section 2.09 hereof.

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

APPLICATION OF BOND PROCEEDS

Section 4.01. Initial Deposit. On the Closing Date, the Trustee shall make the following deposits:

(a) $__________, representing accrued interest on the Bonds, shall be deposited to the Collateral Security Interest Account as provided in Section 5.13(b)(ii); and

(b) $__________, representing a portion of the Bond proceeds loaned to the Borrower pursuant to the Mortgage Loan made by the Issuer in the amounts set forth in Section 5.13(b)(ii) and (iii) hereof, shall be deposited to the Collateral Security Interest Account; and

(c) $__________, representing a portion of the Bond proceeds loaned to the Borrower by the Issuer pursuant to the Mortgage Loan, shall be deposited into the Proceeds Fund and $__________, representing the remaining portion of the Bond proceeds loaned to the Borrower pursuant to the Mortgage Loan, shall be deposited into the Costs of Issuance Fund; and

(d) $__________, representing funds received by or on behalf of the Borrower, shall be deposited into the Costs of Issuance Fund; and

(e) $__________, representing payment by the Lender for the Assigned Loan in consideration of the assignment by the Issuer to the Lender of the Mortgage Loan in an amount set forth in Section 5.13(b)(i), shall be deposited to the Collateral Security Principal Account pending application to purchase the Pass-Through Certificate by the Trustee.

Section 4.02. Proceeds Fund. The Trustee shall establish, create and maintain a Proceeds Fund under this Indenture, and amounts on deposit in the Proceeds Fund shall be disbursed by the Trustee to fund the costs of the Project pursuant to requisitions executed by an Authorized Borrower Representative in the form of EXHIBIT B attached hereto. The Proceeds Fund shall not be a part of the Trust Estate upon the funding of the Collateral Security Fund. After the initial disbursement from the Proceeds Fund and payment of Costs of Issuance and other disbursements pursuant to the terms of this Indenture on the Closing Date, the balance left in the Proceeds Fund for rehabilitation purposes shall be deposited in the Rehabilitation Account hereby created with the Trustee within the Proceeds Fund. Moneys in the Rehabilitation Account shall be held by the Trustee for reasons of convenience and tax accounting only. Such balance in the Rehabilitation Account shall, pending disbursement to the Borrower at the written direction of the Lender, upon which the Trustee may conclusively rely, be pledged by the Borrower to the Lender until the Purchase Date, and thereafter pledged to Fannie Mae. The Trustee shall hold such funds as custodian for the Lender as the pledgee until the Purchase Date and from and after the Purchase Date as custodian for Fannie Mae as the pledgee and not for the Bondholders. Upon the final disbursement from the Rehabilitation Account by the Trustee, the Trustee shall close the Rehabilitation Account.

Section 4.03. Delivery of Pass-Through Certificate. The obligation of the Trustee to purchase the Pass-Through Certificate on the Purchase Date shall be subject to satisfaction of the following conditions:

The Trustee shall have received written notification from the Lender upon which the Trustee may rely and act without further investigation certifying that the Pass-Through Certificate duly executed by
Fannie Mae is available for purchase by the Trustee at the Pass-Through Certificate Purchase Price, has terms consistent with the Term Sheet, and meets the following requirements:

(a) has a Stated Principal Balance (as defined in the Fannie Mae Trust Indenture) which is equal to the outstanding Mortgage Loan balance shown in the amortization schedule on the Purchase Date as included in the Term Sheet;

(b) bears interest at the Pass-Through Rate payable on the _____ day of each month, commencing on the _____ day of the month following the month in which the Trustee purchases the Pass-Through Certificate, or if any such _____ day is not a Business Day, the next succeeding Business Day, and have a final maturity date, which is the same as the Maturity Date of the Bonds; and

(c) provides that timely payment of principal (whether on any scheduled Payment Date or prior thereto upon any mandatory prepayment of the Mortgage Note or upon any optional prepayment of the Mortgage Note or upon declaration of acceleration following a default thereunder upon Fannie Mae’s determination that the Mortgage Loan is or is to be deemed a Fully Prepaid Mortgage Loan (as defined in the Fannie Mae Trust Indenture)) and interest on the Pass-Through Certificate is guaranteed to the record owner of the Pass-Through Certificate, regardless of whether corresponding payments of principal and interest on the Mortgage Loan are paid when due; and

(d) otherwise reflects Assigned Loan terms consistent with the Term Sheet attached as Exhibit A to the Financing Agreement, taking into account any changes in such terms as may be reflected in any written notice delivered to the Issuer and the Trustee by the Lender pursuant to Section 4.04 of the Financing Agreement; provided, however, that except as set forth in Section 4.03 of the Financing Agreement, such changes may only be made to cure any ambiguity, supply any omission or cure or correct any defect or inconsistent provision in the Term Sheet.

Upon purchase of the Pass-Through Certificate on the Purchase Date, the Trustee shall post a notification to this effect on the Electronic Municipal Market Access website of the Municipal Securities Rulemaking Board.

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

REVENUES AND FUNDS

Section 5.01. Pledge of Revenues and Assets. The pledge and assignment of and the security interest granted in the Trust Estate pursuant to the Granting Clauses hereof for the payment of the principal of, premium, if any, and interest on the Bonds, in accordance with their terms and provisions, and for the payment of all other amounts due hereunder, shall attach, be perfected and be valid and binding from and after the time of the delivery of the Bonds by the Trustee or by any person authorized by the Trustee to deliver the Bonds. The Trust Estate so pledged and then or thereafter received by the Trustee shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Issuer irrespective of whether such parties have notice thereof.

Section 5.02. Establishment of Funds. In addition to the Proceeds Fund established under Section 4.02 hereof, the Trustee shall establish, maintain and hold in trust the following funds, each of which shall be disbursed and applied only as herein authorized:

(a) Bond Fund;
(b) Operating Fund;
(c) Costs of Issuance Fund;
(d) Collateral Security Fund; and
(e) Rebate Fund.

Section 5.03. Application of Revenues. All Pass-Through Certificate Revenues shall be deposited by the Trustee, promptly upon receipt thereof, to the Bond Fund.

Section 5.04. Application of Operating Fund. All Operating Revenues shall be deposited into the Operating Fund. Amounts in the Operating Fund shall be withdrawn by the Trustee and used solely to pay first, any amount required to be deposited in the Rebate Fund to the extent sufficient funds are not otherwise made available to the Trustee for such purposes, second, on each Payment Date the fees and expenses of the Trustee, and third, the fees and expenses incurred in connection with the determination of rebatable arbitrage. In the event the amounts in the Operating Fund are not equal to the amounts payable from the Operating Fund on any date on which such amounts are due and payable to fund such deficiency, the Trustee shall give notice to the Borrower, the Managing Member, and the Investor Member of such deficiency and of the amount of such deficiency and request payment within five Business Days to the Trustee of the amount of such deficiency. No amount shall be charged against the Operating Fund except as expressly provided in this Section.

Section 5.05. Application of Bond Fund. The Trustee shall disburse from the Bond Fund, on each Payment Date an amount equal to the amount of the principal, including prepayments, interest and premium, if any, received on the Pass-Through Certificate on or immediately prior to such Payment Date.

Section 5.06. Investment of Funds. The moneys held by the Trustee shall constitute trust funds for the purposes hereof. Any moneys attributable to each of the Funds hereunder shall be invested by the Trustee at the written direction or telephonic direction (promptly confirmed in writing) of the Borrower in
Permitted Investments which mature or are redeemable at par on the earlier of (a) one hundred eighty (180) days from the date of investment, or (b) the date on which such funds are expected to be needed for the purposes for which they are held. Notwithstanding anything herein to the contrary, all amounts in the Bond Fund and the Proceeds Fund shall be held uninvested, and all amounts in the Collateral Security Fund shall be uninvested or invested solely in Permitted Investments described in subparagraph (b) of the definition of Permitted Investments. If the Trustee does not receive written direction or telephonic directions (promptly confirmed in writing) from the Borrower regarding the investment of funds, the Trustee shall invest solely in Permitted Investments described in subparagraph (b) of the definition of Permitted Investments, which shall mature or be redeemable at par at the times set forth in the preceding sentence. The Trustee may make any and all such investments through its own banking department or the banking department of any affiliate.

Permitted Investments representing an investment of moneys attributable to any Fund shall be deemed at all times to be a part of such Fund. Such investments shall be sold at the best price obtainable whenever it shall be necessary to do so in order to provide moneys to make any transfer, withdrawal, payment or disbursement from such Fund. In the case of any required transfer of moneys to another such Fund, such investments may be transferred to that Fund in lieu of the required moneys if permitted hereby as an investment of moneys in that Fund.

All Permitted Investments acquired by the Trustee pursuant hereto shall be purchased in the name of the Trustee and shall be held for the benefit of the holders of the Bonds and Fannie Mae pursuant to the terms of this Indenture. The Trustee shall take such actions as shall be necessary to assure that such Permitted Investments are held pursuant to the terms of this Indenture and are subject to the trust and security interest herein created.

The Trustee shall not be liable or responsible for any loss resulting from any investment made in accordance herewith. The Trustee or its affiliates may act as sponsor, principal or agent in the acquisition or disposition of investments. The Trustee may commingle investments made under the Funds and Accounts established hereunder, but shall account for each separately.

In computing for any purpose hereunder the amount in any Fund on any date, obligations so purchased shall be valued at the lower of cost or par exclusive of accrued interest, and may be so valued as of any time within four days prior to such date.

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

Section 5.07. Moneys Held for Particular Bonds. The amounts held by the Trustee for the payment of the interest, principal or premium, if any, due on any date with respect to particular Bonds shall, pending such payment, be set aside and held in trust by it for the holders of the Bonds entitled thereto, and for the purposes hereof such interest, principal or premium, if any, after the due date thereof, shall no longer be considered to be unpaid.

Section 5.08. Funds Held in Trust. All moneys held by the Trustee, as such, at any time pursuant to the terms of this Indenture shall be and hereby are assigned, transferred and set over unto the Trustee in trust for the purposes and under the terms and conditions of this Indenture.

Section 5.09. Accounting Records. The Trustee shall maintain accurate books and records for all Funds and Accounts established hereunder.
Section 5.10. Amounts Remaining in Funds. After full payment of the Bonds (or provision for payment thereof having been made in accordance with Section 7.01) and full payment of the fees and expenses of the Trustee and other amounts required to be paid hereunder and under the Financing Agreement including fees payable to the Issuer and Fannie Mae, any amounts remaining in any Fund hereunder other than the Rebate Fund shall be paid to the Lender for the payment of any amounts due and payable to the Lender and/or Fannie Mae and thereafter, to the Borrower; provided, however, that if a default shall have occurred and remain uncured under the Mortgage Loan of which the Trustee shall have received written notice from Fannie Mae or the Lender, then any such amounts remaining in any Fund or Account hereunder shall be paid to Fannie Mae.

Section 5.11. Rebate Fund. The Rebate Fund shall not be subject to the lien or encumbrance of this Indenture, but shall be held in trust for the benefit of the United States of America, and shall be subject to the claim of no other person, including that of the Trustee and Bondholders. The interest on any Permitted Investments representing an investment of moneys in the Rebate Fund and any profit arising from the sale thereof shall be retained in the Rebate Fund. Any moneys deposited therein in accordance with the provisions of this Indenture shall be used for no other purpose than to make payments to the United States Treasury, at the time and in the manner and amount specified in Section 9.12.

Section 5.12. Costs of Issuance Fund. On or before the Closing Date, the Borrower shall deliver to the Trustee for deposit in the Costs of Issuance Fund, amounts to pay Costs of Issuance from sources other than Bond proceeds. The Trustee shall use amounts in the Costs of Issuance Fund to pay the Costs of Issuance on the Closing Date or as soon as practicable thereafter in accordance with written instructions to be given to the Trustee by the Borrower, upon delivery to the Trustee of appropriate invoices for such expenses. Any unexpended amounts attributable to deposits made by the Borrower remaining on deposit in the Costs of Issuance Fund three months after the Closing Date shall be returned to the Borrower and the Costs of Issuance Fund shall be closed.

Section 5.13. Collateral Security Fund.

(a) There shall be established within the Collateral Security Fund two Accounts: (i) a Collateral Security Principal Account, and (ii) a Collateral Security Interest Account.

(b) On the Closing Date, (i) the payment received by the Trustee from the Lender for the Assigned Loan in an amount equal to the principal amount of the Bonds shall be deposited to the Collateral Security Principal Account, (ii) accrued interest on the Bonds shall be deposited to the Collateral Security Interest Account, and (iii) Bond proceeds in an amount equal to the interest on the Bonds for the remainder of the month of August 2017 from the Closing Date shall also be deposited to the Collateral Security Interest Account, and an amount equal to ________ days of interest on the Bonds (e.g., to cover the period from September 1, 2017 to but not including [Initial Mandatory Redemption Date] __________, 20__) shall also be deposited to the Collateral Security Interest Account (for a total deposit to the Collateral Security Interest Account equal to _____ days’ interest on the Bonds).

(c) Moneys on deposit in the Collateral Security Fund (derived from the amount on deposit in the Collateral Security Principal Account and an amount on deposit in the Collateral Security Interest Account equal to the accrued interest on the Pass-Through Certificate) shall be applied by the Trustee to purchase the Pass-Through Certificate on the Purchase Date.

(d) If the Purchase Date occurs in the same month as the Closing Date (i.e., August 2017), or in a subsequent month following the Payment Date for such month, then
following the Purchase Date the Trustee shall, in the case of Bond proceeds, transfer the remaining balance in the Collateral Security Interest Account to the Rehabilitation Account of the Proceeds Fund, or otherwise disburse such funds to the Borrower (after application of moneys therein to pay the accrued interest on the Pass-Through Certificate).

(e) If the Purchase Date (i) occurs in a month following the Closing Date (e.g., September 2017) and (ii) on or prior to the Payment Date for such month, then the Trustee shall retain the amount on deposit in the Collateral Security Interest Account and apply moneys from such Account to pay the interest on the Bonds on the next Payment Date. So long as payment has already been made or provided for with respect to the Payment Date in the month in which the Purchase Date occurs, any balance in the Collateral Security Interest Account following such Payment Date shall be, in the case of Bond proceeds, transferred to the Rehabilitation Account of the Proceeds Fund, or otherwise disbursed to the Borrower (after application of moneys therein to pay the accrued interest on the Pass-Through Certificate).

(f) The Borrower may at any time (not later than the last day for which notice of redemption must be given pursuant to Section 3.01(c) hereof) extend the Initial Mandatory Redemption Date by depositing Preference Proof Moneys to the credit of the Collateral Security Interest Account in an amount sufficient to pay the interest on the Bonds from the last Payment Date to the extended Mandatory Redemption Date (an “Extension Deposit”).

(g) Extension Deposits shall continue to be made by the Borrower until the Purchase Date occurs or the Borrower declines to make an Extension Deposit resulting in the mandatory redemption of the Bonds pursuant to Section 3.01(c) hereof.

(h) If a Purchase Date has not yet occurred and the Borrower has deferred the Initial Mandatory Redemption Date or any subsequent Mandatory Redemption Date by making an Extension Deposit, the Trustee shall apply amounts on deposit in the Collateral Security Interest Account to pay the preceding month’s accrual of interest on the Bonds on the next Payment Date. Whether or not the Purchase Date has been extended, on any Payment Date, the Trustee shall also apply amounts on deposit in the Collateral Security Principal Account equal to the amount set forth in the Mortgage Loan amortization schedule on the first day of the month [in which such Payment Date occurs as] included in the Term Sheet to redeem principal of the Bonds on such Payment Date; such redemption shall be in an amount equal to the preceding month’s principal amortization on the Mortgage Loan as set forth in the Mortgage Loan amortization schedule included in the Term Sheet.

(i) After the Purchase Date, and after making the transfers set forth in Section 5.13(d) and (e) hereof, the Trustee shall remit to the Borrower any moneys on deposit in the Bond Fund deriving from the Mortgage Loan that are not needed to pay debt service on or the Redemption Price of the Bonds due to the operation of the Collateral Security Interest Account.

(j) Moneys on deposit in the Collateral Security Fund shall be uninvested or invested as provided for in Section 5.06 hereof at a yield not exceeding the yield on the Bonds.

Section 5.14. Reports From the Trustee. The Trustee shall furnish to the Borrower (and to Fannie Mae, the Lender, the Investor Member, and the Issuer upon request) quarterly statements of the activity and assets held in each of the Funds and Accounts maintained by the Trustee hereunder.
ARTICLE VI

COVENANTS OF ISSUER

Section 6.01. Payment of Bonds. Subject to the other provisions of this Indenture, the Issuer shall duly and punctually pay or cause to be paid from the Revenues the principal of, premium, if any, and interest on the Bonds, at the dates and places and in the manner described in the Bonds, according to the true intent and meaning thereof solely from amounts available in the Trust Estate. The Bonds are not a general obligation of the Issuer, but are payable solely from the Trust Estate.

The payment and other obligations of the Issuer with respect to the Bonds are intended to be, and shall be, independent of the payment and other obligations of the issuer or maker of the Mortgage Note and the Pass-Through Certificate, even though the principal amount of all three instruments is expected to be identical, except in the case of a default with respect to one or more of the instruments.

Section 6.02. Performance of Covenants by Issuer.

(a) In General. The Issuer covenants that it will faithfully perform on its part at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining thereto; provided, however, that, except for the matters set forth in Section 6.01 hereof relating to payment of the Bonds, the Issuer will not be obligated to take any action or execute any instrument pursuant to any provision hereof until it has been requested to do so by the Borrower or by the Trustee, or has received the instrument to be executed and, at the option of the Issuer, has received from the party requesting such execution assurance satisfactory to the Issuer that the Issuer will be reimbursed for its reasonable expenses incurred or to be incurred in connection with taking such action or executing such instrument. The Issuer covenants that it is duly authorized under the Constitution and the laws of the State, including particularly the Act and the Bond Resolution, to issue the Bonds authorized hereby and to execute this Indenture, to grant the security interest herein provided, to assign and pledge the Trust Estate (except as otherwise provided herein) and to assign and pledge the amounts hereby assigned and pledged in the manner and to the extent herein set forth, that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken and that the Bonds in the hands of the owners thereof are and will be valid and enforceable special, limited obligations of the Issuer according to the terms thereof and hereof. Anything contained in this Indenture to the contrary notwithstanding, it is hereby understood that none of the covenants of the Issuer contained in this Indenture are intended to create a general or primary obligation of the Issuer.

(b) Prohibited Activities. Subject to the limitations on its liability as stated herein, the Issuer represents, warrants, covenants and agrees that it has not knowingly engaged and will not knowingly engage in any activities and that it has not knowingly taken and will not knowingly take any action which might result in any interest on the Bonds becoming includable in the gross income of the owners thereof for purposes of federal income taxation.

(c) Rights Under Financing Agreement. The Financing Agreement sets forth covenants and obligations of the Issuer and the Borrower, and reference is hereby made to the same for a detailed statement of said covenants and obligations. The Issuer agrees to cooperate in the enforcement of all covenants and obligations of the Borrower under the Financing Agreement and agrees that the Trustee, in its name, may enforce all rights of the Issuer (other than the Reserved Rights) and all obligations of the Borrower under and pursuant to the Financing
Agreement and on behalf of the Holders, whether or not the Issuer has undertaken to enforce such rights and obligations.

(d) **Issuer's Further Assurance.** The Issuer covenants that it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered by the parties within its control, such instruments supplemental hereto and such further acts, instruments, and transfers as the Trustee may reasonably require for the better assuring, transferring, mortgaging, conveying, pledging, assigning, and confirming unto the Trustee, the Issuer's interest in and to all interests, revenues, proceeds, and receipts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds in the manner and to the extent contemplated herein. The Issuer shall be under no obligation to prepare, record, or file any such instruments or transfers.

(e) **Unrelated Bond Issues.** The Issuer, prior to the issuance of the Bonds, has issued, and subsequent to the issuance of the Bonds, the Issuer expects to issue various series of bonds in connection with the financing of other projects (said bonds together with any bonds issued by the Issuer between the date hereof and issuance of the Bonds shall be referred to herein as the “Other Bonds”). Any pledge, mortgage, or assignment made in connection with any Other Bonds shall be protected, and any funds pledged or assigned for the payment of principal, premium, if any, or interest on the Other Bonds shall not be used for the payment of principal, premium, if any, or interest on the Bonds. Correspondingly, any pledge, mortgage, or assignment made in connection with the Bonds shall be protected, and any funds pledged or assigned for the payment of the Bonds shall not be used for the payment of principal, premium, if any, or interest on the Other Bonds.

Section 6.03. **Tax Covenants.** The Issuer shall not take any action that will cause the interest paid on the Bonds to be includable in gross income for federal income tax purposes or to be subject to personal income taxation by the State. In furtherance of the foregoing covenant, the Issuer hereby particularly covenants and agrees with the holders of the Bonds as follows:

(a) No part of the proceeds of the Bonds or any other funds of the Issuer shall be used by the Issuer at any time directly or indirectly to acquire securities or obligations, the acquisition of which, or which in any other manner, would cause any Bond to be an arbitrage bond as defined in Section 148 of the Code and any applicable Regulations promulgated thereunder.

(b) The Issuer will not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code and any applicable Regulations promulgated thereunder.

Section 6.04. **Compliance with Conditions Precedent.** Upon the Closing Date, all conditions, acts and things required by law regarding the Issuer to exist, to have happened or to have been performed precedent to or in the issuance of such Bonds shall exist, shall have happened and shall have been performed, and such Bonds, together with all other indebtedness of the Issuer, shall be within every debt and other limit prescribed by law.

