

RESOLUTION NO. 3946

CITY OF MILES CITY, MONTANA

AUTHORIZING THE AMENDMENT OF THE REGULATORY AGREEMENT AND THE TERMINATION OF A LEASE AGREEMENT AND TRANSFERRING FEE TITLE TO A MULTIFAMILY HOUSING PROJECT OWNED BY BIRCHWOOD PROPERTIES LIMITED PARTNERSHIP

WHEREAS, the City of Miles City, Montana (the "City") has previously issued its Multifamily Housing Revenue Bonds (Birchwood Properties Limited Partnership Project), Series 1999 (the "1999 Bonds"), in the original aggregate principal amount of \$1,655,000 as authorized by Title 90, Chapter 5, Part I, Montana Code Annotated (the "Act"); and

WHEREAS, the City issued the 1999 Bonds pursuant to that certain Indenture of Trust, dated as of May 1, 1999 (the "1999 Indenture"), between the City and U.S. Bank National Association (formerly known as U.S. Bank Trust National Association), as trustee (the "Prior Trustee"); and

WHEREAS, the City loaned the proceeds of the 1999 Bonds to Birchwood Properties Limited Partnership, a North Dakota limited partnership (the "Company") pursuant to a Loan Agreement, dated as of May 1, 1999 (the "1999 Loan Agreement"), between the City and the Company, to (i) finance the acquisition and rehabilitation of a 32-unit multifamily rental project located within the City and known as Custer Villa Apartments (the "Project"), (ii) fund a debt service reserve fund for the 1999 Bonds, and (iii) pay costs of issuance of the 1999 Bonds; and

WHEREAS, the 1999 Bonds are conduit revenue bonds of the City and as such are special, limited obligations and not a general or moral obligation of the City and the full, faith and credit of the City are not pledged under the 1999 Indenture to the payment of the 1999 Bonds; and

WHEREAS, the payment of the principal and interest of the 1999 Bonds is solely an obligation of the Company and the City does not have any payment obligation whatsoever with respect to the 1999 Bonds; and

WHEREAS, the Borrower's operation of the Project is subject to certain income and occupancy restrictions as set forth in that certain Regulatory Agreement (and Declaration of Restrictive Covenants), dated as of May 1, 1999 (the "Original Regulatory Agreement"), between the City, the Prior Trustee and the Company; and

WHEREAS, in connection with the issuance of the 1999 Bonds, the City and the Company also entered into a Lease Agreement, dated as of May 1, 1999 (the "Birchwood Lease"), whereby fee title ownership in the land and Project were technically transferred to the City and subleased back to the Company until the 1999 Bonds are paid in full; and

WHEREAS, the Company has represented to the City that is owner of the Project for federal income tax purposes; and

WHEREAS, the Birchwood Lease contains provisions under for the transfer (option to purchase for a nominal amount) of the fee title ownership of the land and the Project back to the Company upon repayment of the 1999 Bonds; and

WHEREAS, the Company has requested that the Public Finance Authority (the "Authority"), a body corporate and politic of the State of Wisconsin, issue its Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Birchwood Properties Limited Partnership Project), Series 2016 (the "2016 Bonds"), in the original aggregate principal amount of \$4,260,000, in order to, along with funds of the Borrower, (i) refinance the 1999 Bonds and (ii) refinance certain conduit revenue bonds previously issued by Richland County, North Dakota (the "1999 Richland Bonds") for 14 affordable multifamily housing projects that the Company owns and operates in four counties in western North Dakota ; and

WHEREAS, the Company is refinancing the 1999 Bonds and the 1999 Richland Bonds into the 2016 Bonds in order to streamline the Company's obligations and consolidate its debt; and

WHEREAS, Barnes & Thornburg LLP, as bond counsel for the 2016 Bonds, has represented that the income and occupancy restrictions for the Project will be the same even though the 1999 Bonds are being refinanced with proceeds of the 2016 Bonds; and

WHEREAS, in order for the Authority to issue the 2016 Bonds, certain technical revisions need to be made to the provisions of the Original Regulatory Agreement; and

WHEREAS, the First Amendment to Regulatory Agreement, dated as of July 1, 2016 (the "First Amendment" and together with the Original Regulatory Agreement, the "Regulatory Agreement"), between the Authority, the Company, U.S. Bank National Association, as trustee of the 2016 Bonds, and consented to by the City contains the technical amendments to the Original Regulatory Agreement required in connection with the issuance of the 2016 Bonds; and

WHEREAS, pursuant to the provisions of Section 10 of the Original Regulatory Agreement, the City is required to consent in writing to any amendment to the Original Regulatory Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of the City of Miles City, Montana, as follows:

1. The First Amendment to Regulatory Agreement is hereby approved in substantially the form on file with the City, and the Mayor and City Clerk are hereby authorized to execute and deliver the First Amendment to Regulatory Agreement on behalf of the City, subject to such modifications as are deemed appropriate and approved by the City Attorney. All of the provisions of the First Amendment to Regulatory Agreement, when executed as authorized herein, shall be deemed to be a part of the Original Regulatory Agreement 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. In the event that either the Mayor or the City Clerk is unable to sign or deliver the First Amendment to Regulatory Agreement, any other authorized officer or official of the City may execute and deliver the document in the place of the Mayor or the City Clerk.

