



# INDUSTRIAL COMMISSION OF NORTH DAKOTA

Doug Burgum  
Governor

Drew H. Wrigley  
Attorney General

Doug Goehring  
Agriculture Commissioner

Wednesday, June 26<sup>th</sup>, 2024

Governor's Conference Room or Microsoft Teams – 12:00 pm

Meeting Coordinators:

Karen Tyler, Interim Executive Director

Reice Haase, Deputy Executive Director

Brenna Jessen, Recording Secretary

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## I. **Roll Call and Pledge of Allegiance**

## II. **Office of the Industrial Commission – Karen Tyler, Reice Haase**

- A. **Consideration of May 28, 2024 Meeting Minutes** (Attachment 1)
- B. Presentation of BND President/CEO Search Committee Status Report – Karen Tyler
- C. Presentation of DMR Director Search Committee Status Report – Reice Haase
- D. **Consideration of contract for administrative management and technical support for Lignite Research, Development and Marketing Program** (Attachment 2) - Reice Haase
- E. Other Office of Industrial Commission Business

(approximately 12:15 pm)

## III. **North Dakota Mill and Elevator – Karen Tyler**

- A. **Consideration of North Dakota Mill and Elevator Profit Transfers** (Attachment 3)
- B. Other Mill and Elevator Business

(approximately 12:20 pm)

## IV. **North Dakota Pipeline Authority – Justin Kringstad**

- A. Presentation of Pipeline Authority Report on Midstream and Project Updates (Attachment 4)

- B. Presentation of Overview of Pipeline Authority's Pipeline Project Capacity Acquisition Authority (Attachment 5)
- C. Other Pipeline Authority Business

(approximately 1:00 pm)

**V. Bank of North Dakota – Todd Steinwand, Rob Pfennig, Kaylen Hausauer**

- A. **Acceptance of Resignation Letter from Todd Steinwand and Appointment of Interim Bank President/CEO** (Attachment 6)
- B. **Consideration of Approval of Pilot Program on Rural Workforce Initiative to Support Housing** (Attachment 7)
- C. **Consideration of Approval of Amendments to General Loan Policy** (Attachment 8)
- D. Presentation of April 17 and 18, 2024 Nonconfidential Committee and Advisory Board Minutes (Attachment 9)
- E. Other Bank of North Dakota Business

**Meeting Closed to the Public for Executive Session Pursuant to NDCC 6-09-35, 44-04-18.4, 44-04-19.1 and 44-04-19.2**

(approximately 1:15 pm)

**VI. Bank of North Dakota Executive Session – Todd Steinwand, Kirby Evanger, Craig Hanson**

- A. **Consideration of Approval of 2 Loans** (Confidential Attachments 10 and 11)
- B. Presentation of Problem Loans as of May 31, 2024 (Confidential Attachment 12)
- C. Presentation of April 17 and 18, 2024 Confidential Committee and Advisory Board Minutes (Confidential Attachment 13)
- D. Other Bank of North Dakota Confidential Business

(approximately 1:45 pm)

**VII. Attorney Consultation**

- A. Changes to the Renewable Energy Standard and the Newly Created Carbon Free Standard under Minn. Stat. § 216B.1691
- B. NDPERS Matter Related to Contribution Limits Under IRC 401(a)(17)

## Meeting Returns to Public Session

(approximately 2:15 pm)

### **VIII. Formal Action taken in Public Session**

(approximately 2:20 pm)

### **IX. Public Finance Authority – Karen Tyler**

- A. **Reappointment of Advisory Committee Member Linda Svihovec for term ending July 1, 2027** (Attachment 14)
- B. Other Public Finance Authority Business

(approximately 2:30 pm)

### **X. Housing Finance Agency – Dave Flohr, Jennifer Henderson**

- A. **Reappointment of Advisory Board Members Lisa Rotvold and Larry Nygaard for terms ending July 1, 2027** (Attachment 16)
- B. **Consideration of Approval of Issuance not to exceed \$16,500,000 Multifamily Tax-Exempt Revenue Bonds for Lashkowitz Riverfront 4, LLLP** (Attachment 17)
- C. **Consideration of Approval of Issuance not to exceed \$5,000,000 Multifamily Taxable Revenue Bonds for Lashkowitz Riverfront 9, LLLP** (Attachment 18)

(approximately 2:45 pm)

### **XI. Outdoor Heritage Fund – Reice Haase, Bob Kuylen, Tyler Dokken**

- A. Presentation of Outdoor Heritage Fund Project Management and Financial Report – Reice Haase (Attachment 19)
- B. **Consideration of Grant Round 24 Recommended Awards:**
  - i. 24-2 (A) North Dakota Forest Service: ND Statewide Windbreak Renovation Initiative 4.0, \$900,000 (Attachment 20)
  - ii. 24-5 (C) City of Belfield: Belfield Dam Improvement, \$145,125 (Attachment 21)
  - iii. 24-10 (A) North Dakota Natural Resources Trust: Bakken Development and Working Lands Program III, \$1,625,000 (Attachment 22)
  - iv. 24-12 (B) North Dakota Natural Resources Trust: Badlands Restoration Project, \$77,000 (Attachment 23)
  - v. 24-13 (C) North Dakota Wildlife Federation: North Dakota Prescribed Fire Program for Ranchland Enhancement, \$200,000 (Attachment 24)

- vi. 24-15 (D) Sunset Park District 1: PreK Park Enhancement, \$10,000 (Attachment 25)
- vii. 24-16 (A) McLean County Water Resource District: Painted Woods Lake Flood Protection & Recreation Project, \$1,000,000 (Attachment 26)
- C. **Consideration of Project Amendment: 022-222 Scope of Work Adjustment** (Attachment 27)
- D. **Resolution of Appreciation for Bob Kuylen** (Attachment 28)
- E. Other Outdoor Heritage Fund Business

(approximately 3:15 pm)

**XII. Department of Mineral Resources - Mark Bohrer, Ed Murphy**

- A. Presentation of Geological Survey Quarterly Report – Ed Murphy (Attachment 29)
- B. Presentation of Oil and Gas Division Quarterly Report – Mark Bohrer (Attachment 30)
- C. **Consideration of the following cases:**
  - i. Order No. 33618 issued in Case No. 30958 regarding an application of Continental Resources, Inc. for an authorization to drill a saltwater disposal well in Williams County, ND (Attachment 31)
- D. Other Department of Mineral Resources Business

(approximately 3:45 pm)

**I. Legal Update – Phil Axt**

- A. Litigation Update
  - i. Northwest Landowners v. NDIC – Phil Axt
  - ii. NDIC v. DOI Quarterly Federal Lease Sales
  - iii. Northern Oil and Gas v. Continental Resources, NDIC et al
- B. Federal Regulatory Update
  - i. BLM Resource Management Plan
  - ii. BLM Conservation and Landscape Rule
  - iii. BLM Mineral Leases and Leasing Process Rule
  - iv. EPA Methane Waste Emission Charge
  - v. BLM Venting and Flaring
  - vi. Dakota Prairie Grasslands Travel Management Plan
  - vii. DAPL Draft Environmental Impact Statement
  - viii. Federal Executive Order 14008
- C. Other Industrial Commission Legal Updates

\* Possible Executive Session under N.D.C.C. 44-04-19.1(9) & 44-04-19.2 for attorney consultation

(approximately 4:00 pm)

**XIII. Adjournment**

Next Meeting – July 30<sup>th</sup>, 2024, 1:00 pm  
Governor's Conference Room, Bismarck, ND

Minutes of a Meeting of the Industrial Commission of North Dakota

Held on May 28, 2024 beginning at 1:00 p.m.

Governor's Conference Room – State Capitol

Present: Governor Doug Burgum, Chairman  
Attorney General Drew H. Wrigley  
Agriculture Commissioner Doug Goehring

Also Present: This meeting was open through Microsoft Teams so not all attendees are known.  
Agency representatives joined various portions of the meeting.

Governor Burgum called the meeting of the Industrial Commission to order at approximately 1:05 p.m.

Ms. Karen Tyler took roll call, and Governor Burgum and Attorney General Wrigley were present.

Governor Burgum invited the room to stand and join the Commission in saying the Pledge of Allegiance.

**OFFICE OF THE INDUSTRIAL COMMISSION**

Ms. Karen Tyler presented for consideration of approval the April 30, 2024 Industrial Commission meeting minutes.

**It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approve the April 30, 2024 meeting minutes.**

**On a roll call vote, Governor Burgum and Attorney General Wrigley voted aye. The motion carried.**

Ms. Tyler presented for consideration of approval an updated professional services contract for the Pipeline Authority.

**It was moved by Attorney General Wrigley and seconded by Governor Burgum that the Industrial Commission approve the updated and standardized contract format for the Pipeline Authority Executive Director contract and that the updated contract be executed and replace that currently in effect.**

**On a roll call vote, Governor Burgum and Attorney General Wrigley voted aye. The motion carried.**

Ms. Tyler presented for consideration of approval an updated professional services contract for the Transmission Authority.

**It was moved by Attorney General Wrigley and Governor Burgum that the Industrial Commission approve the updated and standardized contract format for the Transmission Authority Executive Director contract and that the updated contract be executed and replace that currently in effect.**

**On a roll call vote, Governor Burgum and Attorney General Wrigley voted aye. The motion carried.**

\*Commissioner Goehring joined the meeting at 1:15 p.m.