Section 6.05. **Extension of Payment of Bonds.** The Issuer shall not directly or indirectly extend or assent to the extension of the maturity of the principal due on any of the Bonds or the time of payment of interest due on the Bonds, and if the time for payment of any such claims for interest shall be extended through any other means, such Bonds or claims for interest shall not be entitled in case of any default hereunder to any payment out of the Trust Estate or the funds (except funds held in trust for the payment
of particular Bonds pursuant hereto) held by the Trustee, except subject to the provisions of Section 7.02 hereof and subject to the prior payment of the principal of all Bonds issued and Outstanding the maturity of which has occurred and has not been extended and of such portion of the accrued interest on the Bonds which is not represented by such extended claims for interest.

Section 6.06. Further Assurances. At any time and at all times the Issuer shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances and enter into such further agreements as may be necessary or desirable for the better assuring, conveying, granting, assigning or confirming all and singular the rights in, pledge and grant of a security interest in the Trust Estate hereby pledged or assigned in trust, or intended so to be, or which the Issuer may hereafter become bound to pledge or assign in trust.

Section 6.07. Powers as to Bonds and Pledge. The Issuer is duly authorized pursuant to law to authorize and issue the Bonds, to enter into this Indenture and to pledge, assign, transfer and set over unto the Trustee in trust the Trust Estate herein purported to be so pledged, assigned, transferred and set over unto the Trustee in trust hereby in the manner and to the extent provided herein. The Trust Estate so pledged, assigned, transferred and set over in trust is and will be free and clear of any pledge, lien, charge or encumbrance thereon with respect thereto prior to, or of equal rank with, the pledge and assignment in trust created hereby, and all action on the part of the Issuer to that end has been duly and validly taken. The Bonds and the provisions hereof are and will be the valid and binding limited, special obligations of the Issuer in accordance with their terms and the terms hereof. The Trustee shall at all times, to the extent permitted by law, defend, preserve and protect the pledge and assignment in trust of the Trust Estate created hereby and all the rights of the Bondholders hereunder against all claims and demands of all persons whomsoever. The Bonds shall not be deemed to constitute a debt or liability of the State or any political subdivision thereof, other than the Issuer to the limited extent herein provided, or a pledge of the faith and credit or the taxing power of the Issuer, the State or of any such political subdivision, but shall be payable solely from funds provided therefor pursuant hereto.

Section 6.08. Preservation of Revenues; Amendment of Agreements. The Issuer shall not take any action to interfere with or impair the pledge and assignment hereunder of the Trust Estate, or the Trustee’s enforcement of any rights hereunder or under the Financing Agreement or the Regulatory Agreements without the prior written consent of the Trustee. The Trustee may give such written consent, and may itself take any such action or consent to an amendment or modification to the Financing Agreement, the Regulatory Agreements or the Pass-Through Certificate, only with the written consent of Fannie Mae and following receipt by the Trustee of written confirmation from the Rating Agency that the taking of such action or the execution and delivery of such amendment or modification will not adversely affect the rating then assigned to the Bonds by the Rating Agency, and if the Trustee shall have received an opinion of Bond Counsel to the effect that such action or such amendment or modification will not affect adversely the validity of the Bonds or the exclusion from gross income for federal income tax purposes of interest on the Bonds. Notwithstanding the foregoing, Fannie Mae and the Borrower may amend the Mortgage Note and the Mortgage without the consent of the Issuer, the Trustee or the holders of the Bonds so long as any such amendment does not reduce or modify the payments due under the Pass-Through Certificate.

Section 6.09. Assignment. Any assignment of the Issuer’s rights in favor of the Trustee shall not include Reserved Rights.

Section 6.10. Request and Indemnification. Where the consent of or other action on the part of the Issuer is required in this or any other document, the Issuer shall have no obligation to act unless first
requested to do so, and the Issuer shall have no obligation to expend time or money or to otherwise incur any liability unless indemnity satisfactory to the Issuer has been furnished to it.

Section 6.11. Limitations on Liability. Notwithstanding anything in this Indenture or in the Bonds, the Issuer shall not be required to advance any money derived from any source other than the Revenues and other assets pledged under this Indenture for any of the purposes of this Indenture.

No agreements or provisions contained in this Indenture, nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project, or the issuance, sale and delivery of the Bonds shall give rise to any pecuniary liability of the Issuer or a charge against its general credit or taxing power, or shall obligate the Issuer financially in any way except from the application of Revenues or proceeds pledged to the payment of the Bonds and the proceeds of the Bonds. No failure of the Issuer to comply with any term, condition, covenant or agreement herein or in any document executed by the Issuer in connection with the Project, or the issuance, sale and delivery of the Bonds shall subject the Issuer to liability for any claim for damages, costs or other financial and pecuniary charge except to the extent that the same can be paid or recovered from the Financing Agreement or the Revenues or other assets pledged to the payment of the Bonds or the proceeds of the Bonds.

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

DISCHARGE OF INDENTURE

Section 7.01.  Defeasance.

(a) If all Bonds shall be paid and discharged as provided in this Section, then all obligations of the Trustee and the Issuer under this Indenture with respect to all Bonds shall cease and terminate, except only (i) the obligation of the Trustee to pay or cause to be paid to the owners thereof all sums due with respect to the Bonds and to register, transfer and exchange Bonds pursuant to Section 2.08 hereof, (ii) the obligation of the Issuer to pay the amounts owing to the Trustee under Section 9.02 hereof from the Trust Estate, and (iii) the obligation of the Issuer to comply with Sections 6.03 and 9.12 hereof. Any funds held by the Trustee at the time of such termination which are not required for payment to Bondholders or for payment to be made by the Issuer, shall be paid as provided in Section 5.10 hereof.

Any Bond or portion thereof in an authorized denomination shall be deemed no longer Outstanding under this Indenture if paid or discharged in any one or more of the following ways:

(i) by well and truly paying or causing to be paid the principal of and interest on such Bond which have become due and payable; or

(ii) by depositing with the Trustee, in trust, cash which, together with the amounts then on deposit in the Bond Fund and dedicated to this purpose, is fully sufficient to pay when due all principal of, and premium, if any, and interest on such Bond to the maturity or earlier redemption date thereof; or

(iii) by depositing with the Trustee, in trust, any investments listed in subparagraph (a) under the definition of Permitted Investments in such amount as in the written opinion of a certified public accountant will, together with the interest to accrue on such Permitted Investments without the need for reinvestment, be fully sufficient to pay when due all principal of, and premium, if any, and interest on such Bond to the maturity or earlier redemption date thereof, notwithstanding that such Bond shall not have been surrendered for payment; or

(iv) by exchanging such Bond for ownership of a like principal amount of the Pass-Through Certificate, including receipt of premium, if any, and interest due on such Bond to the date of exchange.

(b) Notwithstanding the foregoing, no deposit under clauses (ii) and (iii) of subsection (a) above shall be deemed a payment of such Bond until the earlier to occur of:

(i) if such Bond is by its terms subject to redemption within forty-five (45) days, proper notice of redemption of such Bond shall have been previously given in accordance with Section 3.02 to the holder thereof or, in the event such Bond is not by its terms subject to redemption within forty-five (45) days of making the deposit under clauses (ii) and (iii) of subsection (a) above, the Issuer shall have given the Trustee irrevocable written instructions to mail by first-class mail, postage prepaid, notice to the holder of such Bond as soon as practicable stating that the deposit required by clauses (ii) or (iii) of subsection (a) above, as applicable, has been made with the Trustee and that such Bond is deemed to have been paid and further stating such redemption date or dates
upon which money will be available for the payment of the principal and accrued interest thereon; or

(ii) the maturity of such Bond.

(c) The Trustee shall be entitled to receive a report from a nationally recognized accounting firm to provide for the payment of all Bonds to be defeased pursuant to this Section.

Section 7.02. Unclaimed Moneys. Anything herein to the contrary notwithstanding, and subject to applicable escheatment laws of the State, any moneys held by the Trustee in trust for the payment and discharge of any of the Bonds which remain unclaimed for two years after the date when such Bonds have become due and payable, either at maturity or by call for redemption, if such moneys are held by the Trustee at said date, or for two years after the date of deposit of such moneys if deposited with the Trustee after the date when such Bonds became due and payable, shall be paid by the Trustee to the Issuer as its absolute property and free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the holders of such Bonds shall look only to the Issuer for the payment thereof; provided, however, that before being required to make any such payment to the Issuer, the Trustee shall cause to be mailed to the holders of such Bonds, at their addresses shown on the Bond Register, notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than thirty (30) nor more than sixty (60) days after the date of mailing such notice, the balance of such moneys then unclaimed will be paid to the Issuer; and provided further, that the provisions of this Section shall not apply to the extent disposition of any moneys so held by the Trustee shall be governed by any laws applicable to the Trustee or the Issuer dealing with the disposition of such unclaimed property.

Section 7.03. No Release of Pass-Through Certificate. Except as provided in this Section and in Section 7.04, the Trustee shall not release and discharge the Pass-Through Certificate from the lien of this Indenture until the principal of, premium, if any, and interest on the Bonds shall have been paid or duly provided for under this Indenture. The Trustee shall not release or assign the Pass-Through Certificate to any person other than a successor Trustee so long as Fannie Mae shall not be in default thereunder.

Section 7.04. Transfer of Pass-Through Certificate. While the Bonds are Outstanding, the Trustee shall maintain the Pass-Through Certificate in book entry form in the name of the Trustee and may not sell, assign, transfer or otherwise dispose of the Pass-Through Certificate.

Section 7.05. Issuance of Additional Obligations. The Issuer shall not hereafter create or permit the creation of or issue any obligations or create any additional indebtedness secured by a charge and lien on the Pass-Through Certificate Revenues or other moneys, securities, funds and property pledged by this Indenture, other than the Bonds authorized under Section 2.01 hereof.

Section 7.06. Modification of Mortgage Terms. To the extent allowed by applicable State law, the Issuer shall consent to the modification of, or modify, the amount of time or payment of any installment of principal or interest on any Mortgage Loan or the security for or any terms or provisions of any Mortgage Loan or Mortgage or the security for the same or the rate or rates of interest on the Mortgage Loans, solely to the extent required by federal or State law or regulations.

(The remainder of this page is intentionally left blank.)
ARTICLE VIII
DEFAULT PROVISIONS AND REMEDIES
OF TRUSTEE AND BONDHOLDERS

Section 8.01. Events of Default. Each of the following shall constitute an Event of Default under this Indenture:

(a) Failure by Fannie Mae to pay principal, interest or premium, if any, due under the Pass-Through Certificate;

(b) Failure to pay the principal, interest or premium, if any, on the Bonds when the same shall become due; or

(c) Default in the observance or performance of any other covenant, agreement or condition on the part of the Issuer in this Indenture and the continuation of such default for a period of ninety (90) days after written notice to the Issuer from the Trustee or the registered owners of at least seventy-five percent (75%) in aggregate principal amount of the Bonds Outstanding at such time specifying such default and requiring the same to be remedied.

The Trustee, upon any failure by Fannie Mae to distribute to the Trustee any payment required to be made under the terms of the Pass-Through Certificate, shall notify Fannie Mae not later than the next Business Day (all such notices to be promptly confirmed in writing) requiring the failure to be remedied.

The Trustee will immediately notify the Issuer, the Bondholders, the Lender and Fannie Mae after a Responsible Officer obtains knowledge or receives notice of the occurrence of an Event of Default or an event which would become an Event of Default with the passage of time or the giving of notice, or both.

Section 8.02. Acceleration; Rescission of Acceleration. Upon the occurrence of an Event of Default under Section 8.01(a) hereof, the Trustee may, and upon the written request of the holders of not less than seventy-five percent (75%) in aggregate principal amount of the Bonds then Outstanding, which written request shall acknowledge that the amounts due on the Pass-Through Certificate cannot be accelerated solely by virtue of acceleration of the Bonds, and upon receipt of indemnity satisfactory to it, shall, by notice in writing delivered to the Issuer, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. Subject to Section 8.14 hereof, upon the occurrence of an Event of Default under Section 8.01(b) hereof no action shall be taken by the Trustee, unless an Event of Default has occurred pursuant to Section 8.01(a) hereof in which event the Trustee shall proceed as provided above. An Event of Default under Section 8.01(c) hereof shall not give rise to an acceleration pursuant to this Section, provided, however, that following such an Event of Default, the holder of one hundred percent (100%) of the Bonds then Outstanding may direct the Trustee in writing to transfer the Pass-Through Certificate to it or its designee, in which case, the Trustee shall cancel the Bonds upon such release and transfer of the Pass-Through Certificate, and upon such transfer, the Bonds will no longer be Outstanding. In the event any payments are received by the Trustee after the transfer of the Pass-Through Certificate and cancellation of the Bonds, all such payments shall belong to and be transferred to the owner of the Pass-Through Certificate.

The acceleration of the Bonds will not constitute a default under, or by itself cause the acceleration of, the Pass-Through Certificate.
If at any time after the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Issuer, the Borrower or Fannie Mae, as applicable, shall pay to or deposit with the Trustee a sum sufficient to pay all principal of the Bonds then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) on all the Bonds then due with interest at the rate borne by the Bonds on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable expenses of the Trustee shall have been made good or cured or adequate provisions shall have been made therefor, and all other defaults hereunder have been made good or cured or waived in writing by the holders of a majority in principal amount of the Bonds then Outstanding, then and in every case, the Trustee on behalf of the holders of all the Bonds shall rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent Event of Default, nor shall it impair or exhaust any right or power consequent thereon.

Section 8.03. Other Remedies; Rights of Bondholders. Subject to Section 8.14, upon the happening and continuance of an Event of Default the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the holders of all Bonds, may also proceed to protect and enforce any rights of the Trustee and, to the full extent that the holders of such Bonds themselves might do, the rights of such Bondholders under the laws of the State or under this Indenture by such of the following remedies as the Trustee shall deem most effectual to protect and enforce such rights:

(a) By pursuing any available remedies under the Financing Agreement, the Regulatory Agreements or the Pass-Through Certificate;

(b) Upon an Event of Default under 8.01(a) hereof only, by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder (including the sale or disposition of the Pass-Through Certificate); and

(c) By action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the Bonds and to execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Trustee in order to have the respective claims of the Bondholders against the Issuer allowed in any bankruptcy or other proceeding.

If an Event of Default shall have occurred, and if requested by the holders of not less than seventy-five percent (75%) in aggregate principal amount of the Bonds then Outstanding, and upon being indemnified to its satisfaction, the Trustee shall be obligated to exercise one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem to be in the best interests of the Bondholders subject to the limitations set forth above and in this Indenture.

No right or remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other right or remedy, but each and every such right and remedy shall be cumulative and shall be in addition to any other right or remedy given to the Trustee or to the Bondholders hereunder or under the Financing Agreement, the Regulatory Agreements or the Pass-Through Certificate or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein and every such right and power may be exercised from time to time as often as may be deemed expedient.
No waiver of any default or Event of Default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

Section 8.04. Mandatory Exchange of Bonds. Notwithstanding anything herein to the contrary, upon an Event of Default under Section 8.01(c) hereof, the Trustee will, at the written direction of Fannie Mae, after no less than ten (10) days’ notice to the Bondholders, which notice shall be given by the Trustee as soon as practicable after the written direction of Fannie Mae is received, exchange all the Outstanding Bonds for ownership of a like principal amount of the Pass-Through Certificate held in the Trust Estate, and upon completion of such exchange the Bonds will no longer be Outstanding and the Indenture shall be terminated and no longer of any force and effect as provided in Section 7.01(a)(iv) hereof. In the event any payments are received by the Trustee after the transfer of the Pass-Through Certificate and cancellation of the Bonds, all such payments shall belong to and be transferred to the owner of the Pass-Through Certificate.

Section 8.05. Representation of Bondholders by Trustee. The Trustee is hereby irrevocably appointed (and the Bondholders, by accepting and holding their Bonds, shall be conclusively deemed to have so appointed the Trustee and to have mutually covenanted and agreed, each with the other, not to revoke such appointment) the true and lawful attorney in fact of the Bondholders with power and authority, in addition to any other powers and rights heretofore granted the Trustee, at any time in its discretion to make and file, in any proceeding in bankruptcy or judicial proceedings for reorganization or liquidation of the affairs of the Issuer, either in the respective names of the Bondholders or on behalf of all the Bondholders as a class, any proof of debt, amendment of proof of debt, petition or other document, to receive payment of any sums becoming distributable to the Bondholders, and to execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Trustee in order to have the respective claims of the Bondholders against the Issuer allowed in any bankruptcy or other proceeding.

In the enforcement of any rights and remedies hereunder, the Trustee in its own name and as trustee of an express trust on behalf of and for the benefit of the holders of all Bonds, shall be entitled to sue for, enforce payment on and receive any and all amounts then or during any Event of Default becoming, and at any time remaining, due from the Issuer for principal, premium, if any, interest or other moneys, under any provision hereof or of the Bonds, and unpaid, with interest on overdue payments at the rate or rates of interest specified in such Bonds, together with any and all costs and expenses of collection and of all proceedings hereunder and under such Bonds, without prejudice to any other right or remedy of the Trustee or of the Bondholders.

Section 8.06. Action by Trustee. All rights of action hereunder or upon any of the Bonds enforceable by the Trustee may be enforced by the Trustee without the possession of any of the Bonds, or the production thereof at the trial or other proceedings relative thereto, and any such suit, action or proceeding instituted by the Trustee may be brought in its name for the ratable benefit of the holders of such Bonds subject to the provisions hereof.

In any action, suit or other proceeding by the Trustee, the Trustee shall be paid fees, counsel fees and expenses in accordance with Section 9.02 hereof.

Section 8.07. Accounting and Examination of Records After Default. The Issuer covenants with the Trustee and the Bondholders that, if an Event of Default shall have happened and shall not have been remedied, the books of record and account of the Issuer relating to the Bonds and the Project shall at all times during normal business hours be subject to the inspection and use of the Trustee and of its agents and attorneys.
Section 8.08. Restriction on Bondholder Action. No holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of any provision hereof or for the execution of any trust hereunder or for any other remedy hereunder, unless (a)(i) such holder previously shall have given to the Issuer and the Trustee written notice of the Event of Default on account of which such suit, action or proceeding is to be instituted, and (ii) after the occurrence of such Event of Default, a written request shall have been made of the Trustee to institute such suit, action or proceeding by the holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding and there shall have been offered to the Trustee security and indemnity satisfactory to it against the costs and liabilities to be incurred therein or thereby, and (iii) the Trustee shall have been enjoined or restrained from complying or shall have refused or neglected or otherwise failed to comply with such request within a reasonable time; or (b)(i) such holder previously shall have obtained the written consent of the Trustee to the institution of such suit, action or proceeding, and (ii) such suit, action or proceeding is brought for the ratable benefit of the holders of all Bonds subject to the provisions hereof.

Nothing in this Article contained shall affect or impair the right of any Bondholder to enforce the payment of the principal of, premium, if any, and interest on his or her Bonds or the obligation of the Issuer to pay the principal of, premium, if any, and interest on each Bond to the holder thereof, at the time and place and from the source expressed in such Bonds and pursuant to the terms of the Bonds and this Indenture.

No holder of any Bond shall have any right in any manner whatever by his or her action to affect, disturb or prejudice the pledge of Revenues or of any other moneys, funds or securities hereunder, or, except in the manner and on the conditions in this Section provided, to enforce any right or duty hereunder.

Section 8.09. Application of Moneys After Default. All moneys collected by the Trustee at any time pursuant to this Article shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Trustee to the Bond Fund. Such moneys so credited to the Bond Fund and all other moneys from time to time credited to the Bond Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article V hereof and this Section.

Subject in all instances to the provisions of Section 8.12 hereof, in the event that at any time the moneys credited to the Bond Fund, or any other funds held by the Issuer or the Trustee available for the payment of interest or principal then due with respect to the Bonds, shall be insufficient for such payment, such moneys and funds (other than funds held for the payment or redemption of particular Bonds as provided in Section 5.07 hereof) shall be applied as follows:

(a) Only in the event that there has been an Event of Default hereunder pursuant to Section 8.01(a) hereof as a result of a failure by Fannie Mae to make payments under the Pass-Through Certificate, for payment of all amounts due to the Trustee incurred in performance of its duties under this Indenture and the other documents executed in connection therewith, including, without limitation, the payment of all reasonable fees and expenses of the Trustee incurred in exercising any remedies under this Indenture and the other documents executed in connection herewith;

(b) Unless the principal of all of the Bonds shall have become or have been declared due and payable:

First: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available is not
sufficient to pay in full any installment, then to the payment thereof ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, on any Bonds which shall have become due, whether at maturity or by call for redemption, in the order in which they became due and payable, and, if the amount available is not sufficient to pay in full all the principal of and premium, if any, on the Bonds so due on any date, then to the payment of principal ratably, according to the amounts due on such date, to the persons entitled thereto, without any discrimination or preference and then to the payment of any premium due on the Bonds, ratably, according to the amounts due on such date, to the persons entitled thereto, without any discrimination or preference; and

(c) If the principal of all of the Bonds shall have become or have been declared due and payable, to the payment of the principal of, premium, if any, and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

Section 8.10. Control of Proceedings. In the case of an Event of Default pursuant to Section 8.01(a) hereof, the holders of a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, subject to the provisions of Section 8.08 hereof, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee; provided, however, that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action or proceeding so directed may not be taken lawfully, or if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or otherwise adversely affect the Trustee or be unjustly prejudicial to Bondholders not parties to such direction.