2. Mayor, the City Clerk, and the City Attorney are authorized to take all necessary action to terminate the Birchwood Lease upon the repayment of the 1999 Bonds by the Company. The Mayor, the City Clerk, and the City Attorney are authorized to execute and deliver any necessary documents in connection with the termination of the Birchwood Lease, including, but not limited to lease terminations, warranty deeds, and other required real estate transfer documents. In the event that either the Mayor or the City Clerk is unable to sign or deliver the First Amendment to Regulatory Agreement, any other authorized officer or official of the City may execute and deliver the document in the place of the Mayor or the City Clerk.

3. The Company shall pay any reasonable costs incurred by the City in connection with the City's execution of the First Amendment to Regulatory Agreement and the termination of the Birchwood Lease and the transfer of the fee title interest of the Project back to the Company.

4. This resolution shall become effective immediately upon its passage and approval.

PASSED AND APPROVED by the City Council of the City of Miles City, Montana, this 26th day of July, 2016.



Mayor

Attest:



City Clerk

(SEAL)

70501-1 (BWJ)
4098959v.2

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting Mayor of the City of Miles City, Montana (the "City"), hereby certifies that the attached resolution is a true copy of a Resolution entitled: "AUTHORIZING THE AMENDMENT OF THE REGULATORY AGREEMENT AND THE TERMINATION OF A LEASE AGREEMENT AND TRANSFERRING FEE TITLE TO A MULTIFAMILY HOUSING PROJECT OWNED BY BIRCHWOOD PROPERTIES LIMITED PARTNERSHIP" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on July 26, 2016 and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following members of the City Council voted in favor thereof: **Susanne Galbraith, Rachel Sloan, Brent Kasner, Kathy Wilcox, Jeff Erlenbusch, Dwayne Andrews**
voted against the same:

abstained from voting thereon:

or were absent: **John Uden, Ken Gardner**

WITNESS my hand and seal officially this 26th day of July, 2016.



Mayor

(SEAL)

Return to:
Guaranty Commercial Title, Inc.
520 Nicollet Mall, Suite 400
Minneapolis, MN 55402

167264 Fee: \$80.00

Custer County Recorded 1/19/2017 At 12:45 PM
Linda Corbett, Clk & Rcdr By Alisa Wagner
Return to: Guaranty Commercial Title, Inc 520 Nicollet Mall, S
MINNEAPOLIS MN 55402

Execution Copy

**FIRST AMENDMENT TO
REGULATORY AGREEMENT
(Miles City)**

Between

**PUBLIC FINANCE AUTHORITY,
as Issuer**

and

**BIRCHWOOD PROPERTIES LIMITED PARTNERSHIP,
as Borrower**

and

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

and consented to by the

CITY OF MILES CITY, MONTANA

Dated as of July 1, 2016

**\$4,260,000
Public Finance Authority
Variable Rate Demand Multifamily Housing Revenue
Refunding Bonds
(Birchwood Properties Limited Partnership Project)
Series 2016**

This instrument was drafted by:

Barnes & Thornburg LLP (BWJ)
225 South Sixth Street, Suite 2800
Minneapolis, Minnesota 55402

62813

FIRST AMENDMENT TO REGULATORY AGREEMENT

THIS FIRST AMENDMENT TO REGULATORY AGREEMENT is dated as of July 1, 2016 (the "First Amendment to Regulatory Agreement"), between the PUBLIC FINANCE AUTHORITY, a body corporate and politic of the State of Wisconsin created pursuant to the provisions of Sections 66.0301, 66.0303 and 66.0304, as amended, of the Wisconsin Statutes (together with its successors and assigns, the "Issuer"), BIRCHWOOD PROPERTIES LIMITED PARTNERSHIP, a North Dakota limited partnership ("Company"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association (successor to U.S. Bank Trust National Association) (the "Trustee"), and amends the Regulatory Agreement (and Declaration of Restrictive Covenants), dated as of May 1, 1999 (the "Original Regulatory Agreement"), between the City of Miles City, Montana ("Miles City") and the Trustee, and recorded in the Official Records of Custer County, Montana as Document No. 111472, on May 14, 1999. As required by the Original Regulatory Agreement, Miles City is consenting to this First Amendment to Regulatory Agreement.