Mr. Reice Haase presented for consideration of approval a contract template for administrative management and technical support for Industrial Commission research and development programs.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the updated and standardized contract format for the Lignite Research, Development and Marketing Program consulting services and authorizes the Office of the Industrial Commission to execute the contract for consulting services.**

**On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

#### **NORTH DAKOTA MILL AND ELEVATOR**

Mr. Vance Taylor presented the Fiscal Year 2024 3<sup>rd</sup> Quarter Results. Profits for the 3<sup>rd</sup> quarter of the year were \$5,187,825 compared to \$4,809,663 last year. Operating activity for the nine months ending March resulted in a profit of \$15,027,952 compared to \$11,315,019 last year, an increase of 32%. Sales for the 3<sup>rd</sup> quarter were \$123,236,967 compared to \$128,057,893 last year. Operating costs for the 3<sup>rd</sup> quarter were \$12,657,095 compared to \$12,329,601 last year. Profits for the 3<sup>rd</sup> quarter were \$5,187,825 compared to \$4,809,663 last year.

Ms. Karen Tyler and Ms. Cathy Dub presented for consideration of approval a recommendation to contract for consulting services.

The memo reads as follows:

“In August of 2023, a complaint by a former ND Mill employee was received by the Office of the Industrial Commission. Over the following months the Mill’s Chief Financial Officer, Cathy Dub, worked to address the matters set forth in the complaint, and I held numerous meetings with Ms. Dub and also with representatives of the Attorney General’s office.

The Mill has compiled a comprehensive response that covers each item in the complaint. However, due to the passage of time before the complaint was made, records retention policy, and employee turnover, Mill management was unable to review records pertaining to or corroborate numerous of the assertions made.

While the process of addressing this complaint has been thorough, and while all items that could be researched and reviewed have been addressed, awareness has been raised for myself and for the Mill management that the Mill may benefit from an independent review of current human resource, information technology, and governance policies. The primary goals of the review would be to ensure the Mill is operating with industry best practices, remains competitive and innovative, and continues to attract and retain the talent needed to operate profitably for the state.

Therefore, I am recommending the Industrial Commission consider the approval of the Mill’s request to contract for the services of an independent consultant to provide a performance review and deliver recommendations related to the North Dakota Mill and Elevator Association’s human resource, information technology, and governance policies and current management practices related thereto.”

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the Mill’s request to contract for the services of an independent**

**consultant to provide a performance review and deliver recommendations related to the North Dakota Mill and Elevator Association’s human resource, information technology, and governance policies and current management practices related thereto.**

**On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

Under other business, Governor Burgum asked for an update on the Midds project. Mr. Taylor said they are hoping to be complete with the Midds Storage Facility and be ready for tours by October 2024. All the current capital projects are on schedule and on budget for this year.

#### **NORTH DAKOTA PUBLIC FINANCE AGENCY**

Ms. DeAnn Ament presented for consideration of approval the following State Revolving Fund loan application:

- i. City of Minot – Drinking Water - \$3,704,000

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approve the \$3,704,000 Drinking Water State Revolving Fund loan to the City of Minot.**

**On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

#### **A RESOLUTION WAS MADE**

##### **RESOLUTION APPROVING**

##### **LOAN FROM DRINKING WATER STATE REVOLVING FUND**

WHEREAS, the Industrial Commission has heretofore authorized the creation of a Drinking Water State Revolving Fund Program (the “Program”) pursuant to N.D.C.C. chs. 6-09.4, 61-28.1, and 61-28.2; and

WHEREAS, the State Revolving Fund is governed in part by the Master Trust Indenture dated as of July 1, 2011 (the "Indenture"), between the North Dakota Public Finance Authority (the “NDPFA”) and the Bank of North Dakota (the “Trustee”); and

WHEREAS, the City of Minot (the “Political Subdivision”) has requested a loan in the amount of \$3,704,000 from the Program to replace cast iron pipe with PVC pipe; and

WHEREAS, NDPFA’s Advisory Committee is recommending approval of the Loan; and

WHEREAS, there has been presented to this Commission a form of Loan Agreement proposed to be adopted by the Political Subdivision and entered into with the NDPFA;

NOW, THEREFORE, BE IT RESOLVED by the Industrial Commission of North Dakota as follows:

1. The Loan is hereby approved, as recommended by the Advisory Committee.



2. The form of Loan Agreement to be entered into with the Political Subdivision is hereby approved in substantially the form on file and the Executive Director is hereby authorized to execute the same with all such changes and revisions therein as the Executive Director shall approve.

3. The Executive Director is authorized to fund the Loan from funds on hand in the Drinking Water Loan Fund established under the Indenture upon receipt of the Municipal Securities described in the Political Subdivisions bond resolution, to submit to the Trustee a NDPFA Request pursuant to the Indenture, and to make such other determinations as are required under the Indenture.

4. The Commission declares its intent pursuant to Treasury Regulations '1.150-2 that any Loan funds advanced from the Federally Capitalized Loan Account shall be reimbursed from the proceeds of bonds issued by the NDPFA under the Indenture.

Adopted: May 28, 2024

Ms. Ament gave a presentation of the State Revolving Fund loans approved by the Public Finance Authority Advisory Board:

- i. Drake – Clean Water - \$149,000
- ii. Medina – Drinking Water - \$1,250,000
- iii. Northeast Regional Water District – Drinking Water - \$1,768,000

#### **NORTH DAKOTA HOUSING FINANCE AGENCY**

Mr. Brandon Dettlaff presented for consideration of approval changes to the FirstHome Income Limits.

The memo reads as follows:

“The Department of Housing and Urban Development (HUD) published new median income numbers on April 3, 2024. These numbers are used to establish the Annual Income limits for FirstHome, FirstHome Start, FirstHome DCA, and HomeAccess programs.

The new statewide median income for North Dakota increased \$3,500 (3.49%) to \$103,900 for 2024. This compares to the national median income increase of \$1,600 (1.66%) to \$97,800.

Mortgage Revenue Bond (MRB) regulations allow the use of the greater of county or state median income and those regulations and NDHFA policy limit household incomes as follows:

- FirstHome – 100% of median income – one and two member households by county (MRB regulation)
- FirstHome – 115% of median income – three or more member households by county (MRB regulation)
- DCA limits – 80% of median income by family size and county (NDHFA policy)

The proposed 2023 limits range from \$103,900 to \$128,110 depending on family size and county.

The NDHFA Advisory Board recommends the Industrial Commission approve, in the form of Program Directive No. 122 per Exhibit 1, new Annual Income limits effective for loan reservations under FirstHome (Standard/Start/HomeAccess) programs dated on or after June 1, 2024.

The Advisory Board further recommends changes to the DCA Program limits per Exhibit 2 effective for loan reservations dated on or after June 1, 2024.”

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accept the recommendation of the NDHFA Advisory Board and approve, in the form of Program Directive No. 122, new Annual Income limits effective for loan reservations under the FirstHome/Standard/Start/HomeAccess programs dated on or after June 1, 2024 as follows:**

**Maximum Annual Income**

**FirstHome/Start/HomeAccess**

County	Family Size	Family Size
	Less than 3	3 or more
Mercer/Williams	\$111,400	\$128,110
Burleigh/Morton/Oliver/McKenzie/Stark	\$108,300	\$124,545
Cass	\$105,900	\$121,785
Ward	\$105,200	\$120,980
Grand Forks	\$104,300	\$119,945
All Other Counties	\$103,900	\$119,485

**And further that the Industrial Commission accept the recommendation of the NDHFA Advisory Board and approve changes to the DCA Program limits per Exhibit 2 effective for loan reservations dated on or after June 1, 2024 as follows:**

**DCA INCOME LIMITS**  
06/01/2024

COUNTY	FAMILY SIZE*							
	1	2	3	4	5	6	7	8
Mercer/Williams	62,400	71,300	80,200	89,100	96,250	103,400	110,500	117,650
Burleigh/Morton/Oliver/McKenzie/Stark	60,700	69,350	78,000	86,650	93,600	100,550	107,450	114,400
Cass	59,300	67,800	76,250	84,700	91,500	98,300	105,050	111,850
Grand Forks/Ward	58,450	66,800	75,150	83,450	90,150	96,850	103,500	110,200
All Others	56,850	65,000	73,100	81,200	87,700	94,200	100,700	107,200

**On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

Ms. Kayla Axtman gave a report on the pricing and sale of the 2024 Series AB Bond Issue, and an update on the current interest rate environment impact on single-family homeownership programs. Since the beginning of 2023, the Federal Reserve has raised interest rates 4 times, bringing the fed funds rate to 5.25%-5.50%. During this same time, the Agency has moved the tax exempt 30-year mortgage rate 9 times and continues to be well below the current market rate for a 30-year conventional loan. The average 30-year FHA mortgage rate is 6.61% and the average 30-year conventional mortgage is 7.11% right now. For the past two months, the Agency is averaging just over \$10.4 million a week in FirstHome (tax exempt) reservations and approximately \$1.4 million in Roots (taxable) reservations. Currently, the

average total payment (principal, interest, taxes and insurance) for a FirstHome borrower is \$1,191 and for a Roots borrower is \$1,932.