Section 8.11. Waivers of Events of Default. The Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of, premium, if any, and interest on the Bonds upon the written request of the holders of a majority in aggregate principal amount of all Bonds then Outstanding with respect to which there is an Event of Default; provided, however, that there shall not be waived (a) any default in the payment of the principal amount of any Bonds at the date of maturity specified therein or upon proceedings for mandatory redemption, or (b) any default in the payment when due of the interest or premium, if any, on any such Bonds, unless prior to such waiver or rescission all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds in respect of which such Event of Default shall have occurred on overdue installments of interest or all arrears of payments of principal or premium, if any, when due (whether at the stated maturity thereof or upon proceedings for mandatory redemption) as the case may be, and all expenses of the Trustee in connection with such monetary default, shall have been paid or provided for, and in case of any such waiver or rescission, the Issuer, the Borrower, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder respectively.

No such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto; and no delay or omission of the Trustee or of any Bondholders to exercise any right
or power accruing upon any Event of Default shall impair any right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence therein.

Section 8.12. Subordination. No claim for interest on any of the Bonds which claim in any way at or after maturity shall have been transferred or pledged by the holder thereof separate and apart from the Bond to which it relates, unless accompanied by such Bond, shall be entitled in case of an Event of Default hereunder to any benefit by or from this Indenture except after the prior payment in full of the principal of and premium, if any, on all of the Bonds then due and of all claims for interest then due not so transferred or pledged.

Section 8.13. Termination of Proceedings. In case any proceeding taken by the Trustee on account of any Event of Default shall have been discontinued or abandoned for any reason or determined adversely to the Trustee, then in every such case the Issuer, the Borrower, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Trustee shall continue as though no such proceeding had been taken.

Section 8.14. No Interference or Impairment of Pass-Through Certificate. Notwithstanding any other provision of this Indenture to the contrary, so long as the Pass-Through Certificate remains outstanding and Fannie Mae is not in default in its payment obligations thereunder, neither the Issuer, the Trustee nor any person under their control shall, without the prior written consent of Fannie Mae, exercise any remedies or direct any proceedings under the Indenture other than to (a) enforce rights under the Pass-Through Certificate, (b) enforce the tax covenants in this Indenture and the Financing Agreement, or (c) enforce rights of specific performance under the Regulatory Agreements; provided, however, that any enforcement under (b) or (c) above shall not include seeking monetary damages other than actions for Issuer Fees or the Trustee’s fees and expenses.

Nothing contained in this Indenture shall affect or impair the right of any Bondholder to enforce the payment of the principal of, the premium, if any, and interest on any Bond at the maturity thereof or the obligation of the Trustee to pay the principal of, premium, if any, and interest on the Bonds issued hereunder to the respective holders thereof, at the time, in the place, from the sources and in the manner expressed herein and in said Bonds.

(The remainder of this page is intentionally left blank.)
ARTICLE IX
THE TRUSTEE

Section 9.01. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions and no implied covenants or conditions shall be read into this Indenture against the Trustee:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a reasonable person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall not be answerable for the conduct of the same if appointed with reasonable care, and shall be entitled to advice of counsel concerning all matters of the trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorneys (who may be the attorney or attorneys for the Issuer, the Borrower or Fannie Mae) approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action taken in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital herein, or in the Bonds (except in respect to the certificate of the Trustee endorsed on the Bonds), or for insuring the Project or collecting any insurance moneys, or for the registration, filing or recording or re-registration, re-filing or re-recording of this Indenture or the Mortgage or any financing statements relating hereto or thereto or for the validity of the execution by the Issuer of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value or title of the Project or otherwise as to the maintenance of the security hereof. The Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Issuer or on the part of the Borrower under the Financing Agreement, except as hereinafter set forth; but the Trustee may require of the Issuer or the Borrower full information and advice as to their performance of the covenants, conditions and agreements aforesaid. The Trustee acknowledges it has assumed certain duties of the Issuer under the Financing Agreement and the Regulatory Agreements.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may become the owner of Bonds secured hereby with the same rights which it would have if it were not Trustee hereunder. To the extent permitted by law, the Trustee may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Indenture, whether or not any such committee shall represent the holders of a majority in aggregate principal amount of the Bonds Outstanding.
(e) The Trustee shall be protected in acting under any notice, request, consent, certificate, order, affidavit, letter, facsimile transmission, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request, authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely (unless other evidence in respect thereof is herein specifically prescribed) upon an Officer’s Certificate as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default of which the Trustee has been notified as provided in subsection (h) of this Section, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept an Officer’s Certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate signed by an Attesting Officer of the Issuer as conclusive evidence that a resolution of the governing body of the Issuer has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its own negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default or Event of Default hereunder except a default in payment when due of the principal of, premium, if any, or interest on any Bond or the failure of the Issuer or the Borrower to file with the Trustee any documents required by this Indenture, the Financing Agreement or the Regulatory Agreements to be so filed subsequent to the issuance of the Bonds unless the Trustee shall be specifically notified in writing of such default or Event of Default by the Issuer or by the holders of at least seventy-five percent (75%) in aggregate principal amount of Bonds then Outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the designated office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no default or Event of Default except as aforesaid.

(i) At any and all reasonable times the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right fully to inspect any and all of the property herein conveyed, including the Project and all books, papers and records of the Issuer pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired, provided that such inspection be made and any such memoranda be taken and used on a basis that will insure the confidentiality thereof and of any results thereof.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the trusts and powers or otherwise in respect of the premises granted in this Indenture.

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property or any action whatsoever within the
purview of this Indenture (other than enforcement of the Regulatory Agreements), any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, the release of any property or the taking of any other action by the Trustee, but the resolutions, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warranty, protection and authority to the Trustee for the release of property and the withdrawal of cash hereunder.

(l) Before taking any action under Article VIII hereof the Trustee may require that a satisfactory indemnity bond or other indemnity satisfactory to the Trustee be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default in conjunction with any action so taken.

(m) All moneys received by the Trustee, until used, applied or invested as herein provided, shall be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law.

(n) The immunities extended to the Trustee also extend to its directors, officers, employees and agents.

(o) The Trustee’s rights to immunities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive its resignation or removal and the final payment or the defeasance of the Bonds (or the discharge of the Bonds or the defeasance of the lien of this Indenture).

(p) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur individual financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

(q) The Trustee shall have no responsibility, opinion or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

Section 9.02. Fees, Charges and Expenses of Trustee. Notwithstanding any provision to the contrary herein, the Trustee shall be entitled to payment for reasonable fees for its services rendered hereunder and under the Financing Agreement and reimbursement for all advances, counsel fees and other expenses reasonably made or incurred by the Trustee (including any co-Trustee) in connection with such services which shall be paid from time to time as provided in Section 5.04 hereof from moneys available therefor and as provided in the Financing Agreement; provided that no such amounts shall be paid to the Trustee from the proceeds of the Pass-Through Certificate. Upon an Event of Default under Section 8.01(a) hereof as a result of a failure by Fannie Mae to make payment under the Pass-Through Certificate, but only upon such an Event of Default, the Trustee shall have a lien upon the Trust Estate for extraordinary fees, charges and expenses incurred by it. The Issuer shall require the Borrower to indemnify and save harmless the Trustee against any liabilities which the Trustee may incur in the exercise and performance of its powers and duties hereunder, under the Financing Agreement and under the Regulatory Agreements which are not due to its own negligence or willful misconduct, and to reimburse the Trustee for any fees and expenses of the Trustee to the extent they exceed funds available under this Indenture for the payment thereof, subject only to the right of the Borrower to contest the
reasonableness of any such fees or the necessity for any such expenses. The Trustee shall continue to perform its duties and obligations hereunder until such time as its resignation or removal is effective pursuant to Section 9.05 or Section 9.06, respectively.

Section 9.03. Intervention By Trustee. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of owners of the Bonds, the Trustee may intervene on behalf of the Bondholders and shall do so if requested in writing by the owners of at least seventy-five percent (75%) in aggregate principal amount of Bonds then Outstanding, subject to receipt of indemnity as provided in Section 9.01(l). The rights and obligations of the Trustee under this Section are subject to receipt of any approval of a court of competent jurisdiction which may be required by law as a condition to such intervention.

Section 9.04. Merger or Consolidation of Trustee. Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto shall be and become successor Trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 9.05. Resignation by Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty (30) days’ written notice to the Issuer and Fannie Mae, and such resignation shall only take effect upon the appointment, pursuant to Section 9.07, of, and acceptance by, a successor Trustee. The successor Trustee shall give notice of such succession by first class mail, postage prepaid, to each Bondholder at the address of such Bondholder shown on the Bond Register.

Section 9.06. Removal of Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and to Fannie Mae, and signed by the Issuer (or if an Event of Default shall have occurred and be continuing, by the owners of a majority in aggregate principal amount of the Bonds then Outstanding, in which event such instrument or instruments in writing shall also be delivered to the Issuer) provided that such removal shall not take effect until the appointment of a successor Trustee by the Issuer (or by the Bondholders).

Section 9.07. Appointment of Successor Trustee. In case at any time the Trustee or any successor thereto shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of such Trustee or of its property shall be appointed, or if any public officer shall take charge or control of such Trustee or of its property or affairs, a successor may be appointed by the Issuer with the approval of Fannie Mae (if it is not in default in its obligations under the Pass-Through Certificate), or if Fannie Mae does not approve a successor the Issuer proposes to appoint, or if the Issuer is in default hereunder, by the holders of a majority in aggregate principal amount of the Bonds then Outstanding, excluding any Bonds held by or for the account of the Issuer, by an instrument or concurrent instruments in writing signed by such Bondholders, or their attorneys duly authorized in writing, and delivered to such successor Trustee, notification thereof being given to the Issuer, Fannie Mae, the Borrower, the Managing Member, the Investor Member, and the predecessor Trustee. If in a proper case no appointment of a successor Trustee shall have been made pursuant to the foregoing provisions of this Section within forty-five (45) days after the Trustee shall have given to the Issuer written notice as provided in Section 9.05 hereof or after the occurrence of any other event requiring or authorizing such appointment, the Trustee or any Bondholder
may apply to any court of competent jurisdiction to appoint a successor. The court may thereupon, after
such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Any Trustee appointed under the provisions of this Section shall be a bank, trust company or
national banking association, having a designated office within the State, having trust powers, with prior
experience as trustee under indentures under which multifamily housing revenue bonds of public agencies
or authorities are issued, and having a capital and surplus acceptable to the Issuer and Fannie Mae, willing
and able to accept the office on reasonable and customary terms in light of the circumstances under which
the appointment is tendered and authorized by law to perform all the duties imposed upon it hereby, if
there be such an institution meeting such qualifications willing to accept such appointment.

Section 9.08. Transfer of Rights and Property to Successor Trustee. Any successor Trustee
appointed hereunder shall execute, acknowledge and deliver to its predecessor Trustee, and also to the
Issuer and Fannie Mae, an instrument accepting such appointment, and thereupon such successor Trustee,
without any further act, deed or conveyance, shall become fully vested with all moneys, estates,
properties, rights, powers, duties and obligations of such predecessor Trustee, with like effect as if named
herein as such Trustee, but the Trustee ceasing to act shall nevertheless, on the written request of the
Issuer, Fannie Mae or the successor Trustee, execute, acknowledge and deliver such instruments of
conveyance and further assurance and do such other things as reasonably may be required for more fully
and certainly vesting and confirming in such successor Trustee all the right, title and interest of the
predecessor Trustee in and to any properties held by it under this Indenture, and shall pay over, assign and
deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set
forth. Should any deed, conveyance or instrument in writing from the Issuer be required by such
successor Trustee for more fully and certainly vesting in and confirming to such successor Trustee any
such moneys, estates, properties, rights, powers and duties, any and all such deeds, conveyances and
instruments in writing, on request, and so far as may be authorized by law, shall be executed,
acknowledged and delivered by the Issuer.

Section 9.09. Successor Trustee as Bond Registrar, Custodian of Funds and Paying Agent. In the
event of a change in the Trustee, the Trustee which has resigned or been removed shall cease to be bond
registrar, custodian of the Funds and Accounts created under this Indenture and paying agent for the
Bonds, and the successor Trustee shall become such registrar, custodian and paying agent.

Section 9.10. Collection of Pass-Through Certificate Payments. The Trustee shall cause the
Pass-Through Certificate to be registered in the name of the Trustee or in the name of the nominee of the
Trustee with such additional recitals as appropriate to indicate that the Pass-Through Certificate is to be
held by the Trustee in its capacity as Trustee hereunder subject to the provisions of Sections 7.03 and 7.04
hereof. In the event the Trustee determines in its discretion that payment by Fannie Mae, directly to DTC
for the account of the Bondholders is desirable, it can, subject to Fannie Mae’s consent, designate DTC as
the address to which payments under the Pass-Through Certificate are to be made; provided that DTC
shall have agreed to notify the Trustee in the event that any amount payable under the Pass-Through
Certificate is not received by such custodian within one Business Day of the date such payment is due. In
the event that any amount payable to the Trustee under the Pass-Through Certificate is not received by the
Trustee within one Business Day of the date such payment is due, or if such payment is to be made
directly to the DTC, in the event the Trustee shall receive notice from DTC that such payment has not
been received within one Business Day of the date such payment is due, the Trustee shall notify Fannie
Mae or (if directed by Fannie Mae) the paying agent for the Pass-Through Certificate by telephone (such
notification to be immediately confirmed by telegram, telecopy or other means of instantaneous written
communication) that such payment has not been received in a timely manner and request that such
payment be made by wire transfer of immediately available funds to the account of the Trustee or such
custodian, as the case may be.
Section 9.11. Requests from Rating Agency. The Trustee shall promptly respond in writing, or in such other manner as may be reasonably requested, to requests from the Rating Agency for information deemed necessary by the Rating Agency in order to maintain the rating assigned thereby to the Bonds. The Trustee shall promptly furnish any such requested information in its possession to the Rating Agency and shall, as may be reasonably requested by the Rating Agency, assist in efforts to obtain any necessary information from the Issuer or the Borrower or Fannie Mae as applicable.


(a) Moneys and securities held by the Trustee in the Rebate Fund are not pledged or otherwise subject to any security interest in favor of the Trustee to secure the Bonds or any other payments required to be made hereunder or any other document executed and delivered in connection with the issuance of the Bonds.

(b) Moneys in the Rebate Fund shall be held separate and apart from all other Funds and Accounts established under this Indenture and shall be separately invested and reinvested by the Trustee in Permitted Investments. The interest accruing thereon and any profit realized therefrom shall be credited to the Rebate Fund, and any loss resulting therefrom shall be charged to the Rebate Fund. The Trustee shall sell and reduce to cash a sufficient amount of such Permitted Investments whenever the cash balance in the Rebate Fund is insufficient for its purposes.

(c) The Issuer hereby covenants to provide, or to cause the Borrower to provide, for the calculation of and rebate to the federal government, in accordance with the Code, of excess investment earnings to the extent required by section 148(f) of the Code.

(d) In order to provide for the administration of this Section, the Trustee may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Trustee may deem appropriate and in addition and without limitation of the provisions of Section 9.01, the Trustee may rely conclusively upon and be fully protected from all liability in relying upon the opinions, determinations, calculations and advice of such attorneys, accountants and consultants employed hereunder.

(e) The Borrower shall be responsible for any fees and expenses incurred by the Issuer or the Trustee under or pursuant to this Section.

(f) Withdrawals from the Rebate Fund may be made to the extent the rebate analyst determines that amounts on deposit therein exceed amounts required to be on deposit therein pursuant to this Section. All amounts so withdrawn shall be transferred to the Bond Fund.

(g) The provisions of this Section may be amended or deleted from this Indenture upon receipt by the Issuer and the Trustee of an opinion of Bond Counsel that such amendment or deletion will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes. Any moneys on deposit in the Rebate Fund may be applied by the Trustee as permitted in such opinion. Fees and expenses incurred in connection with the determination of rebatable arbitrage shall be paid by the Borrower pursuant to the provisions of the Financing Agreement.

Section 9.13. Compliance of Borrower Under Regulatory Agreements. The Trustee shall give written notice to the Issuer, the Lender, the Managing Member, the Investor Member, and Fannie Mae of any failure by the Borrower to comply with the terms of any of the Regulatory Agreements.
ARTICLE X
SUPPLEMENTAL INDENTURES

Section 10.01. Supplemental Indentures Effective Upon Acceptance. For any one or more of the following purposes and at any time or from time to time, the Issuer and the Trustee may enter into a Supplemental Indenture which, upon the execution and delivery thereof by an Authorized Officer and by the Trustee, and with the prior written consent of Fannie Mae, but without the necessity of consent of the Bondholders, shall be fully effective in accordance with its terms:

(a) To add to the covenants or agreements of the Issuer herein contained other covenants or agreements to be observed by the Issuer or to otherwise revise or amend this Indenture in a manner which are/is not materially adverse to the interests of the Bondholders;

(b) To add to the limitations or restrictions herein contained other limitations or restrictions to be observed by the Issuer which are not contrary to or inconsistent with the provisions hereof as theretofore in effect;

(c) To surrender any right, power or privilege reserved to or conferred upon the Issuer herein, provided that the surrender of such right, power or privilege is not contrary to or inconsistent with the covenants and agreements of the Issuer contained herein and is not materially adverse to the interests of the Bondholders;

(d) To confirm, as further assurance, any pledge of the Trust Estate hereunder and the subjection to any lien on or pledge of the Trust Estate created or to be created hereby;

(e) To appoint a co-trustee or successor Trustee or successor co-trustee;

(f) To cure any ambiguity, supply any omission or cure or correct any defect or inconsistent provision herein;

(g) To insert such provisions clarifying matters or questions arising hereunder as are necessary or desirable and are not materially adverse to the interests of the Bondholders; and

(h) To make such changes and modifications that are necessary or desirable to provide for all interest, principal and premium paid with respect to the Bonds are in the exact respective amounts of the payments of interest, principal and premium paid under and pursuant to the Pass-Through Certificate.

Section 10.02. Supplemental Indentures Requiring Consent of Bondholders. In addition to those amendments to the Indenture which are authorized by Section 10.01 hereof, any modification or amendment of the Indenture may be made by a Supplemental Indenture with the written consent, given as hereinafter provided in Section 10.03 hereof, of Fannie Mae and the holders of at least two-thirds in aggregate principal amount of the Bonds Outstanding at the time such consent is given; provided, however, that no such modification or amendment shall (a) permit a change in the terms of redemption or maturity of the principal amount of any Outstanding Bond or an extension of the date for payment of any installment of interest thereon or a reduction in the principal amount of, premium, if any, or the rate of interest on any Outstanding Bond without the consent of the holder of such Bond, (b) reduce the proportion of Bonds the consent of the holders of which is required to effect any such modification or amendment or to effectuate an acceleration of the Bonds prior to maturity, (c) permit the creation of a lien on the Trust Estate pledged under this Indenture prior to or on a parity with the lien of this Indenture,
(d) deprive the holders of the Bonds of the lien created by this Indenture upon the Trust Estate (except as expressly provided in this Indenture), without (with respect to (b) through (d)) the consent of the holders of all Bonds then Outstanding, or (e) change or modify any of the rights or obligations of the Trustee without the written consent thereto of the Trustee.

Section 10.03. Consent of Bondholders. The Issuer and the Trustee may, at any time, execute and deliver a Supplemental Indenture making a modification or amendment permitted by the provisions of Section 10.02 hereof, to take effect when and as provided in this Section. A copy of such Supplemental Indenture (or brief summary thereof or reference thereto in a form approved by the Trustee), together with a request to Bondholders for their consent thereto in form satisfactory to the Trustee, shall be mailed by the Trustee to the Bondholders. Such Supplemental Indenture shall not be effective unless there shall have been filed with the Trustee (a) the written consents of Fannie Mae and the holders of the proportion of Outstanding Bonds specified in Section 10.02 hereof, and (b) an opinion of Bond Counsel stating that such Supplemental Indenture has been duly and lawfully entered into by the Issuer in accordance with the provisions of this Indenture, is authorized or permitted by the provisions of this Indenture, and, when effective, will be valid and binding upon the Issuer. Each such consent of the Bondholders shall be effective only if accompanied by proof of the holding, at the date of such consent, of the Bonds with respect to which such consent is given, which proof shall be such as is permitted by Section 11.01 hereof. A certificate or certificates by the Trustee that it has examined such proof and that such proof is sufficient under the provisions of Section 11.01 hereof shall be conclusive that the consents have been given by the holders of the Bonds described in such certificate or certificates. Any such consent shall be binding upon the holder of the Bonds giving such consent and upon any subsequent holder of such Bonds and of any Bonds issued in exchange therefor (whether or not such subsequent holder thereof has notice thereof). At any time after the holders of the required proportion of Bonds shall have filed their consents to such Supplemental Indenture, the Trustee shall make and file with the Issuer a written statement that the holders of such required proportion of Bonds have filed and given such consents. Such written statement shall be conclusive that such consents have been so filed and have been given. Within ninety (90) days after filing such statement, the Trustee shall mail to the Bondholders a notice stating in substance that such Supplemental Indenture (which may be referred to as a Supplemental Indenture executed by the Issuer on a stated date, a copy of which is on file with the Trustee) has been consented to by the holders of the required proportion of Bonds and will be effective as provided in this Section, but failure to mail such notice shall not prevent such Supplemental Indenture from becoming effective and binding as in this Section 10.3 provided. The Trustee shall file with the Issuer proof of the mailing of such notice to the Bondholders. A record, consisting of the papers required or permitted by this Section to be filed with the Trustee, shall be proof of the matters therein stated. Such Supplemental Indenture making such modification or amendment shall be deemed conclusively binding upon the Issuer, the Trustee and the holders of all Bonds upon the execution thereof and the filing by the Trustee with the Issuer of the statement that the required proportion of Bondholders have consented thereto.

The Issuer may conclusively rely upon the Trustee’s determination that the requirements of this Section have been satisfied.