WHEREAS, Miles City and the Trustee previously entered into the Original Regulatory Agreement, relating to the property legally described in EXHIBIT A attached hereto (the "Land"); and

WHEREAS, Miles City previously issued its Multifamily Housing Revenue Bonds (Birchwood Properties Limited Partnership Project), Series 1999 (the "Prior Bonds"), in the original aggregate principal amount of \$1,655,000, the proceeds of which were loaned to the Company to finance a portion of the costs of the acquisition and rehabilitation of a 32-unit multifamily housing facility known as Custer Villa Apartments located in Miles City, Montana;

WHEREAS, the Issuer is issuing its Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Birchwood Properties Limited Partnership Project), Series 2016 (the "Bonds"), in the original aggregate principal amount of \$4,260,000, pursuant to an Indenture of Trust, dated as of July 1, 2016 (the "Indenture"), between the Issuer and the Trustee;

WHEREAS, a portion of the proceeds of the Bonds will be used to current refund the Prior Bonds; and

WHEREAS, the Issuer, Miles City, the Company and the Trustee have determined to amend the Original Regulatory Agreement to incorporate the terms of the Bonds;

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

Section 1. Amendment to Definitions in Original Regulatory Agreement.

(a) The following defined terms are hereby amended as follows:

"Act" means Sections 66.0301, 66.0303 and 66.0304 of the Wisconsin Statutes, as amended.

"Agreement" means the Original Regulatory Agreement, as amended by the First Amendment to Regulatory Agreement.

"Bonds" means the Issuer's Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Birchwood Properties Limited Partnership Project), Series 2016, in the original aggregate principal amount of \$4,260,000.

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"*Indenture*" means the Indenture of Trust, dated as of July 1, 2016, between the Issuer and the Trustee, pursuant to which the Bonds were issued.

"*Issuer*" means the Public Finance Authority, its successor and assigns.

(b) The following definitions are hereby added to the Original Regulatory Agreement:

"*First Amendment to Regulatory Agreement*" means the First Amendment to Regulatory Agreement, dated as of July 1, 2016, between the Issuer, the Company and the Trustee.

"*Miles City*" means the City of Miles City, Montana, the issuer of the Prior Bonds.

"*Loan Agreement*" means the Loan Agreement, dated as of July 1, 2016, between the Issuer and the Borrower.

"*Original Regulatory Agreement*" means the Regulatory Agreement, dated as of May 1, 1999, between Miles City, the Company and the Trustee.

"*Prior Bonds*" means the City of Miles City, Montana Multifamily Housing Revenue Bonds (Birchwood Properties Limited Partnership), Series 1999, issued in the original aggregate principal amount of \$1,655,000.

Section 2. Subordination Agreement. The following paragraph is added to the Original Regulatory Agreement as Section 21:

SECTION 21. SUBORDINATION AGREEMENT. This Agreement and the restrictions hereunder are subordinate to the Assignment of Rents and Leases, dated as of July 1, 2016 (the "Assignment"), from the Company to the Trustee. In the event of foreclosure or transfer of title by deed in lieu of foreclosure, this Agreement and the restrictions hereunder will automatically terminate, as more fully set forth in the provisions of Section 10 hereof. Notwithstanding any other provisions herein, enforcement of these restrictions shall not result in any claim against the mortgaged property, the mortgage proceeds or any reserve or deposit made under the Indenture.

Section 2A. Provisions Respecting the State Board of Housing. Notwithstanding the provisions of the Original Regulatory Agreement, the State Board of Housing shall have no right, power or authority to enforce any obligation or undertaking by the Issuer in this Agreement. For avoidance of doubt, the indemnification provisions in Section 7A of the Loan Agreement shall extend to and include any audit, investigation, inquiry or claim by the State Board of Housing involving the Issuer or any Authority Indemnified Person.

Section 3. Amendment to Notices. Section 18 of the Original Regulatory Agreement is hereby amended as follows:

To the Issuer: Public Finance Authority
 22 East Mifflin Street, Suite 900
 Madison, WI 53703
 Attn: Scott Carper and Michael LaPierre

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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

Section 4. Amendment to Original Regulatory Agreement. The amendments to the Original Regulatory Agreement provided in this First Amendment to Regulatory Agreement are hereby incorporated therein by reference and made a part thereof.

Section 5. Effective Date. This First Amendment to Regulatory Agreement shall be effective as of July 28, 2016.

Section 6. Confirmation of Agreement. Except as specifically amended by this First Amendment to Regulatory Agreement, the Original Regulatory Agreement is hereby ratified and confirmed, and remains in full force and effect.

Section 7. Severability. If any provision of this First Amendment to Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 8. Counterparts. This First Amendment to Regulatory Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana *provided*, that with respect to the existence, corporate powers, legal capacity, rights (including, without limitation, rights to indemnification and exculpation from liability), privileges, powers, obligations and liabilities of the Issuer and the Authority Indemnified Persons (as defined in the Loan Agreement), this Agreement shall be governed by the laws of the State, excluding conflicts of law principles. The jurisdiction and venue provisions in Section 10.15 of the Loan Agreement and Section 14.12 of the Indenture are incorporated herein by this reference and made applicable hereto.