### **RENEWABLE ENERGY PROGRAM**

Mr. Charles Gorecki and Mr. Reice Haase presented for consideration of approval the following Grant Round 53 Recommended Award:

- i. **R-053-B – Regional Electric Vehicle Infrastructure Resiliency (REVIR) Plan**; Submitted by EERC; Total Project Costs: \$1,875,000; Award Amount: \$375,000

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accepts the recommendation of the Renewable Energy Council, approves the following Renewable Energy Program project, and authorizes the Office of the Industrial Commission to enter into a contract for the following project:**

**R-053-B – Regional Electric Vehicle Infrastructure Resiliency (REVIR) Plan; Submitted by EERC; Total Project Costs: \$1,875,000; Award Amount: \$375,000**

**On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

### **LIGNITE RESEARCH, DEVELOPMENT AND MARKETING PROGRAM**

Mr. Reice Haase gave a presentation of the Lignite Research Program Project Management and Financial Report. The Lignite Research fund has 255 cumulative projects with 20 of those being active. The fund has \$26,945,449.87 in committed funds and \$5,295,800.49 in funds available for projects.

Mr. Mike Holmes gave a presentation of the Lignite Research and Development Report. The current Lignite Research Program's active projects are focused on Carbon Management (19%), Rare Earth Elements and Critical Minerals (23%), Emerging Markets (50%), and Miscellaneous (8%).

Mr. Holmes presented for consideration of approval the following Grant Round 104 Recommended Awards:

- i. **LRC-104A:** Continued Funding for Regional Lignite Public Affairs Program
- ii. **LRC-104B:** Phase I Bridge Study for CCS at Coal Creek Station
- iii. **LRC-104C:** Lignite Conversion Reactor Optimization for Commercial Carbon Pitch Manufacturing

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accepts the recommendation of the Lignite Research Council, approves the following Lignite Research Development and Marketing Program projects, and authorizes the Office of the Industrial Commission to enter into contracts for the following projects:**

**LRC-104A - Continued Funding for Regional Lignite Public Affairs Program; Submitted by Lignite Energy Council; Total Project Costs: \$3,600,000; Award Amount: \$1,800,000**

**LRC-104B - Phase I Bridge Study for CCS at Coal Creek Station; Submitted by Rainbow Energy Center; Total Project Costs: \$2,188,833; Award Amount: \$1,094,416**

**LRC-104C - Lignite Conversion Reactor Optimization for Commercial Carbon Pitch Manufacturing; Submitted by AmeriCarbon Products, LLC; Total Project Costs: \$1,488,809; Award Amount: \$743,809**

**On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

Mr. Claire Vigesaa presented for consideration of approval the Transmission Authority's request for \$582,795: IJJA Grid Resiliency FY 2024 Match.

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission accepts the recommendation of the Lignite Research Council and authorizes \$582,795 from the Lignite Research Fund to be used as the state match for the North Dakota Transmission Authority's application for Fiscal Year 2024 funding for Grid Resilience Grants under Section 40101(d) of the Infrastructure Investment and Jobs Act.**

**On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

Under other business, Mr. Vigesaa gave an update on the Final Carbon Rule Modeling Study stating that the EPA reduced demand forecasts when it should have been increased. The Commission members stated that the issues related to electricity demand growth and generation capacity shortage must be urgently and continuously communicated to the public to build understanding of the real and growing potential of future blackouts.

#### **BANK OF NORTH DAKOTA**

Mr. Darrell Lingle with Eide Bailly gave a presentation of the North Dakota Guaranteed Student Loan Program Audit. In Eide Bailly's opinion, the accompanying financial statements, present fairly, in all material respects, the respective financial position of the business-type activities of the Program, as of December 31, 2023 and 2022, and the respective changes in its financial position and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Mr. Lingle with Eide Bailly gave a presentation of the Independent Auditor's Report and Fiscal Statement for Bank of North Dakota for Year Ending December 31, 2023 (FASB). In Eide Bailly's opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Bank of North Dakota as of December 31, 2023 and 2022, and the results of its operations and its cash flows for years then ended, in accordance with financial reporting provisions as promulgated by FASB described in Note 1.

Mr. Todd Steinwand presented the 2023 BND Annual Report for the Commission members review.

Mr. Steinwand presented the Commission members with the following Non-confidential BND Advisory Board meeting minutes for their review:

- i. March 20, 2024 Nonconfidential Finance and Credit Committee Minutes
- ii. March 21, 2024 Nonconfidential Advisory Board Minutes

It was moved by Attorney General Wrigley and seconded by Commissioner Goehring that under the authority of North Dakota Century Code Sections 6-09-35, 44-04-18.4, 44-04-19.1, 44-04-19.2, the Industrial Commission enter into executive session for the purposes Bank of North Dakota confidential business.

On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.

The Commission is meeting in executive session regarding Bank of North Dakota confidential business pursuant to N.D.C.C. 6-09-35 to consider those items listed on the agenda under Bank of North Dakota confidential business. Only Commission members, their staff, Commission staff, and BND staff will participate in that executive session.

After the Bank of North Dakota executive session, the Commission will meet in executive session for attorney consultation regarding that item listed on the agenda. Only Commission members, their staff, Commission staff, and Commission attorneys will participate in that executive session.

Any formal action taken by the Commission will occur after it reconvenes in open session.

Governor Burgum reminded the Commission members and those present in the executive session that the discussions must be limited to the announced purposes which is anticipated to last approximately 45 minutes.

The executive session began at 3:30 pm.

**The Meeting Closed to the Public for Executive Session Pursuant to NDCC 6-09-35, 44-04-18.4, 44-04-19.1, 44-04-19.2.**

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#### **BANK OF NORTH DAKOTA EXECUTIVE SESSION**

##### **Industrial Commission Members Present**

Governor Doug Burgum

Attorney General Drew H. Wrigley

Agriculture Commissioner Doug Goehring

##### **BND Members Present**

Todd Steinwand, BND

Kirby Evanger, BND

Rob Pfennig, BND

Craig Hanson, BND

Kaylen Hausauer, BND

##### **Others in attendance**

John Reiten                      Governor's Office

Ryan Norrell                     Governor's Office

Zach Greenberg                 Governor's Office

Jace Beehler	Governor's Office
Dutch Bialke	Ag Department
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office
Brenna Jessen	Industrial Commission Office

### **ATTORNEY CONSULTATION**

#### **Industrial Commission Members Present**

Governor Doug Burgum  
Attorney General Drew H. Wrigley  
Agriculture Commissioner Doug Goehring

Winthrop and Weinstine Attorney's  
Brent Lawrence  
Tom Boyd

#### Others in attendance

John Reiten	Governor's Office
Ryan Norrell	Governor's Office
Zach Greenberg	Governor's Office
Jace Beehler	Governor's Office
Phil Axt	Attorney General's Office
Dutch Bialke	Ag Department
Lynn Helms	Department of Mineral Resources
Karen Tyler	Industrial Commission Office
Reice Haase	Industrial Commission Office
Brenna Jessen	Industrial Commission Office

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The executive session ended at 5:10 p.m. and the Commission reconvened in open session.

**During the Bank of North Dakota executive session, the Commission discussed Bank of North Dakota confidential items.**

**During the Attorney Consultation executive session, the Commission consulted with its attorneys regarding the Minnesota Renewable Energy Standard and the Newly Created Carbon Free Standard under Minnesota Statute Chapter 216B.**

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Commission approve its comment letter regarding the Minnesota Renewable Energy Standard, contingent upon the addition of references to the Transmission Authority's studies on EPA proposed rules and authorizes the Office of the Industrial Commission to submit its comment letter to the Minnesota Public Utilities Commission.**

## LEGAL UPDATE

### A. Litigation Update

- i. NDIC v. DOI Quarterly Federal Lease Sales
- ii. Northern Oil and Gas v. Continental Resources, NDIC et al

### B. Federal Regulatory Update

- i. EPA Methane Waste Emission Charge
- ii. BLM Venting and Flaring
- iii. Dakota Prairie Grasslands Travel Management Plan
- iv. DAPL Draft Environmental Impact Statement
- v. Federal Executive Order 14008

## DEPARTMENT OF MINERAL RESOURCES

Governor Burgum requested that the presentation of the Geological Survey Quarterly Report be moved to next month's Industrial Commission meeting due to time constraints.