Section 10.04. Modification By Unanimous Consent. Notwithstanding anything contained in the foregoing provisions of this Article, the terms and provisions hereof and the rights and obligations of the Issuer and the holders of the Bonds hereunder, in any particular, may be modified or amended in any respect upon execution and delivery of a Supplemental Indenture by the Issuer and the Trustee making such modification or amendment and the consent to such Supplemental Indenture of Fannie Mae and the holders of all of the Bonds then Outstanding, such consent to be given and proved as provided in Section 10.03 hereof except that no notice to Bondholders shall be required; provided, however, that no such modification or amendment shall change or modify any of the rights or obligations of the Trustee without the written assent thereto of the Trustee, in addition to the consent of the Bondholders.
Section 10.05. **Exclusion of Bonds.** Bonds owned or held by or for the account of the Issuer or the Borrower shall be excluded and shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article, unless all of the Bonds are owned or held by or for the account of the Issuer or the Borrower. In the event that not all of the Bonds are owned or held by or for the account of the Issuer or the Borrower, then neither the Issuer nor the Borrower, as the case may be, shall be entitled with respect to such Bonds to give any consent or take any other action provided for in this Article. At the time of any consent or other action under this Article, in the event that any Bonds (but not all of the Bonds) are then owned by or for the account of the Issuer, the Issuer shall furnish to the Trustee an Officer’s Certificate, upon which the Trustee may rely, describing all Bonds so to be excluded. The Trustee shall be obligated to exclude as aforesaid only such Bonds as are shown by the Bond Register or are otherwise known by the Trustee to be so owned or held.

Section 10.06. **Notation on Bonds.** Bonds delivered after the effective date of any action taken as provided in this Article may, and if the Trustee so determines shall, bear a notation by endorsement or otherwise in form approved by the Issuer and the Trustee as to such action, and in that case upon demand of the holder of any Bond Outstanding at such effective date and presentation of such Bond for such purpose at the principal office of the Trustee, suitable notation shall be made on such Bond by the Trustee as to any such action. If the Issuer or the Trustee shall so determine, new Bonds notated as in the opinion of the Trustee and the Issuer may be required to conform to such action shall be prepared and delivered, and upon demand of the holder of any Bond then Outstanding, shall be exchanged, without cost to such Bondholder, for Bonds of the same series, designation, maturity and interest rate then Outstanding upon surrender of such Bonds.

Section 10.07. **Additional Contracts or Indentures.** The Issuer, so far as it may be authorized by law, may enter, and if requested by the Trustee, shall enter into additional contracts or indentures with the Trustee giving effect to any modification or amendment of this Indenture as provided in this Article.

Section 10.08. **Opinion of Bond Counsel Concerning Supplemental Indentures.** The Trustee shall not execute or consent to any Supplemental Indenture unless prior to the execution and delivery thereof the Trustee shall have received the written opinion of Bond Counsel to the effect that the modifications or amendments effected by such Supplemental Indenture will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes or adversely affect the exemption of interest of the Bonds from personal income taxation by the State and are authorized and permitted under the provisions of this Indenture.

Section 10.09. **Modification to Mortgage Loan Documents.** Notwithstanding anything herein to the contrary each and every Mortgage Loan Document may be amended, modified or restated, without the consent of the Bondholders, but subject to and only in the manner and to the extent such modification, amendment or restatement is permitted and made pursuant to the terms of the Fannie Mae Trust Indenture pursuant to which the Pass-Through Certificate was issued.

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

MISCELLANEOUS

Section 11.01. Evidence of Signatures of Bondholders and Ownership of Bonds. Any request, consent, revocation of consent or other instrument which this Indenture may require or permit to be signed and executed by Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such Bondholders in person or by their attorneys duly authorized in writing. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney, or the holding by any person of any Bonds, shall be sufficient for any purpose hereof if made in the following manner or in any other manner satisfactory to the Trustee which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

(a) The fact and date of the execution by any Bondholder or his or her attorney of any such instrument (other than the Bond) may be proved (i) by the certificate of a notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he or she purports to act that the person signing such instrument acknowledged to him or her the execution thereof, or by the affidavit of a witness of such execution, duly sworn to before such a notary public or other officer, or (ii) by the certificate, which need not be acknowledged or verified, of an officer of a bank, trust company or duly licensed securities broker or dealer satisfactory to the Trustee that the person signing such instrument acknowledged to such bank, trust company, broker or dealer the execution thereof;

(b) The authority of a person or persons to execute any such instrument on behalf of a corporate Bondholder may be established without further proof if such instrument is authorized by a corporate resolution (a copy of which shall be delivered to the Trustee) and signed by a person purporting to be the president or a vice president of such corporation; and

(c) The holding of Bonds, the amount, numbers and other identification thereof, and the date of holding the same, shall be proved by the Bond Register.

Any request, consent or other instrument executed by the registered owner of any Bond shall bind all future owners of such Bond in respect of anything done or suffered to be done hereunder by the Issuer or the Trustee in accordance herewith in reliance on such request, consent or other instrument.

Section 11.02. Details of Documents Delivered to Trustee. Matters required to be stated in any document signed by any Authorized Officer or in any accountant’s certificate, Counsel’s Opinion or Officer’s Certificate may be stated in separate documents of the required description or may be included in one or more thereof.

Section 11.03. Preservation and Inspection of Documents. All reports, certificates, statements and other documents received by the Trustee under the provisions hereof shall be retained in its possession and shall be available at all reasonable times for the inspection of the Issuer, Fannie Mae or any Bondholder and their agents and representatives, any of whom may make copies thereof, but any such reports, certificates, statements or other documents may, at the election of the Trustee, be destroyed or otherwise disposed of at any time six years after such date as the pledge of the Trust Estate created hereby shall be discharged as provided in Section 7.01 hereof.

Section 11.04. No Recourse on Bonds. All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Indenture shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any of its officers or employees or members
of its governing body, past, present or future, in his or her individual capacity, and no recourse shall be
had for the payment of the principal of, premium, if any, or interest on the Bonds or for any claim based
thereon or hereunder against any such officer or employee of the Issuer or member of its governing body
or any natural person executing the Bonds.

Section 11.05. Severability. If any one or more of the provisions, covenants or agreements in
this Indenture on the part of the Issuer or the Trustee to be performed should be illegal, inoperative,
unenforceable or contrary to law, then such provision or provisions, covenant or covenants, agreement or
agreements, shall be deemed severable from the remaining provisions, covenants and agreements, and
shall in no way affect the validity of the other provisions hereof or of the Bonds.

Section 11.06. Notices. Unless otherwise specified in this Indenture, it shall be sufficient service
or giving of any notice, request certificate, demand or other communication if the same is sent by (and all
notices required to be given by mail will be given by) first-class registered or certified mail, postage
prepaid, return receipt requested, or by private courier service which provides evidence of delivery, or
sent by Electronic Means which produces evidence of transmission, and in each case will be deemed to
have been given on the date evidenced by the postal or courier receipt or other written evidence of
delivery or electronic transmission. Unless a different address is given by any party as provided in this
Section, all such communications will be addressed as follows:

To the Issuer: City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN  55345
Attn:  City Manager

To the Trustee: U.S. Bank National Association
60 Livingston Avenue, 3rd Floor
EP-MN-WS3C
Saint Paul, MN  55107-2292
Attn:  Corporate Trust Services

To the Borrower: CHC Minnetonka Affordable Housing LLC
c/o Community Housing Corporation of America, Inc.
161 St. Anthony Avenue, Suite 820
Saint Paul, MN  55103
Attn:  President

with copies to: Shelter Corporation
1600 Hopkins Crossroad
Minnetonka, MN  55305
Attn:  President

Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, MN  55402-4629
Attn:  Jeffrey J. Koerselman, Esq.

To the Lender: Dougherty Mortgage LLC
90 South Seventh Street, Suite 4300
Minneapolis, MN  55402-4108
Attn:  ______________________
To the Investor Member:  
Wincopin Circle LLLP  
c/o Enterprise Asset Management, Inc.  
70 Corporate Center  
11000 Broken Land Parkway, Suite 700  
Columbia, MD 21044  
Attn: Asset Management  
Telephone: (410) 964-0552  
Facsimile: (410) 772-2630  

with a copy to:  
Gallagher Evelius & Jones LLP  
218 North Charles Street, Suite 400  
Baltimore, MD 21201  
Attn: Natalie B. Sherman, Esq.  

with a copy to:  
Ballard Spahr LLP  
1909 K Street, NW, 12th Floor  
Washington, DC 20006-1157  
Attn: Rania Samir Galan, Esq.  

To the Rating Agency:  
Moody’s Investor Service  
Public Finance Group  
Housing Finance & State Revolving Funds  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
Attn: Lina Grassano, Analyst  

To Fannie Mae:  
Fannie Mae  
3900 Wisconsin Avenue, N.W.  
Drawer AM  
Washington, DC 20016-2892  
Attn: Director, Multifamily Asset Management  
Telephone: (202) 752-6634  
Facsimile: (240) 699-3880  
RE: ____________________________  

with a copy to:  
Fannie Mae  
3900 Wisconsin Avenue, N.W.  
Drawer AM  
Washington, DC 20016-2892  
Attn: Director, Multifamily Asset Management  
Telephone: (202) 752-6634  
Facsimile: (240) 699-3880  
RE: ____________________________  

Copies of all notices given to Fannie Mae must be given concurrently to the Lender. By notice given under this Indenture, any entity whose address is listed in this Section may designate any different address to which subsequent notices, certificates, requests, demands or other communications shall be sent, but no
notice directed to any one such entity (except for Fannie Mae) will be required to be sent to more than two addresses. All approvals required under this Indenture will be given in writing.

Section 11.07. **Action Required to be Taken on a Non-Business Day.** In any case where any Payment Date, any other date fixed for the payment of interest on or principal of the Bonds, any maturity date or any date fixed for redemption of any Bonds, shall be a day other than a Business Day, then any payment of interest or principal (and premium, if any) required to be made on such date need not be taken or made on such date but may be taken or made on the next succeeding Business Day with the same force and effect as if made or taken on the date herein otherwise provided and, in the case of any Payment Date, no interest shall accrue for the period from and after such date.

Section 11.08. **Parties Interested Herein.** Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person, other than the Issuer, the Trustee, Fannie Mae and the holders of the Bonds, any right, remedy or claim under or by reason hereof, and any covenants, stipulations, obligations, promises and agreements in this Indenture contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Trustee, Fannie Mae and the holders of the Bonds.

Section 11.09. **Counterparts.** This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.10. **Tax Certificate.** In the event of any conflict between this Indenture and the Tax Certificate, the requirements of the Tax Certificate shall control.

Section 11.11. **Applicable Provisions of Law.** The laws of the State shall be applicable to the interpretation and construction of this Indenture, except that if the principal office of the Trustee at any time serving as such under this Indenture shall not be located in the State, then matters pertaining to the rights, duties and responsibilities of the Trustee, to the extent not specifically governed by the Act, shall be determined by the laws of the jurisdiction where the principal office of the Trustee is located.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Issuer and the Trustee have caused this Indenture of Trust to be executed and delivered by duly authorized officers thereof as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By

Its Mayor

By

Its City Manager

(Signature Page with respect to the Series 2017A Bonds)
Execution page of the Trustee to the Trust Indenture, dated as of the date and year first written above.

U.S. BANK NATIONAL ASSOCIATION

By

Its Vice President

(Signature Page with respect to the Series 2017A Bonds)
EXHIBIT A

FORM OF BOND

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE INDENTURE OF TRUST) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

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

No. R-1
$___________

MULTIFAMILY HOUSING REVENUE REFUNDING BOND
(ELMBROOKE AND GOLDEN VALLEY TOWNHOMES PROJECT)
SERIES 2017A

<table>
<thead>
<tr>
<th>Interest Rate</th>
<th>Stated Maturity</th>
<th>Date of Original Issue</th>
<th>CUSIP Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>__%</td>
<td>_______ 1, 20__</td>
<td>August 1, 2017</td>
<td>_______</td>
</tr>
</tbody>
</table>

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: ________________________________ DOLLARS

CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Issuer”), for value received, hereby promises to pay by check (but only from the sources specified in the Indenture hereinafter referred to) to the Registered Owner named above or registered assigns, on the Maturity Date stated above subject to the provisions of the Indenture of Trust, dated as of August 1, 2017 (the “Indenture”), between the Issuer and U.S. Bank National Association, a national banking association (the “Trustee”), including, but not limited to, the definition of Payment Date therein and as hereinafter defined (unless this Bond shall have been previously called for redemption and payment of the Redemption Price shall have been made or duly provided for) the Principal Amount stated above in lawful money of the United States of America, and to pay interest thereon in like lawful money at the Pass-Through Rate specified above in the amounts as accrued and for the periods interest is paid (except in connection with a redemption of Bonds upon failure to purchase the Pass-Through Certificate as described in the Indenture) pursuant to the terms of the Pass-Through Certificate, payable on each Payment Date. Interest shall be calculated on the basis of a year of Actual/360. The payment of interest on a Payment Date is the interest accrued during the preceding calendar month. There shall be no further accrual of interest on the Bonds during the period from the Maturity Date to the final Payment Date.
Notwithstanding anything herein to the contrary, on and after the Purchase Date, the principal, interest and premium, if any, payable on the Bonds will be calculated, except with respect to interest payable on the Bonds if redeemed upon failure to purchase the Pass-Through Certificate as described in the Indenture, at the same rate and for the same periods as interest, principal and premium, if any, payable on the Pass-Through Certificate, and will be paid, except with respect to interest payable on the Bonds if redeemed upon failure to purchase the Pass-Through Certificate as described in the Indenture (which will be paid on the redemption date), one Business Day following receipt by the Trustee pursuant to the Pass-Through Certificate. Any capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in the Indenture or the Financing Agreement (hereinafter defined).

“Payment Date” means (i) the First Payment Date, (ii) prior to the Purchase Date and prior to the Initial Mandatory Redemption Date, as such date may be extended pursuant to the Indenture, the _____ day of the month (or the next Business Day if the _____ is not a Business Day), and (iii) after the Purchase Date, one Business Day after each date principal, interest, or premium, if any, payment is made pursuant to the Pass-Through Certificate (which shall be the _____ day of the month, or the next Business Day if the _____ is not a Business Day, after payment is due on the underlying Mortgage Loan). The First Payment Date means __________, 2017. There shall be no further accrual of interest from the Maturity Date to the final Payment Date. Interest hereon is payable by the Trustee. Payment of the principal of and interest or premium, if any, on any Bond shall be made to the person appearing on the Bond Register as the registered owner thereof, one Business Day following receipt by the Trustee of the interest, principal and premium, if any, paid on the Pass-Through Certificate at the Pass-Through Rate. The principal of and the interest on the Bonds shall be payable in coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts of the United States of America. Unless the Bonds are Book Entry Bonds, the principal of and interest, if any, paid on the Pass-Through Certificate shall be paid by check mailed to the registered owner thereof at such owner’s address as it appears on the registration books maintained by the Trustee on the applicable Record Date or at such other address as is furnished to the Trustee in writing by such owner. All payments of principal of and interest on Book Entry Bonds shall be made and given at the times and in the manner set out in the representation letter of The Depository Trust Company, New York, New York, or any replacement securities depository appointed under the Indenture.

The date of authentication of each Bond shall be the date such Bond is registered.

The Bonds shall be subject to redemption prior to maturity as follows:

Mandatory Redemption from Principal Payments or Prepayments on Pass-Through Certificate. The Bonds are subject to mandatory redemption in the amounts and one Business Day after the dates (i) principal payments are received pursuant to the Pass-Through Certificate at a price equal to one hundred percent (100%) of the principal amount received pursuant to the Pass-Through Certificate, plus interest received pursuant to the Pass-Through Certificate, (ii) prepayments are received with respect to the Pass-Through Certificate, at a price equal to one hundred percent (100%) of the principal amount received pursuant to the Pass-Through Certificate, plus interest and premium, if any, received pursuant to the Pass-Through Certificate, or (iii) prior to the Purchase Date, redemption is otherwise required on any Payment Date in an amount equal to the Mortgage Loan amortization scheduled on the first day of the month immediately preceding such Payment Date from amounts on deposit in the Collateral Security Trust. No prior notice shall be a prerequisite to the effectiveness of any redemption under (i) or
(ii), which redemption shall occur and be effective irrespective of whether the Trustee fulfills its obligation to provide notice.

**Mandatory Redemption upon Failure to Purchase the Pass-Through Certificate.** The Bonds are subject to mandatory redemption in whole on [Initial Mandatory Redemption Date], 20__ (the “Initial Mandatory Redemption Date”) at a redemption price equal to the Original Issue Price plus interest accrued to the Initial Mandatory Redemption Date (as such date may be extended under the Indenture) upon five Business Days’ notice if (i) a Purchase Date has not occurred by the last date on which timely notice of such redemption may be given preceding such Initial Mandatory Redemption Date (as such date may be extended under the Indenture) and (ii) an Extension Deposit has not been made pursuant to the Indenture, such that the balance in the Collateral Security Fund is equal to the Original Issue Price plus interest accrued on the Bonds to the Initial Mandatory Redemption Date (as such date may be extended under the Indenture). The notice for any such mandatory redemption may be conditional, to the effect that if a Purchase Date occurs not later than the close of business on the second Business Day preceding such Initial Mandatory Redemption Date (as such date may be extended under the Indenture), the noticed mandatory redemption shall not occur.

When the Trustee receives notice of a prepayment on the Pass-Through Certificate under clause (a)(ii) above, the Trustee shall use its best efforts to give not less than twenty (20) nor more than thirty (30) days’ notice, in the name of the Issuer, of the redemption of the Bonds, which notice shall specify the following: (i) the maturity and principal amounts of the Bonds to be redeemed; (ii) the CUSIP number, if any, of the Bonds to be redeemed; (iii) the date of such notice; (iv) the issuance date for such Bonds; (v) the interest rate on the Bonds to be redeemed; (vi) the redemption date; (vii) any conditions to the occurrence of the redemption; (viii) the place or places where amounts due upon such redemption will be payable; (ix) the Redemption Price; (x) the Trustee’s name and address with a contact person and a phone number; and (xi) that on the redemption date, the Redemption Price shall be paid. Neither the giving of such notice by the Trustee nor the receipt of such notice by the Bondholders shall be a condition precedent to the effectiveness of any such redemption.

This Bond is one of the duly authorized bonds of the Issuer designated as Multifamily Housing Revenue Refunding Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A (the “Bonds”), limited in aggregate principal amount to $6,600,000, issued pursuant to Minnesota Statutes, Chapters 462C and 474A, as amended (the “Act”), and Minnesota Statutes, Sections 471.59 and 471.656, as amended, and pursuant to the Indenture and resolutions duly adopted by the governing body of the Issuer. The Bonds are special, limited obligations of the Issuer payable from and all equally secured by the lien of the Indenture, and the other security pledged thereby, including certain funds and accounts created pursuant thereto. The Bonds are issued for the benefit of CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), whose managing member is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, to refund a portion of the Issuer’s Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016, which was issued for purposes of financing multifamily rental housing projects in the City of Minnetonka, Minnesota and the City of Golden Valley, Minnesota.

The payment and other obligations of the Issuer with respect to the Bonds are intended to be, and shall be, independent of the payment and other obligations of the issuer or maker of the Mortgage Note and the Pass-Through Certificate (as hereafter defined), even though the principal amount of all three instruments is expected to be identical, except in the case of a default with respect to one or more of the instruments.
The Bonds are secured by certain funds held under the Indenture as described therein, and after the Purchase Date, if any, by (i) by the pledge of a Guaranteed Mortgage Pass-Through Certificate (the “Pass-Through Certificate”) issued by the Federal National Mortgage Association (“Fannie Mae”) and delivered to the Trustee, under the terms of which timely payment of principal of and interest on the Pass-Through Certificate is guaranteed by Fannie Mae regardless of whether corresponding payments on the Mortgage Loan are paid when due, and by (ii) amounts payable under the Pass-Through Certificate. After the Purchase Date, the Pass-Through Certificate is held in trust and pledged under the Indenture to secure the payment of the Bonds.

Reference is hereby made to the Act and to the Indenture, a copy of which is on file at the principal office of the Trustee, and all indentures supplemental thereto for a description of the rights thereunder of the registered owners of the Bonds, of the payments and funds pledged and assigned as security for payment of the Bonds and the nature and extent thereof, of the terms on which the Bonds are issued and the terms and conditions on which the Bonds will be deemed to be paid at or prior to maturity or redemption upon provision for payment thereof in the manner set forth in the Indenture, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Issuer thereunder, to all of the provisions of which Indenture the registered owner of this Bond, by acceptance hereof, assents and agrees.


The Bonds are subject to redemption in the amounts and on the dates, in whole or in part, in the event of optional prepayment of amounts payable under the Mortgage Loan and a corresponding prepayment of the Pass-Through Certificate.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute actions to enforce the pledge, assignments in trust or covenants made therein or to take any action with respect to an Event of Default under the Indenture or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture.

If an Event of Default shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture. The Indenture provides that in certain events such declaration and its consequences may be rescinded by the holders of at least a majority in aggregate principal amount of the Bonds then Outstanding.
The Bonds are issuable only as fully registered bonds without coupons in denominations of $1.00 or any integral multiples of $1.00 in excess thereof. Subject to the limitations and conditions and upon payment of the charges, if any, as provided in the Indenture, Bonds may be exchanged at the designated corporate trust office of the Trustee for Bonds in the same aggregate principal amount.