Section 10. Additional Provisions. Notwithstanding any provision of the Original Regulatory Agreement or this First Amendment to Regulatory Agreement to the contrary:

(a) The Issuer shall be under no obligation whatsoever to enforce, monitor or verify compliance by the Borrower or the Trustee with any provision of this Agreement or any applicable provision of the Code, or to request or obtain any information from the Borrower, any tenant or any other person in respect hereof or thereof or to act or refrain from acting upon any information it may obtain.

(b) It is expressly understood and agreed between the Borrower and the Issuer (on its own behalf and on behalf of the Authority Indemnified Persons (as defined in the Loan Agreement)) that this Agreement is a document referred to in Section 7.4A(a) of the Loan Agreement and that the indemnification of the Issuer and the Authority Indemnified Persons provided for in Section 7.4A of the Loan Agreement shall apply to this Agreement as if fully set forth herein and shall supersede any indemnification provisions of this Agreement; AND THE BORROWER FURTHER ACKNOWLEDGES THAT SAID SECTION 7.4A PROVIDES THAT THE BORROWER SHALL INDEMNIFY THE ISSUER AND THE AUTHORITY

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INDEMNIFIED PERSONS AGAINST ITS OR THEIR OWN NEGLIGENCE OF ANY KIND OR DEGREE.

(c) None of the Issuer or any Authority Indemnified Person (as defined in the Loan Agreement) shall be liable for any costs, expenses, losses, damages, claims or actions of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Agreement except only to the extent amounts are received for the payment thereof from the Borrower under the Loan Agreement.

(d) Performance by the Issuer of its covenants and obligations herein is subject to the provisions of Section 10.8 of the Loan Agreement.

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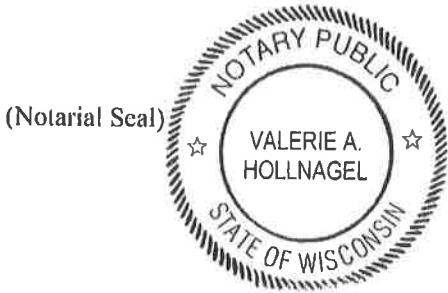
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Regulatory Agreement as of the date first above written.

PUBLIC FINANCE AUTHORITY

By: *Ann Marie Austin*
Name: Ann Marie Austin
Title: Assistant Secretary

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

This document was acknowledged before me by Ann Marie Austin, the Assistant Secretary of the Public Finance Authority, on this 20th day of July, 2016, on behalf of the Authority.



Valerie A. Hollnagel
Notary Public Valerie A. Hollnagel
My Commission expires: 2/2/2018

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BIRCHWOOD PROPERTIES LIMITED PARTNERSHIP,

a North Dakota limited partnership

By: Breezy Shores, LLC, a North Dakota limited liability company
Its: General Partner

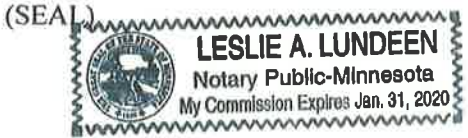


By: _____
Name: David B. Juran
Title: Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 27th day of July, 2016, by David B. Juran, being the Chief Manager of Breezy Shores, LLC, the General Partner of Birchwood Properties Limited Partnership, a North Dakota limited partnership, on behalf of the partnership.

Leslie A. Lundeen
Notary Public



(Signature page to First Amendment to Regulatory Agreement)

U.S. BANK NATIONAL ASSOCIATION

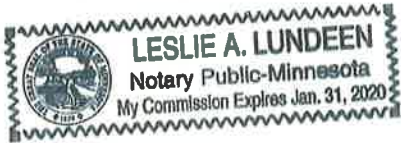
By: [Signature]
Its: Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 27th day of July, 2016, by Dan Sheff, being the Vice President of U.S. Bank National Association, a national banking association, on behalf of said national banking association.

[Signature]
Notary Public

(SEAL)



(Signature page to First Amendment to Regulatory Agreement)

**EXHIBIT A
TO
FIRST AMENDMENT TO REGULATORY AGREEMENT**

LEGAL DESCRIPTION OF REAL ESTATE

That real property lying and being in the City of Miles City, County of Custer, Montana, and described as follows, to-wit:

Lots 1, 2, 3 and 4 in Block 4 of Southgate Meadows, an addition to the City of Miles City, Custer County, Montana, according to the AMENDED plat and survey of said Southgate Meadows, filed for record as Document No. 61997 in Envelope No. 197A of the Plat Cabinet in the office of the County Clerk and Recorder in and for Custer County, Montana.

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