Dr. Lynn Helms presented for consideration of approval the following cases:

- i. **Order No. 33319 issued in Case No. 30669** regarding an application of Hess Bakken Investments II, LLC to establish a 1,280-acre spacing unit in McKenzie County, ND

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order No. 33319 issued in Case No. 30669 granting an application of Hess Bakken Investments II, LLC for an order amending the applicable orders for the Blue Buttes-Bakken Pool to establish an overlapping laydown 1280-acre spacing unit described as Section 12, T.150N., R.96W. and Section 7, T.150N., R.95W., McKenzie County, ND, and authorize one horizontal well to be drilled on such unit, or granting such other relief as may be appropriate.**

**On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

- ii. **Order No. 33464 issued in Case No. 30804** regarding an application of Hess Bakken Investments II, LLC to establish an overlapping 3,840-acre spacing unit in McKenzie County, ND

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order No. 33464 issued in Case No. 30804 granting an application of Hess Bakken Investments II, LLC for an order amending the applicable orders for the Blue Buttes-Bakken Pool to establish an overlapping 3840-acre spacing unit described as Sections 25 and 36, T.151N., R.96W., Sections 30 and 31, T.151N., R.95W., Section 1, T.150N., R.96W., and Section 6, T.150N., R.95W., McKenzie County, ND, and authorize one horizontal well to be drilled on such unit, or granting such other relief as may be appropriate.**

**On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

- iii. **Order No. 33469 issued in Case No. 30809** regarding the confiscation of equipment and salable oil at the Erickson 1-27H well in Divide County, ND

- iv. **Order No. 33470 issued in Case No. 30810** regarding the confiscation of equipment and salable oil at the Landstrom 1-33H well in Divide County, ND
- v. **Order No. 33471 issued in Case No. 30811** regarding the confiscation of equipment and salable oil at the Burner 1-34H well in Divide County, ND
- vi. **Order No. 33472 issued in Case No. 30812** regarding the confiscation of equipment and salable oil at the 29-144-102 Burlington Northern 1 well in Billings County, ND

**It was moved by Commissioner Goehring and seconded by Attorney General Wrigley that the Industrial Commission approves Order Nos. 33469, 33470, 33471, and 33472 issued in Case Nos. 30809, 30810, 30811, and 30812 respectively, authorizing the confiscation of all production-related equipment and salable oil at the Erickson 1-27h well (File No. 16087), Lot 1 Section 27, T.164N., R.97W., Crosby Field, Divide County, ND, Landstrom 1-33h well (File No. 16307), NENE Section 33, T.164N., R.97W., Crosby Field, Divide County, ND, Burner 1-34h well (File No. 16267), NENE Section 34, T.164N., R.97W., Crosby Field, Divide County, ND, and the 29-144-102 Burlington Northern 1 well (File No. 8234), NWNW Section 29, T.144N., R.102W., Morgan Draw Field, Billings County, ND, operated by Vast Operations, LLC, Dry Creek Disposal Company, Inc., or any working interest owner, pursuant to NDCC §§ 38-08-04 and 38-08-04.9.**

**On a roll call vote, Governor Burgum, Attorney General Wrigley, and Commissioner Goehring voted aye. The motion carried unanimously.**

Dr. Helms gave a report on Abandoned Well Plugging and Site Restoration Fund settled civil cases.

Ms. Tyler presented the Industrial Commission Resolution of Appreciation for Lynn Helms.

**A RESOLUTION WAS MADE**

Resolution of Appreciation

- Whereas,** Lynn Helms has admirably served the State of North Dakota since June 1998, both as the Director of the Oil and Gas Division and as the Director of the Department of Mineral Resources; and
- Whereas,** Lynn has been dedicated to the Department’s mission of encouraging and promoting the development, production, and utilization of oil and gas in the state in such a manner as will prevent waste, maximize economic recovery, and fully protect the correlative rights of all owners to the end that the landowners, the royalty owners, the producers, and the general public realize the greatest possible good from these vital natural resources; and
- Whereas,** During Lynn’s tenure with the Department, North Dakota’s average monthly oil production has grown from approximately 99,000 barrels per day in 1998 to over 1.2 million barrels per day in 2024; and
- Whereas,** Lynn’s work during this time fostered a stable regulatory environment within which the incredible growth of North Dakota’s oil and gas industry was made possible, which has resulted in the greatest possible good for all North Dakotans, revenues from which are used to fund public infrastructure like drinking water, schools, and roads; and



**Whereas,** Lynn played a key role in advancing many milestones on behalf of North Dakota, including primacy over the Environmental Protection Agency’s Class VI carbon dioxide injection program, historic tribal-state oil tax sharing agreements, demonstrating the safety of shipping Bakken crude oil by rail, providing the framework for the federal REGROW Act, and serving as a well-respected national leader in organizations like the Interstate Oil and Gas Compact Commission; and

**Whereas,** Lynn’s dedication to the Industrial Commission and to the State of North Dakota will leave a lasting legacy for all citizens of our state and is  
deserving of recognition.

**Now, therefore,** the North Dakota Industrial Commission hereby expresses deep gratitude to Lynn Helms for his service to the citizens of North Dakota and wishes him the very best in his retirement.

Adopted this 28<sup>th</sup> day of May, 2024.

Ms. Tyler presented a Delegation Resolution for Geological Survey.

**A RESOLUTION WAS MADE**

Resolution of Delegation: Geological Survey

**Whereas,** The Industrial Commission ("Commission") has a range of responsibilities and broad authority under Title 38 of the North Dakota Century Code, titled "Mining and Gas and Oil Production" and Chapters 54-17.3 titled "Paleontological Resource Protection," 54-17 .4 titled "Geological Survey" and 23-20.2 titled "Disposal of Nuclear & Other Waste Material."; and

**Whereas,** the Commission has authority under North Dakota Century Code Chapters 38-08, "Control of Gas and Oil Resources;" 38-08.1, "Geophysical Exploration Requirements;" 38-12, "Regulation, Development, and Production of Subsurface Minerals;" 38-12.1, "Exploration Data;" 38-15, "Resolution of Conflicts in Subsurface Mineral Production;" 38-19, "Geothermal Resource Development Regulation;" 38-21, "Exploration Fund;" 38-22, "Carbon Dioxide Underground Storage;" and 38-25, "Underground Storage of Oil and Gas"; and

**Whereas,** The Commission has adopted administrative rules to implement Title 38, and Chapters 54-17.3, and 54-17.4, which provides for the Director of the Department of Mineral Resources to either “appoint the state geologist or carry out the duties of the state geologist along with the duties of director of mineral resources.”; and

**Whereas,** North Dakota Century Code Section 38-08-04.2 provides that the Commission “may delegate to the director of oil and gas all powers the commission has under this title and under rules enacted under this title.”; and

**Whereas,** Lynn Helms, Director of the Department of Mineral Resources has announced his intention to retire, effective June 30<sup>th</sup>, 2024.

**Now, therefore,** the North Dakota Industrial Commission delegates to the State Geologist the authority to carry out, on the Commission's behalf and in its name, all of the Commission's Chapters 54-17.3, 54-17.4 and 23-20.2 statutory and administrative rule authority and responsibility. This delegation of authority does not, however, include the following:

1. Executing final orders for cases in which the person opposing the requested relief presents substantial or procedurally sound reasons for the opposition;
2. Executing final orders for cases in which the State Geologist contemplates granting relief that substantially differs from that requested;
3. Initiating and settling litigation in the courts;
4. Executing final orders imposing a fine for administrative cases in which the person who is the subject of an administrative complaint opposes the proposed penalty and the State Geologist cannot reach a negotiated settlement with such person;
5. Executing orders granting or denying a petition for reconsideration;
6. Executing final orders for cases dealing with the development or production of subsurface minerals.

Adopted this 28<sup>th</sup> day of May, 2024.

Ms. Tyler presented a Delegation Resolution for Oil and Gas Division.

#### **A RESOLUTION WAS MADE**

##### Resolution of Delegation: Oil and Gas Division

**Whereas,** The Industrial Commission ("Commission") has a range of responsibilities and broad authority under Title 38 of the North Dakota Century Code, titled "Mining and Gas and Oil Production" and Chapters 54-17.3 titled "Paleontological Resource Protection," 54-17.4 titled "Geological Survey" and 23-20.2 titled "Disposal of Nuclear & Other Waste Material."; and

**Whereas,** the Commission has authority under North Dakota Century Code Chapters 38-08, "Control of Gas and Oil Resources;" 38-08.1, "Geophysical Exploration Requirements;" 38-12, "Regulation, Development, and Production of Subsurface Minerals;" 38-12.1, "Exploration Data;" 38-15, "Resolution of Conflicts in

Subsurface Mineral Production;" 38-19, "Geothermal Resource Development Regulation;" 38-21, "Exploration Fund;" 38-22, "Carbon Dioxide Underground Storage;" and 38-25, "Underground Storage of Oil and Gas"; and

**Whereas,** The Commission has adopted administrative rules to implement Title 38, and Chapters 54-17.3, and 54-17.4, which provides that “the industrial commission is authorized to appoint a director of mineral resources who shall serve at the pleasure of the commission. The director of mineral resources shall carry out the duties of the director of oil and gas along with the duties of director of mineral resources.”; and

**Whereas,** North Dakota Century Code Section 38-08-04.2 provides that the Commission “may delegate to the director of oil and gas all powers the commission has under this title and under rules enacted under this title.”; and

**Whereas,** Lynn Helms, Director of the Department of Mineral Resources has announced his intention to retire, effective June 30<sup>th</sup>, 2024.