The registration of this Bond is transferable by the registered owner hereof in person or by its attorney duly authorized in writing at the designated corporate trust office of the Trustee. Upon surrender for registration of transfer of this Bond at such office, the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond of the same maturity or maturities and authorized denomination for the same aggregate principal amount. Bonds to be exchanged shall be surrendered at said designated corporate trust office of the Trustee, and the Trustee shall authenticate and deliver in exchange therefore a Bond of equal aggregate principal amount of the same maturity and authorized denomination.

In any case where any Payment Date, any other date fixed for the payment of interest on or principal of the Bonds, any maturity date or any date fixed for redemption of any Bonds, shall be a day other than a Business Day, then any payment of interest or principal (and premium, if any) required to be made on such date need not be taken or made on such date but may be taken or made on the next succeeding Business Day with the same force and effect as if made or taken on the date herein otherwise provided and, in the case of any Payment Date, no interest shall accrue for the period from and after such date.

The Issuer and the Trustee shall treat the registered owner of this Bond as the owner hereof for all purposes, and any notice to the contrary shall not be binding on the Issuer and the Trustee.

The Indenture contains provisions permitting the Issuer and the Trustee, with the written consent of Fannie Mae and the registered owners of not less than two thirds in aggregate principal amount of the Bonds Outstanding, as specified in the Indenture, and in certain instances without such consent, to execute supplemental indentures adding any provisions to, or changing in any manner, or eliminating any of the provisions of, the Indenture; provided, however, that no such supplemental indenture shall (a) permit a change in the terms of redemption or maturity of the principal amount of any Outstanding Bond or an extension of the date for payment of any installment of interest thereon or a reduction in the principal amount of, premium, if any, or the rate of interest on any Outstanding Bond without the consent of the holder of such Bond, (b) reduce the proportion of Bonds the consent of the holders of which is required to effect any such modification or amendment or to effectuate an acceleration of the Bonds prior to maturity, (c) permit the creation of a lien on the Trust Estate pledged under the Indenture prior to or on a parity with the lien of the Indenture, (d) deprive the holders of the Bonds of the lien created by the Indenture upon such Trust Estate (except as expressly provided in the Indenture), without (with respect to clauses (b) through (d)) the consent of the holders of all Bonds then Outstanding, or (e) change or modify any of the rights or obligations of the Trustee without the written consent thereto of the Trustee.

Neither the members of the governing body of the Issuer nor any officer, agent, representative or employee of the Issuer nor any person executing this Bond shall be subject to any personal liability or accountability by reason of the issuance hereof, whether by virtue of any Constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.
It is hereby certified and recited by the Issuer that all conditions, acts and things required by the Indenture or by the laws of the State of Minnesota, including the Act, to exist, to have happened or to have been performed precedent to or in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Bond and the issue of which it forms a part is within every debt and other limit prescribed by said Constitution or statutes.

IN WITNESS WHEREOF, the City of Minnetonka, Minnesota, by its governing body, has caused this Bond to be executed in its name by the manual or facsimile signatures of its duly authorized officials and by the manual signature of a Responsible Agent of the Trustee acting as authenticating agent.

CITY OF MINNETONKA, MINNESOTA

By _______________________________
Its Mayor

By _______________________________
Its City Manager

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds of the series designated therein referred to in the within-mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By _______________________________
Authorized Signature

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto ______________________________ the within Bond and does hereby irrevocably constitute and appoint ______________________________, attorney, to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: ______________________________
PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE ____________________

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever. Signature(s) must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Trustee, which requirements include membership or participation in STAMP or such other “signature guaranty program” as may be determined by the Trustee in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.
EXHIBIT B

FORM OF REQUISITION
(Proceeds Fund)

U.S. Bank National Association

Re: Multifamily Housing Revenue Refunding Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A

Ladies and Gentlemen:

You are requested to disburse funds from the Proceeds Fund pursuant to Section 4.02 of the Indenture (defined below) in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the “Requisition”). The terms used in this Requisition shall have the meaning given to those terms in the Indenture of Trust, dated as of August 1, 2017 (the “Indenture”), between the City of Minnetonka, Minnesota and U.S. Bank National Association, as Trustee, securing the above referenced Bonds.

1. REQUISITION NO.:

2. PAYMENT DUE TO:

3. AMOUNT TO BE DISBURSED: $

4. The undersigned certifies that:

   (i) the expenditures for which moneys are requisitioned by this Requisition represent proper charges against the Proceeds Fund, have not been included in any previous requisition, have been properly recorded on the Borrower’s books and are set forth in Schedule I attached to this Requisition, with paid invoices attached for any sums for which reimbursement is requested;

   (ii) the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the Borrower for its funds actually advanced for the Project; and

   (iii) the Borrower is not in default under the Financing Agreement, the Regulatory Agreements or the Mortgage Loan Documents and nothing has occurred to the knowledge of the Borrower that would prevent the performance of its obligations under the Financing Agreement, the Regulatory Agreements or the Mortgage Loan Documents.

5. Attached to this Requisition is Schedule I, together with copies of invoices or bills of sale covering all items for which payment is being requested.
DATE OF REQUISITION:

CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company

By: CHC Minnetonka Affordable Housing MM LLC
Its: Managing Member

By: 
Name: Richard Martin
Title: Administrative Manager

APPROVED:

__________________________,

as Lender

By ________________________________

Authorized Officer
# SCHEDULE I TO REQUISITION CERTIFICATE

<table>
<thead>
<tr>
<th>ITEM:</th>
<th>AMOUNT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td></td>
</tr>
</tbody>
</table>
ASSIGNMENT OF LOAN AGREEMENT

between

CITY OF MINNETONKA, MINNESOTA, 
as Issuer

and

BRIDGEWATER BANK, 
as Lender

Dated as of August 1, 2017

Relating to:

$1,000,000 
City of Minnetonka, Minnesota 
Multifamily Housing Revenue Refunding Note 
(Elmbrooke and Golden Valley Townhomes Project) 
Series 2017B 

This instrument was drafted by: 
Kennedy & Graven, Chartered (JAE) 
200 South Sixth Street 
470 U.S. Bank Plaza 
Minneapolis, Minnesota  55402
ASSIGNMENT OF LOAN AGREEMENT

THIS ASSIGNMENT OF LOAN AGREEMENT is made and entered into as of August 1, 2017 (the “Assignment”), between the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (together with its successors and assigns, the “Issuer”), and BRIDGEWATER BANK, a Minnesota banking corporation (the “Lender”).

RECITALS

WHEREAS, CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), the managing member of which is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, and the Issuer have entered into a Loan Agreement, dated as of August 1, 2017 (the “Loan Agreement”), pursuant to which the Issuer will loan to the Borrower the proceeds derived from the sale to the Lender of the Multifamily Housing Revenue Refunding Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017 (the “Note”), issued by the Issuer in the original aggregate principal amount of $1,000,000; and

WHEREAS, the Note is to be payable from and secured by the loan repayments (the “Loan Repayments”) to be made by the Borrower under the Loan Agreement, and the Lender, as a condition to purchasing the Note, has required the execution by the Issuer of this Assignment;

NOW THEREFORE, as an inducement to the Lender to purchase the Note, and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are 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 to the Lender under the Loan Agreement, the Issuer does hereby assign to the Lender all of the Issuer’s right, title, and interest in and to the Loan Agreement, including the Loan Repayments payable by the Borrower thereunder, subject to the Issuer’s reserved rights provided in Section 7.10 of the Loan Agreement.

2. The Issuer hereby represents and warrants to the Lender that the Issuer’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 Assignment.

3. The Issuer hereby authorizes the Lender to exercise, either in the Issuer’s name or the Lender’s name, any and all rights available to the Issuer under the Loan Agreement, subject to the reserved rights of the Issuer set forth in the Loan Agreement and described herein. The Issuer agrees, on request of the Lender, to execute and deliver to the Lender such other documents or instruments as shall be deemed necessary or appropriate by the Lender at any time to confirm or perfect the security interest hereby granted. The Issuer hereby appoints the Lender its attorney-in-fact to execute and/or file or record on behalf of the Issuer, 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 Issuer will not:

   (a) exercise or attempt to exercise any remedies under the Loan Agreement, except as permitted by Sections 6.2 and 7.7 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 money under the Loan Agreement (except as permitted under Section 7.10 of the Loan Agreement) 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 Issuer expressly covenants and agrees that the Lender shall be entitled to receive all Loan Repayments and other payments under the Loan Agreement (except any payments due to the Issuer pursuant to its reserved rights provided in Section 7.10 of the Loan Agreement), and hereby authorizes and directs the Borrower to make such Loan Repayments and other 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 and the Note.

6. The Lender agrees to advance the purchase price of the Note on behalf of the Borrower as provided in the Note, the Loan Agreement, and the other agreements between the Borrower and the Lender entered into in connection with the issuance and delivery of the Note (collectively, the “Loan Documents”).

7. If an Event of Default shall occur and be continuing after the expiration of any cure rights under the terms of the Loan Agreement, 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 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, the Pledge of Deposit Account, the Guaranty, or the other Loan Documents 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; all the covenants, promises, and agreements in this Assignment contained by or on behalf of the Issuer 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 Assignment shall not render any other provision or provisions herein contained unenforceable or invalid.

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

11. This Assignment 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. Capitalized terms used in this Assignment which are not defined in this Assignment but are defined in the Loan Agreement shall have the meanings specified in the Loan Agreement, unless the context of this Assignment otherwise requires.

13. No obligation of the Issuer hereunder shall constitute or give rise to a pecuniary liability of the Issuer 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 (specifically the Assigned Capital Contributions).

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Issuer and the Lender have caused this Assignment of Loan Agreement to be duly executed as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By ______________________________
Its Mayor

By ______________________________
Its City Manager

(Signature Page with respect to the Series 2017B Note)
Execution page of the Lender to the Assignment of Loan Agreement, dated as of the date and year first written above.

BRIDGEWATER BANK

By ________________________________
   Nicholas Place
   Its Senior Vice President and Chief Lending Officer

(Signature Page with respect to the Series 2017B Note)
FOR VALUE RECEIVED, THE CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “Issuer”), hereby promises to pay to BRIDGEBANK, a Minnesota banking corporation, its successors or registered assigns (the “Lender”), from the source and in the manner hereinafter provided, the principal sum of One Million and no/100 Dollars ($1,000,000.00), or so much thereof as has been advanced hereunder and remains unpaid from time to time (the “Principal Balance”), with interest on the outstanding Principal Balance as set forth below. All payments of principal and interest on this Multifamily Housing Revenue Refunding Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017 (the “Note”), shall be made in any coin or currency which, at the time or times of payment, is legal tender for the payment of public or private debts in the United States of America, in accordance with the terms hereinafter set forth. All capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in the Loan Agreement, dated as of August 1, 2017 (the “Loan Agreement”), between the Issuer and CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), the managing member of which is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company.

(1) Interest shall accrue on this Note at an annual rate equal to 3.75%.

(2) Notwithstanding the foregoing, upon the failure to pay the principal of or interest on this Note when due or upon the occurrence of any Event of Default that has not been cured within twenty (20) days of written notice from the Lender, interest on the Principal Balance shall accrue at an annual rate which is five percent (5%) in excess of the interest rate otherwise payable hereunder (the “Default Rate”). The interest rate may also be adjusted to the Taxable Rate as provided in Section 8 below. Interest shall be computed on the basis of a 360-day year but shall be payable on the actual days elapsed.

(3) Interest only is payable monthly on the ________ day of the month, commencing _____________, 2017, to and including _____________, 2019 (the “Maturity Date”).

(4) On the Maturity Date, or any earlier prepayment date, the entire remaining Principal Balance and accrued interest shall be fully due and payable.
(5) A late payment fee in an amount equal to five percent (5%) of the delinquent amount shall be paid with respect to all payments not made within ten (10) days of the date due.

(6) Payments shall be applied first to any fees, costs, or expenses owing to the Lender, second to accrued and unpaid interest on the Principal Balance, and thereafter to reduction of the Principal Balance.

(7) The payments hereunder shall be sufficient to pay all principal and interest due, as such principal and interest becomes due, at maturity, upon earlier redemption and prepayment, or otherwise.

(8) Upon the occurrence of a Determination of Taxability, the interest rate per annum on this Note shall be immediately adjusted to be equal to the Taxable Rate. The “Taxable Rate” is defined as the rate of interest determined by the Lender in its sole discretion to be the taxable equivalent of the interest rate otherwise payable hereunder. In addition, the Lender shall be entitled to receive upon demand an amount equal to the aggregate difference between the monthly payments theretofore made to the Lender on this Note and the monthly payments which would have been made if the Taxable Rate had been in effect from and after the Date of Taxability.

(9) Principal and interest due hereunder shall be payable at the following office of the Lender, or at such other place as the Lender may designate in writing: 4400 Excelsior Boulevard, St. Louis Park, Minnesota 55416.

(10) This Note is issued by the Issuer to refund a portion of the Issuer’s Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Series 2016 Note”), which was issued for purposes of financing multifamily rental housing projects in the City of Minnetonka, Minnesota and the City of Golden Valley, Minnesota (the “Project”). This Note is issued pursuant to and in full compliance with the Charter of the Issuer and the Constitution and laws of the State of Minnesota, particularly Minnesota Statutes, Chapters 462C and 474A, as amended, and Minnesota Statutes, Sections 471.59 and 471.656, as amended, and pursuant to resolutions of the governing body of the Issuer duly adopted (the “Resolutions”).

(11) The proceeds of this Note are being loaned by the Issuer to the Borrower pursuant to the terms and conditions of the Loan Agreement. This Note is secured by, among other documents and instruments: (i) the Assignment of Loan Agreement; (ii) the Guaranty; (iii) the Security Agreement; (iv) the Pledge of Deposit Account; (v) the Assignment of Capital Contributions; and (vi) the Assignment of Contract Rights. The proceeds of this Note shall be advanced by the Lender to redeem and prepay the Series 2016 Note. Transferred, unspent proceeds of the Series 2016 Note will be disbursed pursuant to the terms and conditions of the Disbursing Agreement and the other Loan Documents.

(12) The Issuer, for itself and its successors and assigns, hereby waives demand, presentment, protest and notice of dishonor; to the extent permitted by law, the Lender may extend interest and/or principal of or any service charge or premium due on this Note or release any part or parts of the property and interest subject to any security document from the same, all without notice to or consent of any party liable hereon or thereon and without releasing any such party from such liability and whether or not as a result thereof the interest on this Note is no longer excludable from gross income for federal income tax purposes.

(13) This Note may be prepaid, in whole or in part, on any date, upon written notice given to the Lender by certified or registered mail, addressed to the Lender at its registered address, not less than thirty (30) days prior to the date proposed for prepayment. On the date fixed for prepayment, funds shall be paid to the Lender at its registered address. Upon any partial or full prepayment of the Principal
Balance of this Note, there shall also be paid, with respect to the portion of the Principal Balance prepaid, the accrued and unpaid interest on the Principal Balance to be prepaid, plus any reasonable attorneys’ fees and costs. Any prepayment shall not affect the monthly payments of principal to be made pursuant to the terms of this Note.

(14) As provided in the Resolutions and subject to certain limitations set forth therein, this Note is only transferable upon the books of the Issuer by the Lender in person or by its agent duly authorized in writing, at the Lender’s expense, upon surrender hereof together with a written instrument of transfer satisfactory to the City Manager of the Issuer, duly executed by the Lender or its duly authorized agent. Upon such transfer the City Manager of the Issuer will note the date of registration and the name and address of the new registered Holder in the registration blank appearing below. The Issuer may deem and treat the person in whose name this Note is last registered upon the books of the Issuer with such registration noted on this Note, as the absolute owner hereof, whether or not overdue, for the purpose of receiving payment of or on the account of the Principal Balance, redemption price, or interest and for all other purposes, and all such payments so made to the Lender or upon its order shall be valid and effective to satisfy and discharge the liability upon this Note to the extent of the sum or sums so paid, and the Issuer shall not be affected by any notice to the contrary.

(15) All of the agreements, conditions, covenants, provisions, and stipulations contained in the Resolutions, the Loan Agreement, the Assignment of Loan Agreement, the Guaranty, the Pledge of Deposit Account, the Security Agreement, the Assignment of Capital Contributions, the Assignment of Contract Rights, the other Loan Documents, and any other documents securing this Note (collectively, the “Security 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.

(16) This Note and interest thereon and any service charge or premium due hereunder (payable solely from payments to be made by the Borrower under the Security Documents) do not constitute a debt of the Issuer within the meaning of any constitutional, charter, or statutory limitation, are not payable from or a charge upon any funds other than the revenues and proceeds pledged to the payment thereof, and do not give rise to a pecuniary liability of the Issuer or, to the extent permitted by law, of any of its officers, agents, or employees, and no holder of this Note shall ever have the right to compel any exercise of the taxing power of the Issuer to pay this Note or the interest thereon, or to enforce payment thereof against any property of the Issuer, and this Note does not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the Issuer, and the agreement of the Issuer to perform or cause the performance of the covenants and other provisions herein referred to shall be subject at all times to the availability of revenues or other funds furnished for such purpose in accordance with the Loan Agreement, sufficient to pay all costs of such performance or the enforcement thereof.

(17) It is agreed that time is of the essence of this Note. If an Event of Default shall occur and be continuing, the Lender shall have the right and option to declare the Principal Balance and accrued interest hereon, immediately due and payable, whereupon the same, plus any other amounts owing to the Lender, shall be due and payable (but shall be payable solely from payments to be made by the Borrower under the Security Documents). Failure to exercise such option at any time shall not constitute a waiver of the right to exercise the same at any subsequent time.

(18) The remedies of the Lender, as provided herein and in the Security Documents, are not exclusive and shall be cumulative and concurrent and may be pursued singly, successively, or together, at the sole discretion of the Lender, and may be exercised as often as occasion therefor shall occur. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.
(19) The Lender shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Lender and, then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

(20) This Note has been issued without registration under state or federal or other securities laws, pursuant to an exemption for such issuance; accordingly this Note may not be assigned or transferred in whole or part, nor may a participation interest in this Note be given pursuant to any participation agreement, except in accordance with an applicable exemption from such registration requirements.

THIS NOTE, INTEREST HEREON, AND ANY PENALTY OR CHARGE OR ANY AMOUNTS PAYABLE HEREUNDER, OR HOWEVER DESIGNATED, IS A SPECIAL, LIMITED OBLIGATION OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES AND PROCEEDS PLEDGED HERETO. THIS NOTE AND THE INTEREST HEREON DO NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY, GENERAL OR MORAL OBLIGATION OR A PLEDGE OF THE FULL FAITH AND CREDIT OR TAXING POWER OF THE ISSUER, THE STATE OF MINNESOTA, OR ANY POLITICAL SUBDIVISION OF THE STATE OF MINNESOTA WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATIONS AND ARE NOT PAYABLE FROM OR A CHARGE UPON ANY FUNDS OF THE ISSUER OTHER THAN THE REVENUES AND PROCEEDS PLEDGED BY THE ISSUER TO THE PAYMENT HEREOF AND DO NOT GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER OR ITS OFFICERS, AGENTS OR EMPLOYEES. NO HOLDER OF THIS NOTE SHALL EVER HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE ISSUER OR THE STATE OF MINNESOTA OR ANY OF ITS POLITICAL SUBDIVISIONS TO PAY THIS NOTE OR TO ENFORCE PAYMENT HEREOF AGAINST ANY PROPERTY OF THE ISSUER OR HENNEPIN COUNTY, MINNESOTA. THIS NOTE DOES NOT CONSTITUTE A CHARGE, LIEN OR ENCUMBRANCE, LEGAL OR EQUITABLE, UPON ANY PROPERTY OF THE ISSUER, AND THE AGREEMENT OF THE ISSUER TO PERFORM OR CAUSE THE PERFORMANCE OF THE COVENANTS AND OTHER PROVISIONS HEREIN REFERRED TO SHALL BE SUBJECT AT ALL TIMES TO THE AVAILABILITY OF REVENUES OR OTHER FUNDS FURNISHED FOR SUCH PURPOSE IN ACCORDANCE WITH THE LOAN AGREEMENT SUFFICIENT TO PAY ALL COSTS OF SUCH PERFORMANCE OR THE ENFORCEMENT HEREOF. NONE OF THE STATE OF MINNESOTA, THE ISSUER, OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF MINNESOTA SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF THIS NOTE OR INTEREST HEREON OR OTHER COSTS INCIDENT HERETO EXCEPT FROM REVENUES PLEDGED THEREFOR UNDER THE LOAN AGREEMENT AND THE ASSIGNMENT OF LOAN AGREEMENT, AS MORE FULLY SET FORTH IN THOSE DOCUMENTS. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER, IF ANY, OF THE ISSUER, THE STATE OF MINNESOTA, OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF THIS NOTE OR INTEREST HEREON OR OTHER COSTS INCIDENT HERETO. THIS NOTE IS NOT A DEBT OF THE UNITED STATES OF AMERICA OR ANY OTHER AGENCY THEREOF AND IS NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA. THIS NOTE IS NEITHER A MORAL NOR AN ANNUAL APPROPRIATION OBLIGATION OF THE ISSUER, THE STATE OF MINNESOTA OR ANY POLITICAL SUBDIVISION THEREOF. THE PROVISIONS OF THIS PARAGRAPH SHALL, FOR PURPOSES OF THIS NOTE, BE CONTROLLING AND SHALL BE GIVEN FULL FORCE AND EFFECT, ANYTHING ELSE TO THE CONTRARY IN THIS NOTE NOTWITHSTANDING.
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 in its name by the manual signature of its Mayor and City Manager, the corporate seal having been intentionally omitted as permitted by law, and has caused this Note to be dated as of the date first written above.

CITY OF MINNETONKA, MINNESOTA

By __________________________________________
Its Mayor

By __________________________________________
Its City Manager

PROVISIONS AS TO REGISTRATION

The ownership of the unpaid Principal Balance of this Note and the interest accruing thereon is registered on the books of the City of Minnetonka, Minnesota in the name of the holder last noted below.

<table>
<thead>
<tr>
<th>Date of Registration</th>
<th>Name and Address Registered Owner</th>
<th>Signature of City Manager</th>
</tr>
</thead>
<tbody>
<tr>
<td>4400 Excelsior Boulevard</td>
<td>Bridgewater Bank</td>
<td>St. Louis Park, MN 55416</td>
</tr>
</tbody>
</table>

__________________________________________
LOAN AGREEMENT

between

CITY OF MINNETONKA, MINNESOTA,
as Issuer

and

CHC MINNETONKA AFFORDABLE HOUSING LLC,
as Borrower

Dated as of August 1, 2017

Relating to:

$1,000,000
City of Minnetonka, Minnesota
Multifamily Housing Revenue Refunding Note
(Elmbrooke and Golden Valley Townhomes Project)
Series 2017B

Except for certain reserved rights, the interest of the City of Minnetonka, Minnesota (the “Issuer”) in this Loan Agreement, dated as of August 1, 2017, between the Issuer and CHC Minnetonka Affordable Housing LLC, has been pledged and assigned to Bridgewater Bank (the “Lender”), under the terms of an Assignment of Loan Agreement, dated as of August 1, 2017, between the Issuer and the Lender.

This instrument was drafted by:
Kennedy & Graven, Chartered (JAE)
200 South Sixth Street
470 U.S. Bank Plaza
Minneapolis, Minnesota 55402
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>PARTIES</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARTICLE I</td>
<td>DEFINITIONS AND RULES OF INTERPRETATION</td>
</tr>
<tr>
<td>Section 1.1</td>
<td>Definitions</td>
</tr>
<tr>
<td>Section 1.2</td>
<td>Rules of Interpretation</td>
</tr>
<tr>
<td>ARTICLE II</td>
<td>REPRESENTATIONS</td>
</tr>
<tr>
<td>Section 2.1</td>
<td>Representations by the Issuer</td>
</tr>
<tr>
<td>Section 2.2</td>
<td>Representations by the Borrower</td>
</tr>
<tr>
<td>ARTICLE III</td>
<td>LOAN TO THE BORROWER</td>
</tr>
<tr>
<td>Section 3.1</td>
<td>Amount and Source of Loan</td>
</tr>
<tr>
<td>Section 3.2</td>
<td>Disbursement of the Loan</td>
</tr>
<tr>
<td>Section 3.3</td>
<td>Repayment of the Loan</td>
</tr>
<tr>
<td>Section 3.4</td>
<td>Borrower's Obligations Unconditional</td>
</tr>
<tr>
<td>Section 3.5</td>
<td>Borrower's Remedies</td>
</tr>
<tr>
<td>Section 3.6</td>
<td>Administrative Fee</td>
</tr>
<tr>
<td>ARTICLE IV</td>
<td>BORROWER'S COVENANTS</td>
</tr>
<tr>
<td>Section 4.1</td>
<td>Financial Statements</td>
</tr>
<tr>
<td>Section 4.2</td>
<td>Indemnity</td>
</tr>
<tr>
<td>Section 4.3</td>
<td>Reports to Governmental Agencies</td>
</tr>
<tr>
<td>Section 4.4</td>
<td>Security for the Loan</td>
</tr>
<tr>
<td>Section 4.5</td>
<td>Preservation of Tax Exemption</td>
</tr>
<tr>
<td>Section 4.6</td>
<td>Lease or Sale of Project</td>
</tr>
<tr>
<td>Section 4.7</td>
<td>Project Operation and Maintenance Expenses</td>
</tr>
<tr>
<td>Section 4.8</td>
<td>Notification of Changes</td>
</tr>
<tr>
<td>Section 4.9</td>
<td>Maintenance of Facility as Qualified Residential Rental Project</td>
</tr>
<tr>
<td>Section 4.10</td>
<td>Compliance with Issuer's Private Activity Bond Policy</td>
</tr>
<tr>
<td>Section 4.11</td>
<td>Interest Reserve Fund</td>
</tr>
<tr>
<td>ARTICLE V</td>
<td>PREPAYMENT OF LOAN</td>
</tr>
<tr>
<td>Section 5.1</td>
<td>Prepayment at Option of Borrower</td>
</tr>
<tr>
<td>Section 5.2</td>
<td>Termination Upon Retirement of the Note</td>
</tr>
<tr>
<td>ARTICLE VI</td>
<td>EVENTS OF DEFAULT AND REMEDIES</td>
</tr>
<tr>
<td>Section 6.1</td>
<td>Events of Default</td>
</tr>
<tr>
<td>Section 6.2</td>
<td>Remedies</td>
</tr>
<tr>
<td>Section 6.3</td>
<td>Disposition of Funds</td>
</tr>
<tr>
<td>Section 6.4</td>
<td>Manner of Exercise</td>
</tr>
<tr>
<td>Section 6.5</td>
<td>Attorneys’ Fees and Expenses</td>
</tr>
<tr>
<td>Section 6.6</td>
<td>Effect of Waiver</td>
</tr>
<tr>
<td>ARTICLE VII</td>
<td>GENERAL</td>
</tr>
<tr>
<td>Section 7.1</td>
<td>Notices</td>
</tr>
<tr>
<td>Section 7.2</td>
<td>Binding Effect</td>
</tr>
<tr>
<td>Section 7.3</td>
<td>Severability</td>
</tr>
<tr>
<td>-------------------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Section 7.4</td>
<td>Amendments, Changes, and Modifications</td>
</tr>
<tr>
<td>Section 7.5</td>
<td>Execution Counterparts</td>
</tr>
<tr>
<td>Section 7.6</td>
<td>Limitation of Issuer’s Liability</td>
</tr>
<tr>
<td>Section 7.7</td>
<td>Issuer’s Attorneys’ Fees and Costs</td>
</tr>
<tr>
<td>Section 7.8</td>
<td>Release</td>
</tr>
<tr>
<td>Section 7.9</td>
<td>Audit Expenses</td>
</tr>
<tr>
<td>Section 7.10</td>
<td>Assignment by Issuer and Survivorship of Obligations</td>
</tr>
<tr>
<td>Section 7.11</td>
<td>Required Approvals</td>
</tr>
</tbody>
</table>

SIGNATURES ........................................................................................................................ S-1
LOAN AGREEMENT

THIS LOAN AGREEMENT is made and entered into as of August 1, 2017 (the “Loan Agreement”), between the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (together with its successors and assigns, the “Issuer”), and CHC MINNETONKA AFFORDABLE HOUSING LLC, a Minnesota limited liability company (together with its successors and assigns, the “Borrower”), the managing member of which is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company.

WITNESSETH:

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

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

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

WHEREAS, on August 18, 2016, the Issuer issued its Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016 (the “Series 2016 Note”), in the original aggregate principal amount of $11,500,000, pursuant to the Act, Minnesota Statutes, Sections 471.59 and 471.656, as amended, and a resolution adopted by the City Council of the Issuer on August 8, 2016; and

WHEREAS, the Issuer sold the Series 2016 Note to Bridgewater Bank, a Minnesota banking corporation (the “Lender”), and the Issuer loaned the proceeds thereof to the Borrower pursuant to a Loan Agreement, dated as of August 1, 2016, between the Issuer and the Borrower; and

WHEREAS, the Series 2016 Note was issued to (i) finance all or a portion of (a) the acquisition, construction, and equipping of approximately twenty-seven (27) new affordable apartment units to be located at 5750 Shady Oak Road, Minnetonka, Minnesota (the “Music Barn Apartments”); (b) the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive, Minnetonka, Minnesota (the “Elmbrooke Apartments”); and (c) the acquisition and substantial rehabilitation of six (6) existing affordable townhome units at 2100 Douglas Drive North and two (2) existing affordable townhome units at 3354 Lilac Drive North, Golden Valley, Minnesota (the “Golden Valley Townhomes”); and (ii) pay costs of issuance of the Series 2016 Note; and
WHEREAS, the Series 2016 Note was drawn down in the principal amount of $________ for the purposes of financing the Elmbrooke Apartments and the Golden Valley Townhomes and the Music Barn Apartments were not financed with proceeds of the Series 2016 Note; and

WHEREAS, pursuant to the Act, Minnesota Statutes, Sections 471.59 and 471.656, as amended, and resolutions adopted by the City Council of the Issuer on August 8, 2016 and July 24, 2017, the Issuer will issue its Multifamily Housing Revenue Refunding Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B (the “Note”), in the original aggregate principal amount of $1,000,000, to (i) refund a portion of the Series 2016 Note; (ii) fund required reserves; (iii) pay capitalized interest; and (iv) pay costs of issuance of the Note; and

WHEREAS, a portion of the principal amount of the Series 2016 Note will be refunded with the proceeds of the Multifamily Housing Revenue Refunding Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A, issued by the Issuer in the original aggregate principal amount of $6,500,000, pursuant to an Indenture of Trust, dated as of August 1, 2017, between the Issuer and U.S. Bank National Association, as trustee (the “Bond Trustee”); and

WHEREAS, a portion of transferred proceeds of the Series 2016 Note will be used for the purposes of financing all or a portion of (i) the acquisition and substantial rehabilitation of the Elmbrooke Apartments; and (ii) the acquisition and substantial rehabilitation of the Golden Valley Townhomes (collectively, the “Project”); and

WHEREAS, in connection with the issuance of the Note, the Issuer, the Borrower, the Bond Trustee, and the Lender will enter into separate Regulatory Agreements, each dated the Closing Date (hereinafter defined), related to each of the Elmbrooke Apartments and the Golden Valley Townhomes, relating to compliance with certain federal and state requirements applicable to the Project; and

WHEREAS, the Borrower agrees to be absolutely and unconditionally obligated to repay the loan together with interest thereon, at times and in amounts sufficient to pay when due the principal of and interest on the Note; and

WHEREAS, the Issuer will assign its rights under this Loan Agreement to the Lender (except for certain unassigned rights set forth in Section 7.9 hereof) pursuant to the Assignment of Loan Agreement, dated as of August 1, 2017, between the Issuer and the Lender; and

WHEREAS, as security for the Borrower’s repayment obligations hereunder, Community Housing Corporation of America, Inc., a Delaware nonprofit corporation, will execute and deliver to the Lender a Guaranty Agreement, dated as of August 1, 2017; and

WHEREAS, as additional security for the Borrower’s repayment obligations hereunder, the Borrower will cause to be delivered to the Lender an Assignment of Capital Contributions, dated as of August 1, 2017, relating to the assignment of certain capital contributions of Enterprise Community Investment, Inc., a Maryland corporation (the “Investor Member”); a Collateral Assignment of Contract Rights, dated as of August 1, 2017, assigning certain contract rights to enforce other capital contributions of the Investor Member; and a Pledge of Deposit Account, dated as of August 1, 2017, relating to the deposit of the capital contributions by the Investor Member; and

NOW THEREFORE, the Issuer and the Borrower each in consideration of the representations, covenants and agreements of the other as set forth herein, mutually represent, covenant and agree as follows:
ARTICLE I
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: collectively, Minnesota Statutes, Chapters 462C and 474A, as amended.

Assigned Capital Contributions: the third installment in the expected amount of $1,524,018, the fourth installment in the expected amount of $159,000, and the fifth installment in the expected amount of $239,810.

Assignment of Capital Contributions: the Assignment of Capital Contributions, dated as of August 1, 2017, from the Borrower and the Managing Member to the Lender, and acknowledged by the Investor Member, as the same may be amended from time to time.

Assignment of Contract Rights: the Collateral Assignment of Contract Rights, dated as of August 1, 2017, from the Borrower and the Managing Member to the Lender, and acknowledged by the Investor Member, as the same may be amended from time to time.

Assignment of Loan Agreement: the Assignment of Loan Agreement, dated as of August 1, 2017, between the Issuer and the Lender, assigning the Issuer’s interest in this Loan Agreement (except for certain retained rights) to the Lender to the extent provided therein, as the same may from time to time be amended or supplemented as herein provided.

Bond Counsel: the firm of Kennedy & Graven, Chartered of Minneapolis, Minnesota, or any other firm of nationally recognized bond counsel experienced in tax-exempt bond financing acceptable to the Issuer. Any opinion of Bond Counsel shall be a written opinion signed by such Bond Counsel.

Bonds: the Multifamily Housing Revenue Refunding Bonds (Elmbrooke and Golden Valley Townhomes Project), Series 2017A, issued by the Issuer in the original aggregate principal amount of $6,500,000.

Bond Trustee: U.S. Bank National Association, a national banking association, its successors and assigns, as trustee for the Bonds.

Borrower: CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company, its successors and assigns, and any surviving, resulting, or transferee business entity which may assume its obligations in accordance with the provisions of this Loan Agreement.

Borrower Tax Certificate: the Borrower Tax Certificate, dated the Closing Date, executed and delivered by the Borrower in connection with the issuance of the Note.

Closing Date: August ___, 2017, which is the date the Note is initially issued and delivered to the Lender.

Combined Bonds: collectively, the Bonds and the Note.

Construction Costs: all direct costs authorized by the Act and paid or incurred by the Borrower to acquire the Land, construct and complete the Improvements, and acquire and install the Equipment, including, but not limited to, interest on the Note during construction, site preparation costs, architectural fees, engineering fees, contractor’s fees, and all costs of labor, material, and services.

Cooperative Agreement: the Cooperative Agreement, dated August 18, 2016, between the Issuer and the City of Golden Valley, Minnesota, entered into in accordance with Minnesota Statutes, Sections 471.59 and 471.656, as amended.

Counsel: an attorney designated by or acceptable to the Lender, duly admitted to practice law before the highest court of any state; an attorney for the Borrower or the Issuer may be eligible for appointment as Counsel.

Date of Taxability: this term shall have the meaning ascribed to it in Section 4.5(2) hereof.

Determination of Taxability: this term shall have the meaning ascribed to it in Section 4.5(2) hereof.

Disbursing Agreement: the Disbursing Agreement, dated as of August 1, 2017, between the Borrower, the Lender, [the Bond Trustee,] and the Title Company, as it may be amended from time to time.

Douglas Drive Golden Valley Townhomes: the approximately six (6) existing affordable townhome units located at 2100 Douglas Drive North, Golden Valley, Minnesota.

Elmbrooke Apartments: the forty-six (46) existing affordable apartment units located at 5400 Smetana Drive, Minnetonka, Minnesota.

Equipment: any and all machinery, equipment, furniture, and other tangible personal property purchased or to be purchased by the Borrower, which will be financed, in part, with the proceeds of the Note.

Escrow Account: the fund created by the Loan Purchase Agreement from which transferred proceeds of the Series 2016 Note will be disbursed for payment of Project Costs.

Event of Default: any of the events described in Section 6.1 hereof.


Guarantor: Community Housing Corporation of America, Inc., a Delaware nonprofit corporation and the sole member of the Managing Member, its successors and assigns.

Guaranty: the Guaranty Agreement, dated as of August 1, 2017, by the Guarantor in favor of the Lender, as it may be amended from time to time.
Improvements: the Project and any equipment or tangible personal property to be constructed or installed by the Borrower, in accordance with the plans and specifications approved by the Lender.

Interest Reserve Fund: the fund of such designation established under Section 4.11 hereof to be held by the Lender.

Investor Member: Enterprise Community Investment, Inc., a Maryland corporation, its permitted successors and assigns.

Issuance Expenses: any and all costs and expenses relating to the issuance, sale, and delivery of the Note, including, but not limited to, any fees of the Lender, all fees and expenses of legal counsel, financial consultants, feasibility consultants, and accountants, any fee to be paid to the Issuer, the preparation and printing of the Related Documents, and all other expenses relating to the issuance, sale, and delivery of the Note and any other costs which are treated as “issuance costs” within the meaning of Section 147(g) of the Code.

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

Issuer Documents: collectively, the Note, this Loan Agreement, the Assignment of Loan Agreement, the Cooperative Agreement, and the Regulatory Agreements.

Land: the real property and any other easements and rights legally described in Exhibit A attached to each of the Regulatory Agreements.

Lender: Bridgewater Bank, a Minnesota banking corporation, its successors and assigns.

Lilac Drive Golden Valley Townhomes: the approximately two (2) existing affordable townhome units located at 3354 Lilac Drive North, Golden Valley, Minnesota.

Loan: the loan from the Issuer to the Borrower of the proceeds derived from the sale of the Note in accordance with the terms of this Loan Agreement.

Loan Agreement: this Loan Agreement, dated as of August 1, 2017, between the Issuer and the Borrower, as the same may from time to time be amended or supplemented as herein provided.

Loan Purchase Agreement: the Loan Purchase Agreement, dated as of August 1, 2017, between the Borrower and the Lender, as it may be amended from time to time.

Managing Member: CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, its permitted successors and assigns.

Note: the Multifamily Housing Revenue Refunding Note (Elmbrooke and Golden Valley Townhomes Project), Series 2017B, issued by the Issuer in the original aggregate principal amount of $1,000,000.

Note Register: the records kept by the Issuer to provide for the registration of transfer of ownership of the Note.
Plans and Specifications: the Plans and Specifications for the Improvements.

Pledge of Deposit Account: means the Pledge of Deposit Account, dated as of August 1, 2017, by the Borrower in favor of the Lender, as it may be amended from time to time.

Principal Balance: so much of the principal sum of the Note as from time to time remains unpaid.

Project: the Land, Improvements, and Equipment as they may at anytime exist, constituting generally of the (a) acquisition and substantial rehabilitation of the Elmbrooke Apartments; and (b) acquisition and substantial rehabilitation of the Golden Valley Townhomes.

Project Costs: the total of all Construction Costs and Issuance Expenses to be financed with the proceeds of the Note.

Regulatory Agreements: collectively, the Regulatory Agreement with respect to the Elmbrooke Apartments, dated the Closing Date, between the Issuer, the Borrower, the Bond Trustee, and the Lender, and the Regulatory Agreement with respect to the Golden Valley Townhomes, dated the Closing Date, between the Issuer, the Borrower, the Bond Trustee, and the Lender, all as the same may be amended from time to time.

Related Documents: this Loan Agreement, the Loan Purchase Agreement, the Assignment of Loan Agreement, the Cooperative Agreement, the Disbursing Agreement, the Regulatory Agreements, the Security Agreement, the Pledge of Deposit Account, the Guaranty, the Assignment of Capital Contributions, the Assignment of Contract Rights, and all other documents securing the Note or the Borrower’s obligations under this Loan Agreement.

Resolution: the resolution adopted by the City Council of the Issuer on July 24, 2017, authorizing the issuance and sale of the Note.

Security Agreement: the Security Agreement, dated as of August 1, 2017, by the Borrower in favor of the Lender, as it may be amended from time to time.

Series 2016 Note: the Multifamily Housing Revenue Note (Minnetonka Affordable Housing Project), Series 2016, issued by the Issuer on August 18, 2016, in the original aggregate principal amount of $11,500,000.

State: the State of Minnesota.

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

Treasury Regulations: all proposed, temporary, or permanent federal income tax regulations then in effect and applicable.

Section 1.2 Rules of Interpretation.

(1) This Loan Agreement shall be interpreted in accordance with and governed by the laws of the State.
(2) The words “herein” and “hereof” 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.

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

(4) Where the Borrower is permitted or required to do or accomplish any act or thing hereunder, the Borrower may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Borrower.

(5) The Table of Contents and titles of articles and sections herein are for convenience only and are not a part of this Loan Agreement.

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

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

(8) References to the Note as “tax exempt” or to the “tax-exempt status of the Note” are to the exclusion of interest on the Note from gross income under Section 103(a) of the Code.

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

REPRESENTATIONS

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

1. The Issuer is a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State.

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

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

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

Section 2.2  **Representations by the Borrower.** The Borrower makes the following representations as the basis for its covenants herein:

1. The Borrower is a limited liability limited company duly organized under the laws of the State, is in good standing and duly authorized and qualified to conduct its business in the State and all other states where its activities require such authorization, has power to enter into the Related Documents to which it is a party and to use the Project for the purpose set forth in this Loan Agreement, and by proper organizational action has authorized the execution and delivery of the Related Documents to which it is a party.

2. The execution and delivery of the Related Documents to which it is a party, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and shall not conflict with or result in a breach of any of the terms or conditions of the Borrower’s organizational documents, any restriction or any agreement or instrument to which the Borrower is now a party or by which it is bound or to which any property of the Borrower is subject; do not and shall not constitute a default under any of the foregoing or, to the best of the Borrower’s knowledge, a violation of any order, decree, statute, rule or regulation of any court or of any state or federal regulatory body having jurisdiction over the Borrower or its properties, including the Project; and do not and shall not result in the creation or imposition of any lien, charge, or encumbrance of any nature upon any of the property or assets of the Borrower contrary to the terms of any instrument or agreement to which the Borrower is a party or by which it is bound.
(3) Each portion of the Project, the Elmbrooke Apartments, the Douglas Drive Golden Valley Townhomes, and the Lilac Drive Golden Valley Apartments, comprise three distinct multifamily housing developments as contemplated by the Act. Subject to the other provisions of this Loan Agreement, it is presently intended and reasonably expected that any equipment purchased from the proceeds of the Combined Bonds will be permanently located and exclusively used on the Land and that the Borrower shall operate the Project on the Land throughout the term of this Loan Agreement in the normal conduct of the Borrower’s business.

(4) The Note is issued within the exemption provided under Section 142(d) of the Code with respect to qualified residential rental projects. Ninety-five percent (95%) or more of the net proceeds of the Combined Bonds shall be used for expenditures chargeable to the capital account of the Project.