**Now, therefore,** the North Dakota Industrial Commission delegates to the Director of Oil and Gas the authority to carry out, on the Commission's behalf and in its name, all of the

Commission's Title 38 statutory and administrative rule authority and responsibility. This delegation of authority does not, however, include the following:

1. Executing final orders for cases dealing with creating and terminating secondary and tertiary recovery units;
2. Executing final orders for cases in which the person opposing the requested relief presents substantial or procedurally sound reasons for the opposition;
3. Executing final orders for cases in which the Director contemplates granting relief that substantially differs from that requested;
4. Initiating and settling litigation in the courts;
5. Executing final orders imposing a fine for administrative cases in which the person who is the subject of an administrative complaint opposes the proposed penalty and the Director cannot reach a negotiated settlement with such person;
6. Executing orders granting or denying a petition for reconsideration;
7. Executing final orders for cases dealing with carbon dioxide storage facility permits and certificates of carbon dioxide project completion;

Adopted this 28<sup>th</sup> day of May, 2024.

Being no further business, Governor Burgum adjourned the meeting at 5:25 p.m. and invited everyone to the Pioneer Room following the meeting to celebrate Lynn Helms and his retirement.

North Dakota Industrial Commission

Brenna Jessen, Recording Secretary

Reice Haase, Deputy Executive Director

Karen Tyler, Interim Executive Director

**CONSULTING SERVICES AGREEMENT**  
**LIGNITE RESEARCH DEVELOPMENT AND MARKETING PROGRAM**

**THIS AGREEMENT** is made and entered into as of July 1, 2024, between the State of North Dakota (State) acting by and through its Industrial Commission (“Commission”) and North Dakota Lignite Energy Foundation ("Contractor") whose address is 1016 E Owens Ave, Bismarck, ND 58501, North Dakota.

**WHEREAS**, the State through legislation adopted in 1987 has established the North Dakota Lignite Research, Development and Marketing Program (LRP) to assist with the development and wise use of North Dakota's vast lignite resources and to promote the economic, efficient, and clean uses of lignite and products derived from lignite in order to maintain and enhance development of North Dakota lignite and its products; support educational activities relating to the lignite industry; preserve and create jobs involved in the production and utilization of North Dakota lignite; ensure economic stability, growth, and opportunity in the lignite industry; and maintain a stable and competitive tax base for our state's lignite industry for the general welfare of North Dakota.

**WHEREAS**, the Commission is interested in contracting with Contractor to provide the professional services required by the Commission to implement the work of the LRP and Contractor agrees to provide the requested professional services.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and conditions contained herein, and subject to the approval of the Commission as required below, the parties hereby agree as follows:

**1.0 INDEPENDENT CONTRACTOR**

Contractor shall perform the services specified in this Agreement as an independent contractor and not as an employee of the Commission. No part of this Agreement shall be construed as creating an employer/employee relationship between the Commission and the Contractor. As an independent contractor, Contractor shall be responsible for payroll related taxes and insurances and covenants that will be paid when due.

**2.0 TERM**

The effective date of this contract is July 1, 2024. The term of this contract shall be for a total of up to twelve months or upon completion of the work required under the LRP, whichever first occurs, with a review at the end of twelve months.

**3.0 SCOPE OF WORK**

Contractor shall provide technical professional services required by the Commission for the successful administration of the LRP. Specific responsibilities include, but are not limited to, the following:

1. Assists with the development of strategy(ies) and implementation plan(s) to facilitate development of priority opportunities to enhance the development and use of North Dakota lignite as directed in the program.
2. Maintains knowledge of laws, regulations, policies and guidelines related to the program. Communicates accurate interpretations and requirements to project applicants, to the Lignite Research Council and to the Commission.
3. Performs administrative duties and is responsible for planning and program development to ensure a cost-effective program. Reviews regular and special reports related to projects and handles correspondence as necessary. Supplies prospective applicants with necessary application information, rules and regulations and any other pertinent information related to the application and review process.

4. Ensures compliance with program requirements and coordinates completeness review of all application submittals for the Lignite Research Council and the Commission. Ensures that all applications meet regulatory requirements and communicates with applicants as appropriate.
5. Recommends selection of and communicates with qualified Independent Technical Peer Reviewers and coordinates the recommendation and comments of the peer reviewers of projects, proposed projects and proposals. Establishes schedules for peer review, collects comments and establishes peer review committees as necessary to develop reports and recommendations to the Lignite Research Council and Commission. Ensures independent and credible analysis of potential projects and projects to insure:
  - a. Technical merit
  - b. Application to North Dakota lignite
  - c. Marketability
  - d. Economic feasibility
  - e. Prospect for rapid commercialization
  - f. Likelihood for attracting private matching funds
  - g. Potential for preserving existing lignite production and jobs or generating additional production and economic growth
6. Assists with negotiation of contracts with successful project applicants as needed and monitors contracts to ensure compliance with Commission policies and procedures. Responsible for monitoring all funded projects. Reports on a regular basis to the Commission on the status of the funded projects.
7. Assists with development of financial recommendations for individual projects and with implementation of financing proposals by working with project partners, the state, and the federal government. Identifies specific sources of cost sharing revenue for potential projects. Works to maximize the availability of private, state, and federal funds for potential lignite research and development projects.
8. Ensures timely filing of all required reports and prepares and coordinates the preparation of regulatory or special reports as required by contract, laws, and rules or at the request of the Commission. Communicates with prospective and successful applicants about the requirements of reports.
9. Assists the Commission with promotion of lignite-based energy conversion projects through Advanced Energy Technology and related demonstration projects.
10. Assists the Commission with lignite-based Research and Development opportunities with the U.S. Department of Energy.
11. Performs other duties as assigned by the Commission.

#### 4.0 COMPENSATION

For all services rendered by the Contractor pursuant to this Agreement, the Contractor shall be paid \$15,542 per month. This rate is intended to include all of the Contractor's general overhead expense, including, but not limited to, the following: rent; office equipment; postage; e-mail; home office secretarial service; local telephone and fax; local travel and meals; employment taxes; insurance; etc. The Commission shall make payment on a monthly basis upon receipt of the Contractor's invoice and report of work completed for the invoice period.

In addition to the above-specified monthly rate, Contractor shall be separately reimbursed for travel and other extraordinary expenses incurred in connection with the performance of this Agreement and as directed by the Commission. The Contractor shall itemize expenses incurred during the invoice period. The Contractor shall be reimbursed at the same rate for meals and lodging as is paid to State employees.

## 5.0 REPORTING

Contractor shall provide a written report prior to a payment for professional services being made that outline what work activities were completed in the invoice period. The Contractor shall also provide such other oral and written reports as the Commission from time-to-time may require. Further, the Contractor shall regularly meet with the Office of the Industrial Commission, either in person or by phone, as the Office determines is necessary to discuss the project objectives, goals, and milestones and shall be available to meet and provide reports to the Lignite Research Council and the Commission.

## 6.0 LIMITED AUTHORITY

Contractor shall have no authority to bind the Commission to any contractual arrangements and is not an agent of the Commission for any purpose.

## 7.0 DATA AND WORK PRODUCT

All data, notes, memoranda, reports, and other work product, of any kind or nature, developed by Contractor pursuant to this Agreement shall be the exclusive property of the Commission. Contractor may not use the data, notes, memoranda, reports, or other work product developed by the Contractor for any purpose other than completion of the scope of work contemplated by this Agreement. Upon termination of this Agreement, all data, notes, memoranda, reports, and other work product remaining in the possession of the Contractor shall be turned over to the Commission.

From time-to-time, Contractor may be provided with confidential reports, data, and work product developed by others for the Commission and/or the State of North Dakota. Contractor may not disclose this confidential work product to third parties without the written permission of the Commission and this work product shall at all times remain the exclusive work product of the Commission. At the termination of this Agreement, all such work product shall be returned to the Commission.

## 8.0 ASSIGNMENT AND SUBCONTRACTING

Contractor may not assign or otherwise transfer or delegate any right or duty without State's express written consent, provided, however, that Contractor may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom State is prohibited from conducting business, State shall have the right to terminate in accordance with the Termination for Cause section of this Contract.

Contractor may enter subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. Contractor is solely responsible for the performance of any subcontractor with whom Contractor contracts. Contractor does not have authority to contract for or incur obligations on behalf of State.

## 9.0 CANCELLATION FOR CONVENIENCE

The Commission shall have the right to terminate this Agreement at any time and for any reason upon 30 days written notice to the Contractor, which notice shall set forth the effective date for the termination. On the termination date specified in the notice, Contractor shall discontinue all work pertaining to this Agreement. Upon termination, Contractor shall be entitled to payment for all earned services up to the termination date, and payment for all reimbursable expenses properly incurred in accordance with this Agreement. The Contractor shall have the right to terminate this Agreement at any time and for any reason upon 30 days written notice to the Commission, which notice shall set forth the effective date for the termination. On the termination date specified in the notice or such date mutually agreed upon by the Commission and Contractor if less than 30 days, the Contractor shall discontinue all work pertaining to this Agreement.

## 10.0 CONFLICTS OF INTEREST

Contractor may not engage in other work in North Dakota during the term of this Agreement that competes or creates a conflict-of-interest with the accomplishment of the goals and objectives of the North Dakota Lignite Research, Development and Marketing Program. The Industrial Commission may grant written approval of other work by the Contractor in North Dakota upon the written request of the Contractor. The Commission acknowledges and does not object to Contractor's position as the Vice President of the Lignite Energy Council (LEC), provided that it does not conflict with the Contractor's obligations under this contract to the Commission, that the Contractor declare a conflict to the Commission for all applications by the LEC to the LRP, and that the Contractor refrain from providing administrative and technical advisory services related to LEC applications to the LRP.