(5) The Project comprises three (3) distinct multifamily housing developments. There is public access to the Project. As of the Closing Date, the use of the Project as designed and proposed to be operated complies, in all material respects, with all presently applicable development, pollution control, water conservation, and other laws, regulations, rules, and ordinances of the federal government and the State and the respective agencies thereof and the political subdivisions in which the Project is located. All necessary and material approvals of and licenses, permits, consents, and franchises from federal, state, county, municipal, or other governmental authorities having jurisdiction over the Project have been or shall be obtained to acquire, rehabilitate, construct, install, and operate the Project and the Borrower has obtained all necessary approvals to enter into, execute, and perform its obligations under the Related Documents.

(6) The proceeds of the Combined Bonds, together with any other funds to be contributed to the Project by the Borrower or otherwise in accordance with this Loan Agreement, shall be sufficient to pay the cost of completing the Project, and all costs and expenses incidental thereto, and the proceeds of the Combined Bonds shall be used only for the purposes contemplated hereby and allowable under the Act.

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

(8) There are no actions, suits, or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any property of the Borrower in any court or before any federal, state, municipal, or other governmental agency which, if decided adversely to the Borrower, would have a material adverse effect upon the Borrower or upon the business or properties of the Borrower; and the Borrower is not in default with respect to any order of any court or governmental agency.

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

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

(11) No public official of the Issuer has either a direct or indirect financial interest in
this Loan Agreement nor shall any public official either directly or indirectly benefit financially
from this Loan Agreement within the meaning of Minnesota Statutes, Sections 412.311 and
471.87, as amended.

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

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

LOAN TO THE BORROWER

Section 3.1 Amount and Source of Loan. The Issuer has authorized the issuance of the Note and the making of the Loan of the proceeds thereof to the Borrower to refund a portion of the Series 2016 Note and to finance a portion of the Project. Upon satisfaction of all terms and conditions set forth herein and in the Related Documents, the Issuer agrees to lend to the Borrower, upon the terms and conditions set forth herein and in the Note, the proceeds of the Note by causing such sums to be advanced to the Borrower to refund a portion of the Series 2016 Note.

Section 3.2 Disbursement of the Loan. Under the terms of this Loan Agreement, the Disbursing Agreement, and the Act, the Issuer hereby authorizes the Borrower to provide directly for the financing of the Project in such manner as determined by the Borrower and hereby authorizes the Lender to advance the proceeds of the Note to refund a portion of the Series 2016 Note, the unspent, transferred proceeds of which will be disbursed into the Escrow Account and used to pay Project Costs in accordance with the terms of the Disbursing Agreement.

Section 3.3 Repayment of the Loan. Subject to the prepayment provisions set forth in the Note, the Borrower agrees to repay the Loan by making all payments of principal, interest, and any premium, penalty, or other charge that is required to be made by the Issuer under the Note at the times and in the amounts provided therein. All payments shall be made directly to the Lender for the account of the Issuer. The Borrower shall also pay the reasonable fees and expenses of the Issuer, including the reasonable fees and expenses of Bond Counsel in connection with issuance of the Note. So long as the Note is outstanding, the Borrower shall repay the Loan solely from the Assigned Capital Contributions and certain other property that may be received by the Lender pursuant to the Security Agreement.

Section 3.4 Borrower’s Obligations Unconditional. All payments required of the Borrower hereunder shall be paid without notice or demand and without setoff, counterclaim, abatement, deduction, or defense. The Borrower shall not suspend or discontinue any payments, and shall perform and observe all of its other agreements in this Loan Agreement, and, except as expressly permitted herein, shall not terminate this Loan Agreement for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction or damage to the Project, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of the Issuer 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 Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Loan Agreement.

Section 3.5 Borrower’s Remedies. Nothing contained in this Article shall be construed to release the Issuer from the performance of any of its agreements in this Loan Agreement.

Section 3.6 Administrative Fee. The Borrower agrees to pay to the Issuer an administrative fee equal to one-eighth of one percent (0.125%) of the principal amount of the Note, which shall be payable by the Borrower on the Closing Date. The administrative fee is not pledged to payment of the Note and may be used by the Issuer for any proper purpose.
ARTICLE IV
BORROWER’S COVENANTS

Section 4.1 Financial Statements. Commencing with the fiscal year ending __________, 20___, the Borrower will cause to be prepared annual financial statements for the Borrower (including a balance sheet, statement of income and statement of changes in financial position which may be done on a consolidating basis) and certified by an independent certified public accountant, and within ninety (90) days of the close of each fiscal year will furnish a copy to the Lender.

The Borrower shall provide the Lender a copy of its annually filed tax returns, including all schedules and exhibits, within thirty (30) days of the Borrower filing such tax returns, and in no event later than October 25 of each year.

Commencing with the calendar year ending December 31, 2017, the Borrower shall also furnish to the Lender a rent roll within ninety (90) days after the end of each calendar year, along with operating statements for the Project.

The Borrower shall deliver to the Lender any additional financial statements of the Borrower upon such terms and conditions as are imposed by the Lender under the terms of the Loan Purchase Agreement.

Section 4.2 Indemnity. The Borrower shall, to the extent permitted by law, pay and shall protect, indemnify, and save the Issuer, its officers, agents, and employees harmless from and against all liabilities, losses, damages, costs, expenses (including reasonable attorneys’ fees and expenses), causes of action, suits, claims, demands, and judgments of any nature (collectively, “Losses”) arising from:

(1) any injury to or death of any person or damage to property in or upon the Project or growing out of or connected with the use, non-use, condition, or occupancy of the Project or any part thereof;
(2) violation of any agreement or condition of this Loan Agreement, except by the Issuer;
(3) violation of any contract, agreement, or restriction by the Borrower relating to the Project;
(4) violation of any law, ordinance, or regulation affecting the Project or a part thereof or the ownership, occupancy, or use thereof, or arising out of this Loan Agreement, the Note, or the transactions contemplated thereby, including any requirements imposed on the Lender as a financial institution or any disclosure or registration requirements imposed by any federal or state securities laws; and
(5) any statement or information relating to the expenditure of the proceeds of the Combined Bonds contained in the Borrower Tax Certificate or similar document furnished by the Borrower to the Issuer which, at the time made, is misleading, untrue, or incorrect in any material respect.
Notwithstanding the foregoing, the Borrower shall not be responsible for any Losses arising from the willful misconduct or gross negligence of the Issuer, its officers, agents, or employees.

Section 4.3 Reports to Governmental Agencies. The Borrower shall furnish to agencies of the State, including but not limited to the Minnesota Housing Finance Agency, such periodic reports or statements as are required under the Act or as they may otherwise reasonably require of the Issuer or the Borrower throughout the term of this Loan Agreement in connection with the transaction contemplated herein; provided, however, the Issuer shall promptly notify the Borrower of any reports or statements being required by agencies of the State of which the Issuer has received notice to allow the Borrower a reasonable and adequate amount of time to prepare and submit any such reports or statements. Copies of such reports shall be provided, upon request, to the Issuer and, upon request, to the Lender.

Section 4.4 Security for the Loan. As additional security for the Loan, and to induce the Issuer to issue and deliver the Note, the Borrower agrees to execute and deliver the Related Documents and such other documents reasonably requested by the Issuer, the Lender, or Counsel, in such places and in such manner as the Issuer, the Lender, or Counsel deems necessary or desirable to perfect or protect the security interest of the Lender in and to the Project and other collateral referred to in such documents; provided that no such instruments or acts shall change the economic terms of the transactions described herein or expand the liabilities of the parties hereunder without the consent of all the parties hereto.

Section 4.5 Preservation of Tax Exemption.

(1) In order to ensure that interest on the Note shall at all times be excludable from gross income for federal income tax purposes, the Borrower represents, warrants, and covenants with the Issuer and the Lender that it shall comply with applicable provisions of Section 103 and Sections 141 through 150 of the Code and applicable Treasury Regulations promulgated thereunder as follows:

(a) The Borrower shall have purchased the Land on or before the Closing Date, and no more than twenty-five percent (25%) of the net proceeds of the Combined Bonds shall be allocated to the acquisition of the Land; the Project shall continue to be owned and operated by the Borrower, except as provided in Section 4.6 hereof, and in no event shall the Project be managed in a manner that would cause interest on the Combined Bonds to be includable in gross income for federal income tax purposes.

(b) The Borrower shall fulfill all continuing conditions specified in Section 142 of the Code and Section 1.103-8(b) of the Treasury Regulations applicable thereunder, to qualify the Combined Bonds as “exempt facility bonds” issued to provide a “qualified residential rental project” thereunder and to qualify the Project as a “qualified residential rental project” thereunder. The Borrower shall fulfill its obligations under the Regulatory Agreements.

(c) The Borrower understands that the Code imposes a penalty for failure to file with the Secretary of the Treasury an annual certification of compliance with low income occupancy requirements (currently under an Annual Certification of a Residential Rental Project, Form 8703 (Rev. April 2011)), and if the requirements for a “qualified residential rental project” are not met, does not allow deduction for interest paid on the Combined Bonds which accrues during the period beginning on the first day of the taxable year in which the Project ceases to meet such requirements and ending on the date the Project again meets such requirements.

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

(e) The Borrower has not paid or incurred any costs to be reimbursed from proceeds of the Combined Bonds before the date which is sixty (60) days before April 11, 2016, the date of adoption by the City Council of the Issuer of a written declaration of official intent which complies with the provisions of Section 1.150-2(d) and (e) of the Treasury Regulations, except for “preliminary expenditures” (within the meaning of Section 1.150-2(f)(2) of the Treasury Regulations) for the Project, including engineering or architectural expenses and similar preparatory expenses, which in the aggregate do not exceed twenty percent (20%) of the aggregate “issue price” of the Combined Bonds, or expenditures in the de minimis amount of $100,000 (as defined in Section 1.150-2(f)(1) of the Treasury Regulations).

(f) The weighted average maturity of the Combined Bonds shall not exceed the estimated economic life of the Project by more than twenty percent (20%), all within the meaning of Section 147(b) of the Code.

(g) No portion of the proceeds of the Combined Bonds shall be used to provide any airplane, skybox or other private luxury box, any facility primarily used for gambling, or a store, the principal business of which is the sale of alcoholic beverages for consumption off premises.

(h) Any Issuance Expenses financed by the Combined Bonds shall not exceed two percent (2%) of the proceeds of the Combined Bonds.

(i) The Borrower shall not use the proceeds of the Combined Bonds in such manner as to cause either of the Combined Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and applicable Treasury Regulations.

(j) The Borrower, on behalf of the Issuer, shall pay to the United States, as a rebate, an amount equal to the sum of (A) the excess of (i) the aggregate amount earned on all nonpurpose investments (other than investments attributable to an excess described in this clause), over (ii) the amount which would have been earned if all nonpurpose investments were invested at a rate equal to the yield on the Combined Bonds, plus (B) any income attributable to the excess described in clause (A), at the times and in the amounts required by Section 148(f) of the Code and applicable Treasury Regulations, all within the meaning of Section 148(f) of the Code and applicable Treasury Regulations. The Borrower shall maintain records of the interest rates borne by the Combined Bonds and earnings thereon in adequate detail to enable the Borrower to calculate the amount of any rebate required to be made to the United States at times and in installments which satisfy Section 148(f) of the Code and applicable Treasury Regulations, at least once every five (5) years and within sixty (60) days after the day on which the Combined Bonds are paid in full. Calculations of the amount to be rebated shall be made at least once every five (5) years (or at such other times as may be required by Section 148(f) of the Code and applicable Treasury Regulations) and the Lender shall be furnished with such calculations within sixty (60) days of the time they are made. If the Lender is not furnished with such calculations, the Lender may undertake to have such calculations made at the expense of the Borrower. Such calculations shall be retained until six (6) years after the Combined Bonds are paid in full. The rebate shall be calculated as provided in Section 148(f) of the Code and Sections 1.148-0 through
1.148-9 of the Treasury Regulations, including taking into account the gain or loss on the disposition of nonpurpose investments. The Borrower shall acquire, and shall cause the Lender to acquire, all nonpurpose investments at their fair market value in arm’s length transactions.

(k) The Borrower has not leased, sold, assigned, granted, or conveyed and shall not lease, sell, assign, grant, or convey all or any portion of the Project or any interest therein to the United States, or any agency or instrumentality thereof, within the meaning of Section 149(b) of the Code.

(l) Other than the Bonds, no other obligations have been or shall be issued under Section 103 of the Code which are sold at substantially the same time as the Note under a common plan of marketing and at substantially the same rate of interest as the Note and which are payable in whole or part by the Borrower or otherwise have with the Note any common or pooled security for the payment of debt service thereon, or which are otherwise treated as the same “issue of obligations” as the Note under Section 1.50(1)(c)(1) of the Treasury Regulations.

(m) The Borrower shall observe the requirements of this Loan Agreement with respect to the obligations imposed by applicable provisions of the Code and the representations, warranties, covenants, and requirements of the Borrower Tax Certificate.

(n) No proceeds of the Combined Bonds shall be invested in investments which cause the Combined Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code.

(o) The Borrower shall not otherwise use the proceeds of the Combined Bonds, or take or fail to take any action, the effect of which would be to impair the exclusion of interest on the Combined Bonds from gross income for federal income tax purposes.

(2) For the purpose of this Section, a “Determination of Taxability” shall mean the issuance of a statutory notice of deficiency by the Internal Revenue Service, 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, or a change in any applicable federal statute, which holds or provides in effect that the interest payable on the Note is includable, for federal income tax purposes under Section 103 of the Code, in the gross income of the Lender or any other holder or prior holder of the Note, if the period, if any, for contest or appeal of such action, ruling, or decision by the Borrower or Lender or any other interested party has expired without any such contest or appeal having been properly instituted by the Lender, the Borrower, or any other interested party. The expenses of any such contest shall be paid by the party initiating the contest, and neither the Lender nor the Borrower shall be required to contest or appeal any Determination of Taxability. The “Date of Taxability” shall mean that point in time, as specified in the determination, ruling, order, or decision, that the interest payable on the Note becomes includable in the gross income of the Lender or any other holder or prior holder of the Note, as the case may be, for federal income tax purposes.

(3) If the Lender receives notice of a “Determination of Taxability” with respect to the Note and delivers to the Borrower a copy of that notice, the rate of interest on the Note shall be automatically adjusted and additional charges shall be paid as provided in the Note.

(4) If the Borrower becomes aware of a Determination of Taxability it shall promptly give notice of such Determination of Taxability to the Issuer and the Lender.
Section 4.6  Lease or Sale of Project. The Borrower shall not lease, sell, convey, or otherwise transfer the Project, in whole or part, without first securing the written consent of the Lender; provided that in no event shall any lease, transfer, assignment, or sale be permitted if the effect thereof would be to cause the Note to be deemed issued in violation of any requirement under Section 142(a) of the Code, and the Treasury Regulations promulgated thereunder, that substantially all of the net proceeds of the Combined Bonds be used to provide a qualified residential rental project, or under the Act that no portion of the Project to be financed or refinanced from proceeds of the Combined Bonds be acquired in whole or part for sale, nor shall any such transaction be permitted if the effect thereof would otherwise be to impair the validity or the tax-exempt status of the Note, nor shall any such transaction release the Borrower of any of its obligations under this Loan Agreement. The Borrower shall promptly notify the Issuer and the Lender of any such sale, transfer, assignment, or lease. Nothing contained in this Section shall prohibit the Borrower from (a) entering into leases with residential tenants in the ordinary course of business, (b) entering into easement or other agreements necessary for the operation of the Project, (c) admitting limited partners or transferring limited partner interests in the Borrower, or (d) removing a member of the Borrower in accordance with the Borrower’s operating agreement, which removal of a member shall require Lender consent.

Section 4.7  Project Operation and Maintenance Expenses. The Borrower shall pay all expenses of the operation and maintenance of the Project, including, but without limitation, adequate insurance thereon and insurance against all liability for injury to persons or property arising from the operation thereof.

Section 4.8  Notification of Changes. The Borrower covenants and agrees that it shall promptly notify the Issuer and the Lender of:

(1) any litigation which may materially and adversely affect the Borrower and any of its properties;

(2) the occurrence of any Event of Default under this Loan Agreement, the occurrence of any event of default under the Related Documents or any other loan agreement, debenture, note, purchase agreement, other agreement providing for the borrowing of money by the Borrower or the occurrence of any event of which the Borrower has knowledge and which, with the passage of time or giving of notice, or both, would constitute an Event of Default under this Loan Agreement or an event of default under the Related Documents or such other agreements; and

(3) any material adverse change in the operations, business, properties, assets, or conditions, financial or otherwise, of the Borrower.

Section 4.9  Maintenance of Facility as Qualified Residential Rental Project. The Borrower covenants that following its acquisition, substantial rehabilitation, and equipping of the Project and subject to the provisions of any recorded document amending, terminating, or deleting such covenants, the Project is to be owned, operated, and managed as three (3) distinct “qualified residential rental projects” within the meaning of Section 142(d) of the Code. To that end, the Borrower further represents, covenants, and agrees that it shall fulfill its obligations under the Regulatory Agreements.

Section 4.10  Compliance with Issuer’s Private Activity Bond Policy. The Borrower agrees to comply with the Issuer’s Policy Number 2.5 related to Tax Exempt Financing.
Section 4.11  **Interest Reserve Fund.** The Borrower shall maintain a Reserve Fund in the amount of $42,500. The Borrower shall make the initial deposit of $42,500 into the Reserve Fund on the Closing Date with equity of the Borrower. Amounts in the Interest Reserve Fund will be used to pay monthly interest payments on the Note when due.

All income derived from the investment of amounts on hand in the Interest Reserve Fund shall remain in and be credited as received to the Interest Reserve Fund. Amounts in the Interest Reserve Fund, if not previously used as aforesaid, shall be applied against the final installments of principal of and interest due on the Note.

If the principal amount of the Note is still outstanding by the end of the fifteenth month after the Closing Date, the Borrower shall replenish the Interest Reserve Fund prior to the commencement of the sixteenth month with sufficient proceeds to pay the projected debt service through the end of the term of the Loan.

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

PREPAYMENT OF LOAN

Section 5.1  Prepayment at Option of Borrower. The Borrower may, at its option, prepay the Loan, in whole or part, by prepaying a like amount of the Principal Balance of the Note, but only in the manner, at the times, and under the conditions provided in the Note.

Section 5.2  Termination Upon Retirement of Note. This Loan Agreement shall, by its terms, terminate at such time as: (a) no Principal Balance on the Note remains outstanding; (b) any obligation of the Lender to advance funds under this Loan Agreement, the Note, the Disbursing Agreement, or the Related Documents has expired; and (c) arrangements satisfactory to the Lender and the Issuer have been made for the discharge of all other accrued liabilities, if any, under the Related Documents.

(The remainder of this page is intentionally left blank.)
ARTICLE VI
EVENTS OF DEFAULT AND REMEDIES

Section 6.1 Events of Default. Any one or more of the following events continuing beyond any applicable cure period is an Event of Default under this Loan Agreement:

(1) If the Borrower shall fail to make any payments required under this Loan Agreement on or before the date that the payment is due and such default continues for ten (10) days.

(2) If the Borrower 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 (a “Default Notice”), specifying such default and requesting that it be remedied, given to the Borrower by the Issuer or the Lender, or for such longer period as may be reasonably necessary to remedy such default provided that the Borrower is proceeding with reasonable diligence to remedy the same, but not exceeding sixty (60) days after the Default Notice is given, unless the Lender shall agree in writing to an extension of such time prior to its expiration.

(3) If the Borrower shall file a petition in bankruptcy or for reorganization or for an arrangement under any present or future federal bankruptcy act or under any similar federal or state law, shall consent to the entry of an order for relief under any present or future federal bankruptcy act or under any similar federal or 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 proposing the entry of an order for relief of the Borrower 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 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 Borrower of all or substantially all of the assets of the Borrower, or of the Project, shall be appointed in any proceeding brought against the Borrower and shall not be discharged within ninety (90) days after such appointment or if the Borrower shall consent to or acquiesce in such appointment, or if the estate or interest of the Borrower in the Project or a part thereof shall be levied upon or attached in any proceeding and such process shall not be vacated or discharged within ninety (90) days after such levy or attachment.

(4) If the operating agreement of the Borrower shall expire or be annulled or if the Borrower shall be dissolved or liquidated or shall be merged with or is acquired by another business entity.

(5) If any representation or warranty made by the Borrower herein, or by an officer or representative of the Borrower in any document or certificate furnished the Lender or the Issuer in connection herewith or therewith or under the terms hereto or thereto, shall prove at any time to be, in any material respect, incorrect or misleading as of the date made, and is not cured within thirty (30) days after a Default Notice, specifying such default and requesting that it be remedied, has given to the Borrower by the Issuer or the Lender.

(6) If the Borrower shall default or fail to perform any covenant, condition, or agreement on its part under any of the Related Documents or any other security document securing the Note, and such failure continues beyond the period, if any, set forth in such
documents during which the Borrower may cure the default, or if an event of default occurs under any of the Related Documents.

Any partner of the Borrower shall have the right, but not the obligation, to cure any default under this Loan Agreement within the same cure period afforded to the Borrower to cure such default.

Section 6.2 Remedies. Whenever any Event of Default referred to in Section 6.1 hereof shall have happened, any one or more of the following remedial steps to the extent permitted by law may be taken:

(1) The Issuer, upon written direction of the Lender, or the Lender may declare all installments of the Loan (being an amount equal to that necessary to pay in full the Principal Balance plus accrued interest thereon and any premium due thereunder of the Note assuming acceleration of the Note under the terms thereof and to pay all other indebtedness thereunder) to be immediately due and payable, whereupon the same shall become immediately due and payable by the Borrower; or

(2) The Lender may exercise all of its rights and remedies under the Related Documents; or

(3) The Issuer, upon written direction of the Lender (except as otherwise provided in Section 7.10 hereof), or the Lender (in either case at no expense to the Issuer) may take whatever action at law or in equity may appear necessary or appropriate to collect the amounts then due and thereafter to become due under this Loan Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the Borrower under this Loan Agreement.