## 11.0 FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), acts of God, or war if the event was not foreseeable through the exercise of reasonable diligence by the affected Party, the event is beyond the Party's reasonable control, and the affected Party gives notice to the other Party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default. If Contractor is the affected Party and does not resume performance within fifteen (15) days or another period agreed between the Parties, then State may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and State shall be entitled to a pro-rata refund of any amounts paid for which the full value has not been realized.

## 12.0 INDEMNIFICATION

Contractor agrees to defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees (State of ND), from and against claims based on the vicarious liability of State of ND or its agents, but not against claims based on the State of ND's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by Contractor to State of ND under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for State of ND is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. 54-12-08. Contractor also agrees to defend, indemnify, and hold State harmless for all costs, expenses and attorneys' fees incurred if State of ND prevails in an action against Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Contract.

## 13.0 CONFIDENTIALITY

Contractor shall not use or disclose any information it receives from State under this Contract that State has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by State. State shall not disclose any information it receives from Contractor that Contractor has previously identified as confidential and that State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of State and Contractor to maintain confidentiality of information under this section continues beyond the Term of this Contract.



#### 14.0 COMPLIANCE WITH PUBLIC RECORDS LAWS

Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, certain records may be open to the public upon request.

Public records may include: (a) records State receives from Contractor under this Contract, (b) records obtained by either Party under this Contract, and (c) records generated by either Party under this Contract.

Contractor agrees to contact State immediately upon receiving a request for information under the public records law and to comply with State's instructions on how to respond to such request.

#### 15.0 INDEPENDENT ENTITY

Contractor is an independent entity under this Contract and is not a State employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor's activities and responsibilities under this Contract, except to the extent specified in this Contract.

#### 16.0 SPOILIATION – PRESERVATION OF EVIDENCE

Contractor shall promptly notify State of all potential claims that arise or result from this Contract. Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to State the opportunity to review and inspect such evidence, including the scene of an accident.

#### 17.0 MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS

This Contract, including the following documents, constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both Parties.

#### 18.0 SEVERABILITY

If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the Parties are to be construed and enforced as if this Contract did not contain that term.

#### 19.0 APPLICABLE LAW AND VENUE

This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each Party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

#### 20.0 ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

By entering this Contract, State does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The Parties may enforce the rights and remedies in judicial proceedings. State does not waive any right to a jury trial.

## 21.0 ATTORNEY FEES

In the event a lawsuit is instituted by State to obtain performance due under this Contract, and State is the prevailing Party, Contractor shall, except when prohibited by N.D.C.C. § 28 26 04, pay State's reasonable attorney fees and costs in connection with the lawsuit.

## 22.0 NONDISCRIMINATION AND COMPLIANCE WITH LAWS

Contractor agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility, and civil rights. (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.)

Contractor agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

Contractor shall have and keep current all licenses and permits required by law during the Term of this Contract.

Contractor is prohibited from boycotting Israel for the duration of this Contract. (See N.D.C.C § 54-44.4-15.) Contractor represents that it does not and will not engage in a boycotting Israel during the term of this Contract. If State receives evidence that Contractor boycotts Israel, State shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if Contractor has fewer than ten (10) full-time employees.

Contractor's failure to comply with this section may be deemed a material breach by Contractor entitling State to terminate in accordance with the Termination for Cause section of this Contract.

## 23.0 STATE AUDIT

Pursuant to N.D.C.C. § 54-10-19, all records, regardless of physical form, and the accounting practices and procedures of Contractor relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. Contractor shall maintain these records for at least three (3) years following completion of this Contract and be able to provide them upon reasonable notice. State, State Auditor, or Auditor's designee shall provide reasonable notice to Contractor prior to conducting examination.

## 24.0 COUNTERPARTS

This Contract may be executed in multiple, identical counterparts, each of which is be deemed an original, and all of which taken together shall constitute one and the same contract.

## 25.0 EFFECTIVENESS OF CONTRACT

This Contract is not effective until fully executed by both Parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the Parties shall be deemed the Effective Date.

IN WITNESS WHEREOF, the parties have caused this Agreement to be entered into as of the date first above written.

**LIGNITE ENERGY FOUNDATION**

**NORTH DAKOTA INDUSTRIAL COMMISSION**

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

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

\_\_\_\_\_  
Name

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

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

# Industrial Commission of North Dakota



Doug Burgum  
Governor

Drew H. Wrigley  
Attorney General

Doug Goehring  
Agriculture Commissioner

## MEMORANDUM

TO: Governor Doug Burgum, Chairman  
Attorney General Drew H. Wrigley  
Agriculture Commissioner Doug Goehring

CC: Susan Sisk, OMB Director

FR: Vance Taylor, State Mill  
Karen Tyler, Industrial Commission

DT: June 26, 2024

RE: State Mill transfers

North Dakota Century Code § 54-18-19 and 54-18-21 state the following:

**54-18-19. Transfer of North Dakota mill and elevator profits to general fund.**

The industrial commission shall transfer to the state general fund fifty percent of the annual earnings and undivided profits of the North Dakota mill and elevator association after any transfers to other state agricultural-related programs. The moneys must be transferred on an annual basis in the amounts and at the times requested by the director of the office of management and budget.

**54-18-21. Annual transfer.** Within thirty days after the conclusion of each fiscal year, the industrial commission shall transfer five percent of the net income earned by the state mill and elevator association during that fiscal year to the agricultural products utilization fund.

Mill management is planning to close their books on July 22, 2024, and is proposing to make the transfers no later than July 24, 2024. Therefore, we are requesting that the Industrial Commission authorize the transfer of 50% of the Mill FY 2024 profits to the General Fund and the 5% of net income to the Agricultural Products Utilization Fund utilizing unaudited numbers by no later than July 24, 2024, with Mill management reporting the amount of the transfers to the Commission at their July 30, 2024, meeting.

We would propose the following action by the Commission:

**Approval of the authorization to transfer 5% of the net income earned by the Mill for fiscal year 2024 to the Agricultural Products Utilization Fund (APUF) and transfer to the General Fund 50% of the annual earnings and undivided profits of the Mill after any transfers to other state agricultural-related programs per the request of the Office of Management and Budget Director noting that the transfers will be based on unaudited year-end results and reserving the right to adjust the transfer numbers once the year-end results have been audited. Further approval that Mill management report the amount of the transfers to the Commission at the July 30, 2024 meeting.**

# Pipeline Development Update

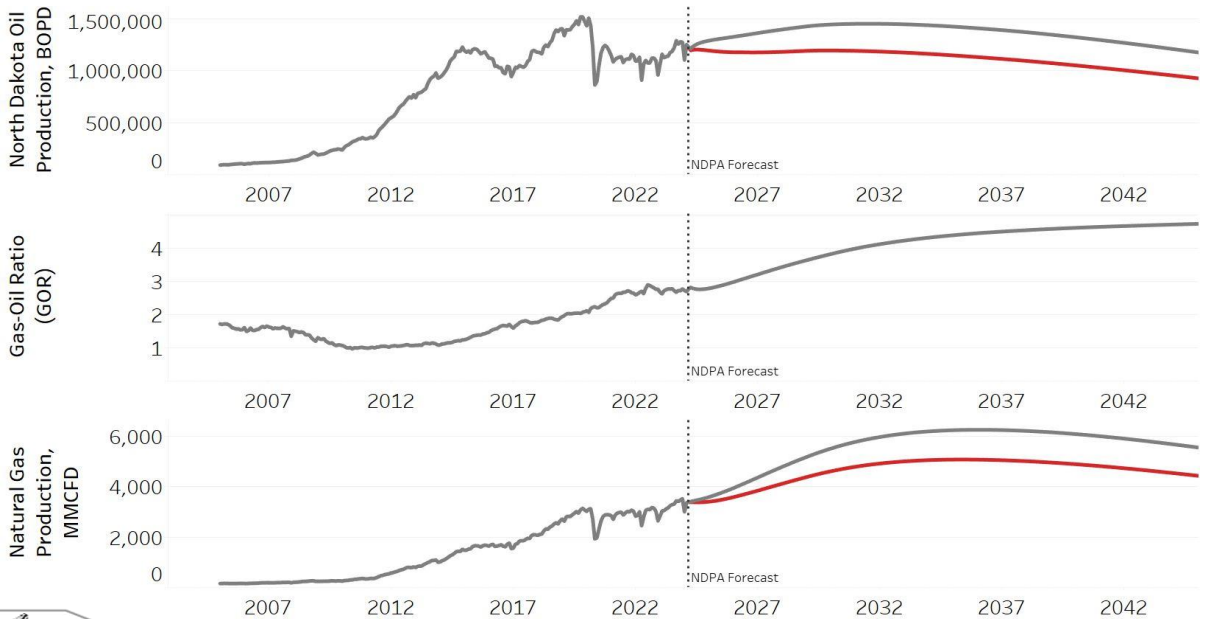


Image: Library of Congress

June 26, 2024

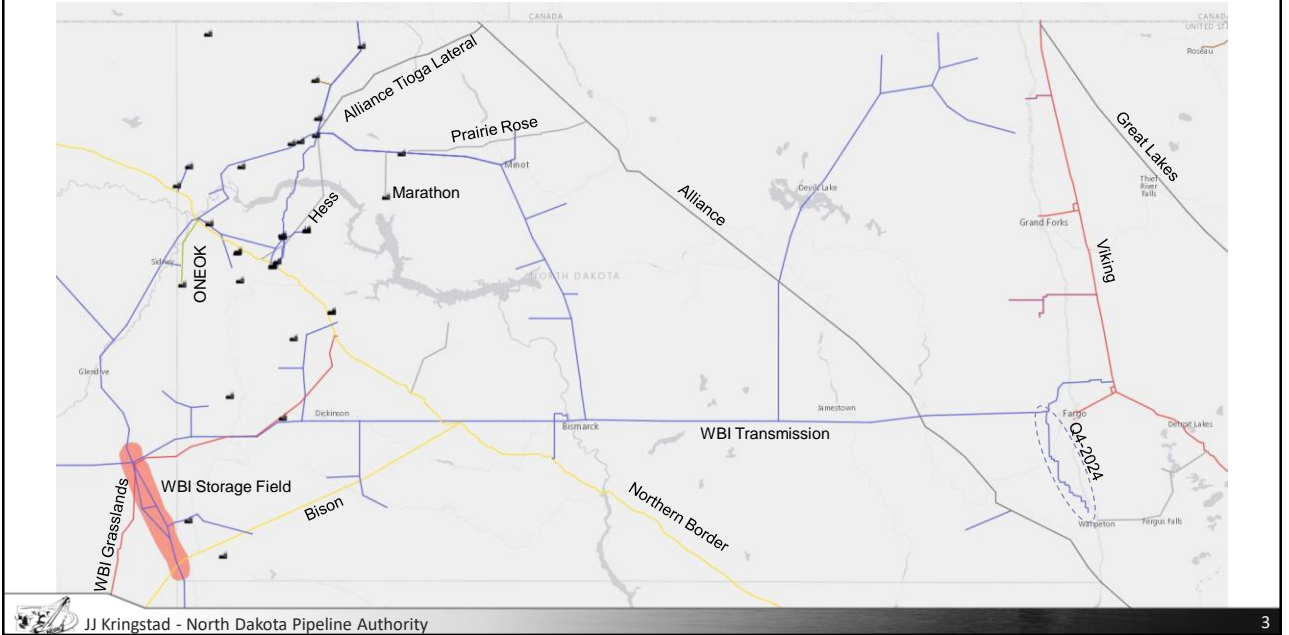
Justin J. Kringstad - North Dakota Pipeline Authority

## ND Production Forecast: EIA Price Deck



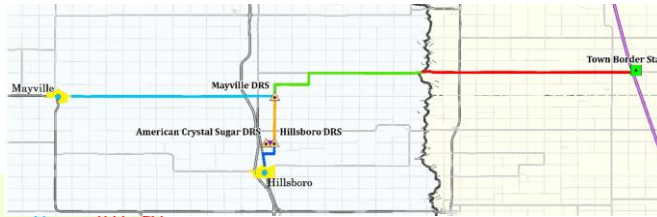
JJ Kringstad - North Dakota Pipeline Authority

# Major Residue Gas Pipeline Infrastructure



## Eastern North Dakota Gas Expansions

# Dakota Natural Gas: Existing LDC Service



**Availability**  
Available to any firm customer for use of natural gas service in Rate Area 1.

**Applicability and Character of Service**  
Rate schedule applies to firm gas service for residential customers whose normal requirements do not exceed 1,999 Ccf annually. Residential customers are defined as those that use gas for general domestic household purposes in space occupied as living quarters, designed for occupancy by one family with separate cooking facilities. Typical service locations include the following: single private residences, separately metered single apartments, mobile homes with separate meters, and auxiliary buildings on the same premises as the living quarters when used for residential purposes. This is not an all-inclusive list.

**Therm Adjustment**  
Customer's consumption in Ccf will be adjusted to reflect 1,000 Btu per cubic foot, base pressure 14.73 PSIA, and a gas temperature of 60 degrees Fahrenheit.

**Rate**

Facility Fee per Month	\$16.00
Distribution Charge per Ccf	\$0.377
Cost of Gas per Ccf	\$ _____

**Determination of Cost of Gas**  
The Cost of Gas is the Company's Cost of Gas as provided for in the Cost of Gas clause herein.

**Monthly Minimum Charge**  
Facility Fee.

**Availability**  
Available to any firm customer for use of natural gas service in Rate Area 1.

**Applicability and Character of Service**  
Rate schedule applies to firm gas service for customers whose normal requirements exceed 4,999 Ccf annually.

**Therm Adjustment**  
Customer's consumption in Ccf will be adjusted to reflect 1,000 Btu per cubic foot, base pressure 14.73 PSIA, and a gas temperature of 60 degrees Fahrenheit.

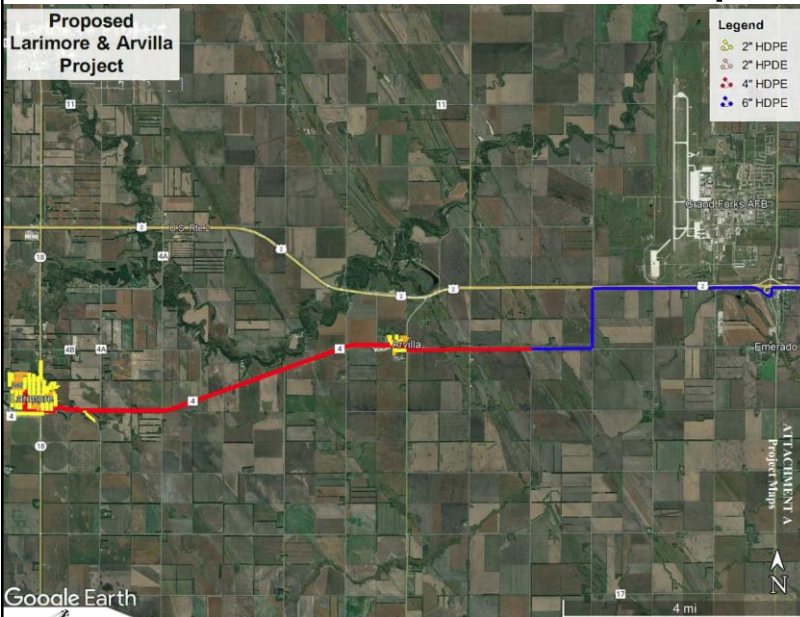
**Rate**

Facility Fee per Month	\$100.00
Distribution Charge per Ccf	\$0.375
Cost of Gas per Ccf	\$ _____

**Determination of Cost of Gas**  
The Cost of Gas is the Company's Cost of Gas as provided for in the Cost of Gas clause herein.

**Monthly Minimum Charge**  
Facility Fee.

# Dakota Natural Gas: Proposed Service Area



**Availability**  
Available to any firm customer for use of natural gas service in Rate Area 2.

**Applicability and Character of Service**  
Rate schedule applies to firm gas service for residential customers whose normal requirements do not exceed 1,999 Ccf annually. Residential customers are defined as those that use gas for general domestic household purposes in space occupied as living quarters, designed for occupancy by one family with separate cooking facilities. Typical service locations include the following: single private residences, separately metered single apartments, mobile homes with separate meters, and auxiliary buildings on the same premises as the living quarters when used for residential purposes. This is not an all-inclusive list.

**Therm Adjustment**  
Customer's consumption in Ccf will be adjusted to reflect 1,000 Btu per cubic foot, base pressure 14.73 PSIA, and a gas temperature of 60 degrees Fahrenheit.

**Rate**

Facility Fee per Month	\$16.00
Distribution Charge per Ccf	\$0.477
Cost of Gas per Ccf	\$ _____

**Determination of Cost of Gas**  
The Cost of Gas is the Company's Cost of Gas as provided for in the Cost of Gas clause herein.

**Monthly Minimum Charge**  
Facility Fee.

**Availability**  
Available to any firm customer for use of natural gas service in Rate Area 2.

**Applicability and Character of Service**  
Rate schedule applies to firm gas service for customers whose normal requirements exceed 4,999 Ccf annually.

**Therm Adjustment**  
Customer's consumption in Ccf will be adjusted to reflect 1,000 Btu per cubic foot, base pressure 14.73 PSIA, and a gas temperature of 60 degrees Fahrenheit.

**Rate**

Facility Fee per Month	\$100.00
Distribution Charge per Ccf	\$0.475
Cost of Gas per Ccf	\$ _____

**Determination of Cost of Gas**  
The Cost of Gas is the Company's Cost of Gas as provided for in the Cost of Gas clause herein.

**Monthly Minimum Charge**  
Facility Fee.

# Binding Open Season: September 2021

WBI Energy Transmission, Inc.  
 Wahpeton Expansion Project  
 Sale of Firm Capacity  
 Commencing September 1, 2021

## Binding Open Season

WBI Energy Transmission, Inc. announces a Binding Open Season for the sale of long term, firm natural gas transportation capacity to new delivery locations in southeastern North Dakota.