(4) The Lender’s obligation to advance any further amounts under the Disbursing Agreement may terminate. Notwithstanding anything to the contrary contained herein or in any other instrument evidencing or securing the Loan, the Lender may exercise the foregoing remedy upon the occurrence of an event that would constitute such an Event of Default but for the requirement that notice be given or that a period of cure or time elapse.

(5) The Lender may disburse any amounts remaining in the Escrow Account first towards payment of accrued interest owing on the Note and then to the Principal Balance of the Note in accordance with the terms of the Note.

Section 6.3 Disposition of Funds. Notwithstanding anything to the contrary contained in this Loan Agreement, any amounts collected, up to the amounts due, in accordance with any action taken under Section 6.2 hereof, except for any amounts collected solely for the benefit of the Issuer under any of the provisions set forth in Section 7.10 hereof, shall, after deducting all expenses incurred in collecting the same, be applied as a prepayment of the Note in accordance with Section 5.1 hereof.

Section 6.4 Manner of Exercise. No remedy herein conferred upon or reserved to the Issuer or 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 this Loan Agreement or now or hereafter existing at law or in equity 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. In order to entitle the Issuer or the Lender to exercise any remedy reserved to
either of them in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 6.5 Attorneys’ Fees and Expenses. In the event the Borrower should default under any of the provisions of this Loan Agreement and the Issuer or the Lender should employ attorneys or incur other expenses for the collection of amounts due hereunder or the enforcement of performance of any obligation or agreement on the part of the Borrower, the Borrower shall on demand pay to the Issuer or the Lender the reasonable fees of such attorneys and such other expenses so incurred.

Section 6.6 Effect of Waiver. In the event any agreement contained in this Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

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

GENERAL

Section 7.1 Notices. All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified or registered mail, postage prepaid, with proper address as indicated below. The Issuer, the Borrower, and the Lender may, by written notice given by each to the others, designate any address or addresses to which notices, certificates, or other communications to them shall be sent when required as contemplated by this Loan Agreement. Until otherwise provided by the respective parties, all notices, certificates, and communications to each of them shall be addressed as follows:

To the Issuer: City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN  55345
Attn:  City Manager

To the Borrower: CHC Minnetonka Affordable Housing LLC
c/o Community Housing Corporation of America, Inc.
161 St. Anthony Avenue, Suite 820
Saint Paul, MN  55103
Attn:  President

with copies to: Shelter Corporation
1600 Hopkins Crossroad
Minnetonka, MN  55305
Attn:  President

Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, MN  55402-4629
Attn:  Jeffrey J. Koerselman, Esq.

To the Lender: Bridgewater Bank
4400 Excelsior Boulevard
St. Louis Park, MN 55416
Attn:  Nicholas Place

with a copy to: Messerli & Kramer, P.A.
100 South Fifth Street, Suite 1400
Minneapolis, MN 55402-1217
Attn:  Michelle R. Jester, Esq.

Section 7.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer and the Borrower and their respective successors and assigns.
Section 7.3  **Severability.** In the event any provision of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 7.4  **Amendments, Changes, and Modifications.** Except as otherwise provided in this Loan Agreement or in the Resolution, subsequent to the initial issuance of the Note and before the Note is satisfied and discharged in accordance with their respective terms, this Loan Agreement may not be effectively amended, changed, modified, altered, or terminated without the written consent of the Lender.

Section 7.5  **Execution Counterparts.** This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.6  **Limitation of Issuer’s Liability.** No covenant, provision or agreement of the Issuer herein or in the Note or in any other document executed by the Issuer (or any other party) in connection with the issuance, sale and delivery of the Note, or any obligation herein or therein imposed upon the Issuer or respecting the breach thereof, shall give rise to a pecuniary liability of the Issuer, its officers, employees or agents, or a charge against the Issuer’s general credit or taxing powers or shall obligate the Issuer, its officers, employees or agents, financially in any way except with respect to this Loan Agreement and the application of revenues therefrom and the proceeds of the Note. The Note shall be and constitutes only a special and limited revenue obligation of the Issuer, payable solely from the revenues pledged to the payment thereof pursuant to this Loan Agreement and the Assignment of Loan Agreement. The Note does not now and shall never constitute an indebtedness, a general or moral obligation or a loan of the credit of the issuer, the State or any political subdivision thereof or a lien, charge or encumbrance, legal or equitable, against the Issuer’s general credit or taxing powers or any of the Issuer’s property. No failure of the Issuer to comply with any term, condition, covenant or agreement therein shall subject the Issuer, its officers, employees or agents, to liability for any claim for damages, costs or other financial or pecuniary charges except to the extent that the same can be paid or recovered from this Loan Agreement or revenues therefrom. No execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers of the Issuer. In making the agreements, provisions and covenants set forth herein, the Issuer has not obligated itself except with respect to this Loan Agreement and the application of revenues hereunder as hereinabove provided. It is further understood and agreed by the Borrower and the Lender that the Issuer, its officers, employees or agents shall incur no pecuniary liability hereunder and shall not be liable for any expenses related hereto, all of which the Borrower agrees to pay. If, notwithstanding the provisions of this Section, the Issuer, its officers, employees or agents incurs any expense, or suffers any losses, claims or damages or incurs any liabilities, the Borrower will indemnify and hold harmless the Issuer, its officers, employees or agents from the same and will reimburse the Issuer, its officers, employees or agents for any legal or other expenses incurred by the Issuer, its officers, employees or agents in relation thereto; provided, however, that the Borrower shall not be responsible for such losses arising from the willful misconduct or gross negligence of the Issuer. This covenant to indemnify, hold harmless and reimburse the Issuer, its officers, employees or agents shall survive delivery of and payment for the Note and expiration or termination of this Loan Agreement. The liability of the Issuer is further restricted as provided in the Act.

Section 7.7  **Issuer’s Attorneys’ Fees and Costs.** If, notwithstanding the provisions of Section 7.6 hereof, the Issuer incurs any expense, or suffers any losses, claims, or damages, or incurs any liabilities in connection with the transaction contemplated by this Loan Agreement, the Borrower shall indemnify and hold harmless the Issuer from the same and shall reimburse the Issuer for any reasonable legal or other expenses incurred by the Issuer in relation thereto; provided, however, that the Borrower
shall not be responsible for such losses arising from the willful misconduct or gross negligence of the Issuer. The Borrower shall also reimburse the Issuer for all other costs and expenses including, without limitation, reasonable attorneys’ fees paid or incurred by the Issuer in connection with (i) the discussion, negotiation, preparation, approval, execution, and delivery of the Related Documents and the documents and instruments related hereto or thereto; (ii) any amendments or modifications hereto or to the Note and the Related Documents and any document, instrument, or agreement related hereto or thereto, and the discussion, negotiation, preparation, approval, execution, and delivery of any and all documents necessary or desirable to effect such amendments or modifications; and (iii) the enforcement by the Issuer during the term hereof or thereafter of any of the rights or remedies of the Issuer hereunder or under the Note and the Related Documents or any document, instrument, or agreement related hereto or thereto, including, without limitation, costs and expenses of collection in the Event of Default, whether or not suit is filed with respect thereto.

Section 7.8. Release. The Borrower hereby acknowledges and agrees that the Issuer shall not be liable to the Borrower, and hereby releases and discharges the Issuer from any liability, for any and all losses, costs, expenses (including reasonable attorneys’ fees), damages, judgments, claims, and causes of action paid, incurred, or sustained by the Borrower as a result of or relating to any action, or failure or refusal to act, on the part of the Lender with respect to this Loan Agreement or the documents and transactions related hereto or contemplated hereby including, without limitation, the exercise by the Lender of any of its rights or remedies under Article VI hereof, the Note, and the Related Documents or any collateral security documents.

Section 7.9. Audit Expenses. The Borrower agrees to pay any costs incurred by the Issuer as a result of the Issuer’s compliance with an audit, random or otherwise, by the Internal Revenue Service or the Minnesota Department of Revenue with respect to the Note, the Borrower, or the Project.

Section 7.10. Assignment by Issuer and Survivorship of Obligations. The Issuer may assign its rights under this Loan Agreement and any related documents to the Lender to secure payment of the principal of and interest and premium, if any, on the Note, but any such assignment shall not operate to limit or otherwise affect the following provisions hereof to the extent that they run to the Issuer from the Borrower to which extent they shall survive any such assignment: Sections 3.4, 3.6, 4.2, 4.3, 6.5, 7.6, 7.7, 7.8, and 7.9. Upon any such assignment, the provisions immediately above running to the Issuer from the Borrower for the Issuer’s benefit shall run jointly and severally to the Issuer and the Lender (if appropriate), provided that the Issuer shall have the right to enforce any retained rights without the approval of the Lender but only if the Lender is not enforcing such rights in a manner to protect the Issuer or is otherwise taking action with respect thereto that brings adverse consequences to the Issuer. The obligations of the Borrower running to the Issuer for the purpose of preserving the tax-exempt status of the Note or otherwise for the Issuer’s benefit under the foregoing Sections shall survive repayment of the Note and the interest thereon.

Section 7.11. Required Approvals. Consents and approvals required by this Loan Agreement to be obtained from the Borrower or the Issuer shall be in writing and shall not be unreasonably withheld or delayed.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Loan Agreement to be executed in their respective names all as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By

Its Mayor

By

Its City Manager

(Signature Page with respect to the Series 2017B Note)
Execution page of the Borrower to the Loan Agreement, dated as of the date and year first written above.

**CHC MINNETONKA AFFORDABLE HOUSING LLC**, a Minnesota limited liability company

By: CHC Minnetonka Affordable Housing MM LLC
Its: Managing Member

By: ______________________________
Name: Richard Martin
Title: Administrative Manager

(Signature Page with respect to the Series 2017B Note)
Bureau of Real Estate Financing  
Syndication Section  
New York State Department of Law  
120 Broadway  
New York, New York 10271

$[________]  
CITY OF MINNETONKA, MINNESOTA  
MULTIFAMILY HOUSING REVENUE REFUNDING BONDS  
(ELMBROOKE AND GOLDEN VALLEY TOWNHOMES PROJECT)  
SERIES 2017A  

Ladies and Gentlemen:

On behalf of the City of Minnetonka, Minnesota (the “Issuer”), we are hereby submitting a Policy Statement 103 Affidavit and Petition for Exemption pursuant to Section 359-f, Subdivision 2(c), from the provisions of Section 359-e, Subdivisions 2, 3, 4, 5 and 6 and from Section 352-e of the General Business Law of New York in connection with the proposed offer and sale in New York of the above-captioned Bonds. The Issuer is a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota; therefore, the provisions of Section 359-e(8), the Further State Notice, do not apply pursuant to the exemption provided in Section 359-f(1)(a). A list of the members and officers of the Issuer is incorporated into the Affidavit and Petition for Exemption as Exhibit A thereto.

In addition, we are enclosing two copies of the final Official Statement relating to the Bonds and a check in the amount of $300.00 to cover the filing fee.

We would appreciate your prompt attention to this matter. Please advise the undersigned by collect telephone call upon the granting of the exemption and forward the Division's written confirmation of exemption to the undersigned at the above address as soon as possible.

Please do not hesitate to contact the undersigned if you have any questions regarding the enclosed or if any additional information is needed.

Sincerely,

Enclosures
Policy Statement 103 Application

ISSUE NAME: City of Minnetonka, Minnesota
Multifamily Housing Revenue Refunding Bonds
(Elmbrooke and Golden Valley Townhomes Project)
Series 2017A

OFFERING AMOUNT: $[_________]

NAME AND ADDRESS OF RESPONSIBLE PERSON: R. Wade Norris
Eichner Norris & Neumann PLLC
1225 19th Street, N.W., Suite 750
Washington, D.C. 20036

NAME AND TELEPHONE NUMBER OF PERSON TO CONTACT: R. Wade Norris
(202) 973-0100

PRINCIPALS: See Attached Exhibit A.

CLOSING DATE: __________, 2017
STATE OF NEW YORK

DEPARTMENT OF LAW

- - - - - - - - - - - - - - - - - - - - - -

In the Matter of

Application of the City of Minnetonka, Minnesota
under Section 359-f Subdivision 2(c) of
Article 23-A of the General Business Law
of the State of New York:

For Exemption

From Subdivisions 2, 3, 4, 5 and 6, of
Section 359-e and from Section 352-e for
the purpose of issuing its Multifamily Housing Revenue Refunding Bond (Elmbrooke and Golden Valley Townhomes Project) Series 2017A
– principal amount of $[__________]

- - - - - - - - - - - - - - - - - - - - - -

To the Department of Law of the State of New York:

This Application for Exemption from the provisions of Subdivisions 2, 3, 4, 5 and 6 of Section 359-e and from Section 352-e of the General Business Law of the State of New York is made pursuant to Policy Statement 103 by the City of Minnetonka, Minnesota (the “Issuer”), through [NAME OF ISSUER’S EXECUTING OFFICER], the [OFFICER TITLE] of the Issuer and the following facts are set forth:

1. The Issuer is a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota. The address of the Issuer is 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345.

2. The affiant is [NAME OF ISSUER’S EXECUTING OFFICER], the [EXECUTING OFFICER’S TITLE] of the Issuer. [His/Her] official address is [EXECUTING OFFICER’S ADDRESS].

3. The names and titles of the members and officers of the Issuer are attached hereto as Exhibit A.
Other than the persons listed on said Exhibit A, there are no other persons who are principals or controlling persons of the Issuer.

4. The Bonds are securities issued by a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota and therefore fall within the definition of GBL Section 359-f(1)(a).

5. The Bonds are being issued to provide funding for a mortgage loan (the “Mortgage Loan”) made by the Issuer to CHC Minnetonka Affordable Housing LLC (the “Borrower”), for the purpose of providing financing for the acquisition and rehabilitation of a scattered site, multifamily residential rental project located in the State of Minnesota. The proposed offering will consist of a total of $[_________] principal amount of the Bonds. The Bonds will be issued as fully registered bonds in denominations of $1.00 or any integral multiple thereof.

6. The Bonds will be sold by registered broker-dealers on a guaranteed underwriting basis. The name of the registered broker-dealer is Dougherty & Company LLC.

7. Two copies of the final Official Statement relating to the Bonds are enclosed herewith. The date of the closing of the Bonds is expected to be __________, 2017.

8. Two copies of any amendments or supplemental materials used in connection with the Bonds will be filed with the Attorney General.
WHEREFORE, it is hereby requested that the offering for sale of the securities of the Issuer be exempted under General Business Law Section 359-f(2)(c) and Section 359-f(1)(a) from the provisions in Subdivisions 2, 3, 4, 5 and 6 of Section 359-e and Section 352-e of the General Business Law of the State of New York.

Dated: _________________, 2017

CITY OF MINNETONKA, MINNESOTA

By:

[NAME OF EXECUTING OFFICER],
[OFFICER TITLE]
[NAME OF ISSUER’S EXECUTING OFFICER], being duly sworn, deposes and says: that [he/she] is the [EXECUTING OFFICER’S TITLE] of the City of Minnetonka, Minnesota, the Issuer described in the foregoing Affidavit and Petition for Exemption; that [he/she] executed the foregoing Affidavit and Petition for Exemption for and on behalf of said Issuer; that [he/she] is fully authorized to execute and file such Affidavit and Petition for Exemption; and that to the best of [his/her] knowledge, information and belief the statements made in such Affidavit and Petition for Exemption are true.

By:

[NAME OF ISSUER’S EXECUTING OFFICER], [EXECUTING OFFICER’S TITLE]

Subscribed and sworn to before me this ____ day of ______________, 2017.

__________________________
Notary

[SEAL] My Commission Expires:

__________________________
EXHIBIT A

CITY OF MINNETONKA, MINNESOTA

City Council & Mayor

Terry Schneider, Mayor

Dick Allendorf, At Large, Seat A

Patty Acomb, At Large, Seat B

Bob Ellingson, Ward 1

Tony Wagner, Ward 2

Brad Wiersum, Ward 3

Tim Bergstedt, Ward 4
Addendum
Minnetonka City Council
Meeting of July 24, 2017

13B - Temporary on-sale liquor license for Unmapped Brewing, LLC, at 14625 Excelsior Blvd.

Attached is a change memo from the community development director with an additional staff recommended condition for approving the temporary license.

14A - Resolution authorizing and affirming the issuance, sale, and delivery of multifamily housing revenue obligations for the benefit of CHC Minnetonka Affordable Housing LLC and authorizing the execution and delivery of related documents

Attached is a memo from city's bond counsel with a revised resolution.
Memorandum

To: City Council
From: Julie Wischnack, AICP, Community Development Director
Date: July 24, 2017
Subject: Change Memo for July 24, 2017

13B  Temporary on-sale liquor license for Unmapped Brewing, LLC, 14625 Excelsior Blvd.

Staff proposes an additional condition to the action of the approval of the temporary on-sale liquor license:

The applicants are responsible to hire off-duty police officers to assist with traffic and pedestrian control created by the event.

14A  Resolution authorizing and affirming the issuance, sale, and delivery of multifamily housing revenue obligations for the benefit of CHC Minnetonka Affordable Housing LLC and authorizing the execution and delivery of related documents

See attached memo and revised resolution from Kennedy & Graven.
July 24, 2017

Julie Wischnack
Community Development Director
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN  55345-1502

Re:  Resolution relating to the issuance of multifamily housing revenue obligations by the City of Minnetonka

Dear Julie,

As you know, CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), has been working with the City of Minnetonka to finance with tax-exempt bonds the acquisition and substantial rehabilitation of forty-six (46) existing affordable townhome units located at 5400 Smetana Drive in the City and the acquisition and substantial rehabilitation of six (6) existing townhome units located at 2100 Douglas Drive North and two (2) existing affordable townhome units located at 3354 Lilac Drive North in Golden Valley, Minnesota.

In order to finance the project described above, the City Council has been asked to consider providing approval to the Borrower to issue up to $7,500,000 in tax-exempt bonds. A portion of those bonds will be issued as short-term debt in the principal amount of $900,000 (the “Series 2017B Note”). The Series 2017B Note will be secured by payments to be received from the tax credit investor. Proceeds of the Series 2017B Note will be used to refund a portion of the temporary debt issued in 2016 and proceeds of the 2016 debt will be used to finance the project. Unfortunately, the tax credit investor’s attorney has taken the position that since the Series 2017B Note is a refunding obligation, Section 42 of the Internal Revenue Code does not allow tax credits to be provided in connection with the issuance of the Series 2017B Note. It is true that tax credits are not available for refunding bonds if the bonds refunded obtained tax credits. The 2016 debt did not receive tax credits. This is an unusual legal position and most tax credit investor counsel do not take this position. Unfortunately, it is too late to obtain new counsel. Therefore, the Borrower is asking the City’s permission to obtain new housing allocation.

Sincerely,

Julie A. Eddington
Resolution No. 2017-____
Resolution authorizing an application of bonding authority from the State of Minnesota with respect to revenue obligations to be issued for the benefit of CHC Minnetonka Affordable Housing LLC

Be it resolved by the City Council (the “Council”) of the City of Minnetonka, Minnesota (the “City”) as follows:

Section 1. Recitals.

1.01. The City is a home rule city duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota.

1.02. CHC Minnetonka Affordable Housing LLC, a Minnesota limited liability company (the “Borrower”), the managing member of which is CHC Minnetonka Affordable Housing MM LLC, a Minnesota limited liability company, has proposed to acquire and substantially rehabilitate forty-six (46) existing affordable townhome units located at 5400 Smetana Drive in the City (the “Elmbrooke Apartments”) and six (6) existing affordable townhome units at 2100 Douglas Drive North and two (2) existing affordable townhome units at 3354 Lilac Drive North, Golden Valley, Minnesota (the “Golden Valley Townhomes”).

1.03. On the date hereof, the Council adopted a resolution (the “Bond Resolution”), which approves the issuance of one or more series of tax-exempt revenue obligations (the “Obligations”) in the maximum principal amount of $7,500,000 to finance the acquisition and substantial rehabilitation of the Elmbrooke Apartments and the Golden Valley Townhomes, fund required reserves, and pay related costs of issuance. The Bond Resolution is incorporated hereby by reference.

1.04. In order for the Obligations to be issued on a tax-exempt basis, the Obligations must receive an allocation of bonding authority of the State of Minnesota. An application for such an allocation must be made pursuant to the requirements of Minnesota Statutes, Chapter 474A, as amended (the “Allocation Act”).

Section 2. Application for Allocation.

2.01. The Council hereby authorizes the submission of an application for allocation of bonding authority pursuant to Section 146 of the Internal Revenue Code of 1986, as amended, and the Allocation Act in accordance with the requirements of the Allocation Act. The Mayor, the City Manager, and the Finance Director of the City and
Kennedy & Graven, Chartered, acting as Bond Counsel with respect to the Obligations, shall take all actions, in cooperation with the Borrower, as are necessary to submit an application for an allocation of bonding authority to the office of Minnesota Management & Budget.

Section 3. Effective Date. This resolution shall be in full force and effect from and after its approval. The approvals contained in the resolution are effective for one year after the date hereof.

Adopted by the City Council of the City of Minnetonka, Minnesota this 24th day of July, 2017.

__________________________
Terry Schneider, Mayor

ATTEST:

__________________________
David E. Maeda, City Clerk

ACTION ON THIS RESOLUTION:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a meeting held on July 24, 2017.
David E. Maeda, City Clerk