## Length of Open Season

The Open Season will commence on September 1, 2021 and conclude at 4:00 PM Central Time on September 15, 2021. The Open Season is available to any party. All related Precedent Agreements must be executed no later than September 30, 2021, unless WBI Transmission agrees, in its sole discretion, to extend such deadline.

## Bids

To properly respond to this Open Season, bidders must complete an Open Season Bid Sheet that includes the delivery location, quantity requested, length of term and desired rate (attached). Completed Open Season Bid Sheets can be e-mailed to [mark.anderson@wbienergy.com](mailto:mark.anderson@wbienergy.com) or mailed (to ensure receipt by WBI Transmission prior to the end of the bid period) to WBI Energy Transmission, Inc., Market Services Department, P.O. Box 5601, Bismarck, ND 58506-5601.

Shippers have the option of requesting the Rate Schedule FT-1 project recourse rate or a mutually agreeable negotiated rate for the firm transportation capacity associated with this Open Season. **The project recourse rate is estimated to be \$1.53584 per dekatherm** on a 100% load factor basis based on the current project cost estimate and a project design capacity of 20,600 dkt/d. It is estimated that the project recourse commodity rate will be equal to the maximum Rate Schedule FT-1 Commodity Rate as set forth in WBI Transmission's Tariff, as such may be in effect from time to time.

The project recourse rate and negotiated rate options will be subject to all applicable surcharges, fuel use, lost and unaccounted for gas and electric power charges as set forth in WBI Transmission's Tariff, as such may be in effect from time to time.

During this Open Season, both the contract term and rates are negotiable. It is projected that **a minimum term of ten (10) years** from commencement of service may be necessary to support the capital expenditures required to construct the facilities associated with the Project.



# Project Highlights



60.5 miles of 12-inch diameter natural gas pipeline

Providing up to 20.6 million cubic feet of natural gas per day to southeastern North Dakota

Starting point: WBI Energy's existing Mapleton Compressor Station near Mapleton, North Dakota

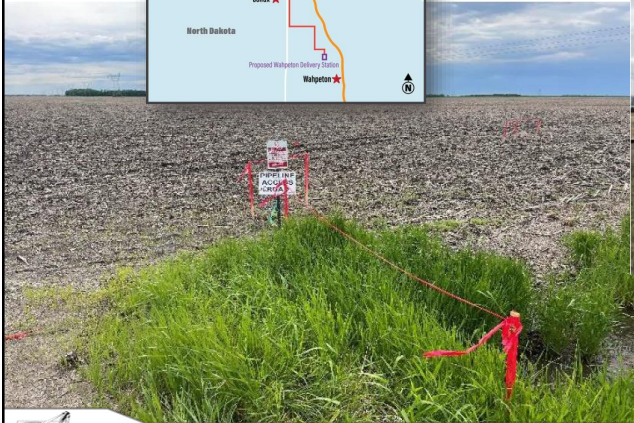
End point: A new delivery station near Wahpeton, North Dakota  
 Also provide natural gas service for the first time to Kindred, North Dakota.

The Project may include the installation of farm taps along the pipeline route.





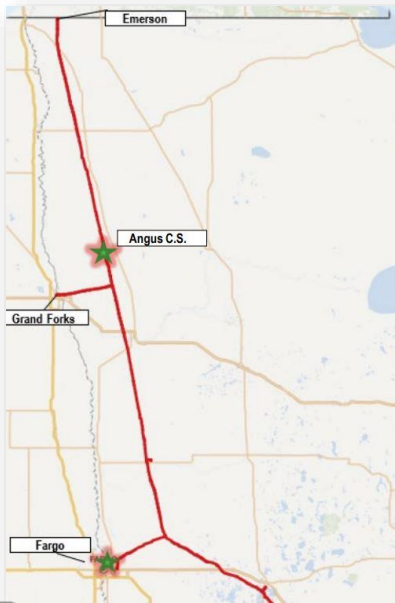
# Wahpeton Expansion Project Construction Starting



Targeted In-Service  
Q4-2024



# Viking Fargo Expansion

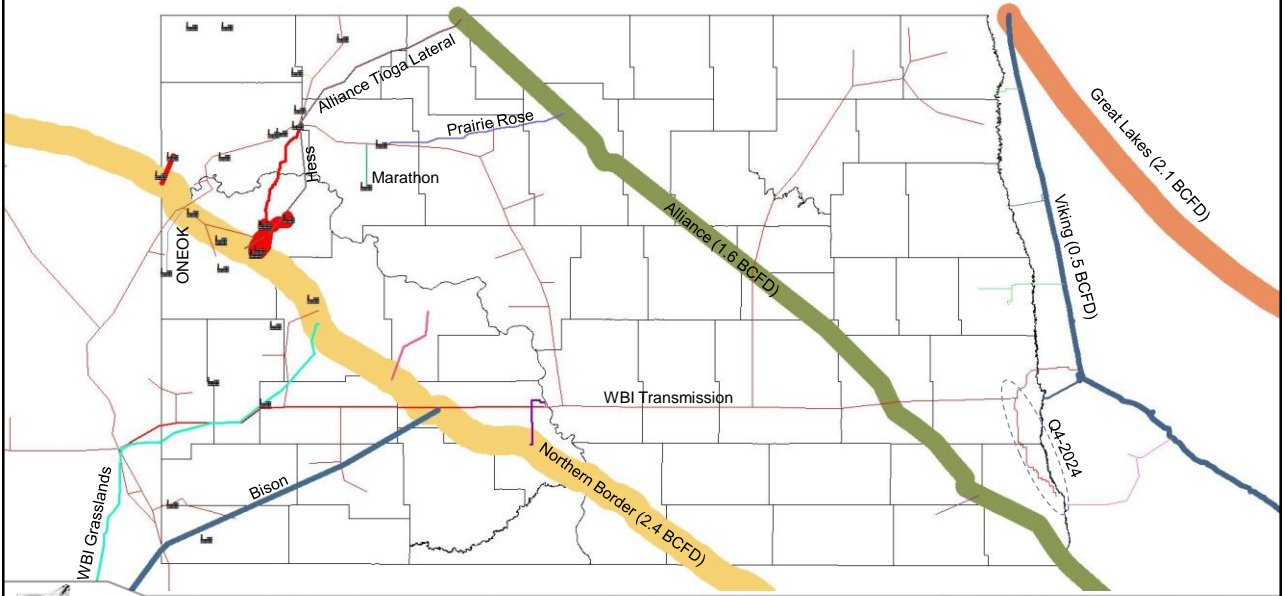


## Project Overview

- 30,000 Dth/d of expansion capacity from Emerson to Fargo.
- FERC prior notice project
- New compression (2,500 hp) at Angus station.
- Fully committed capacity
- December 2023 In-service

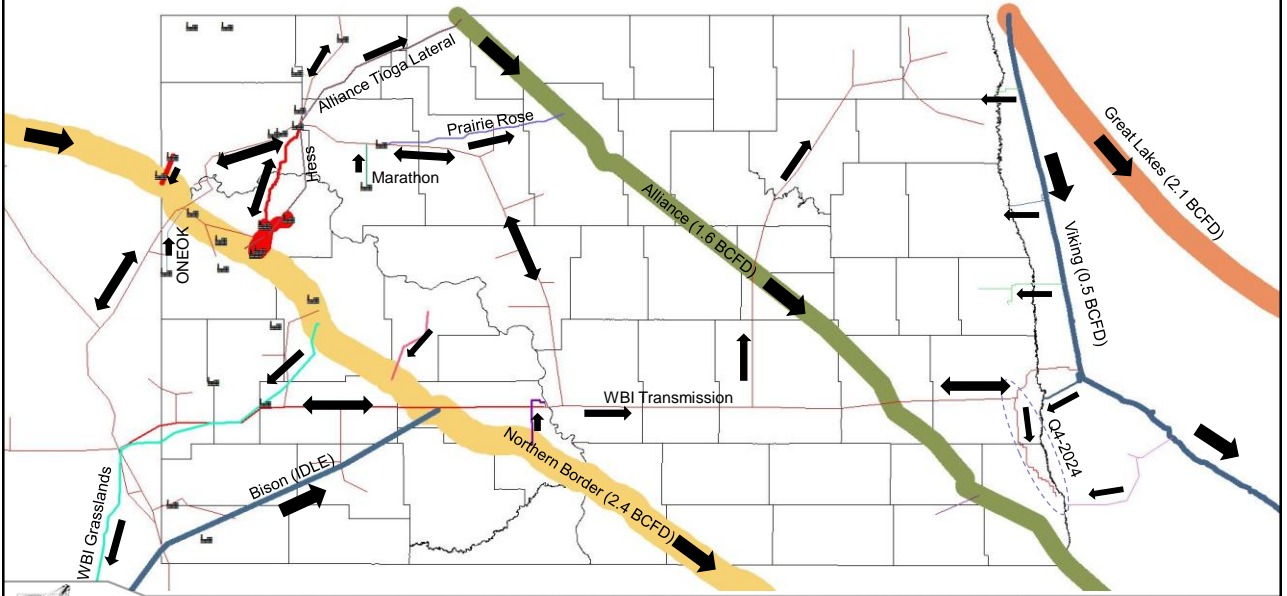


# Residue Gas Pipeline Capacity Visualization



JJ Kringstad - North Dakota Pipeline Authority

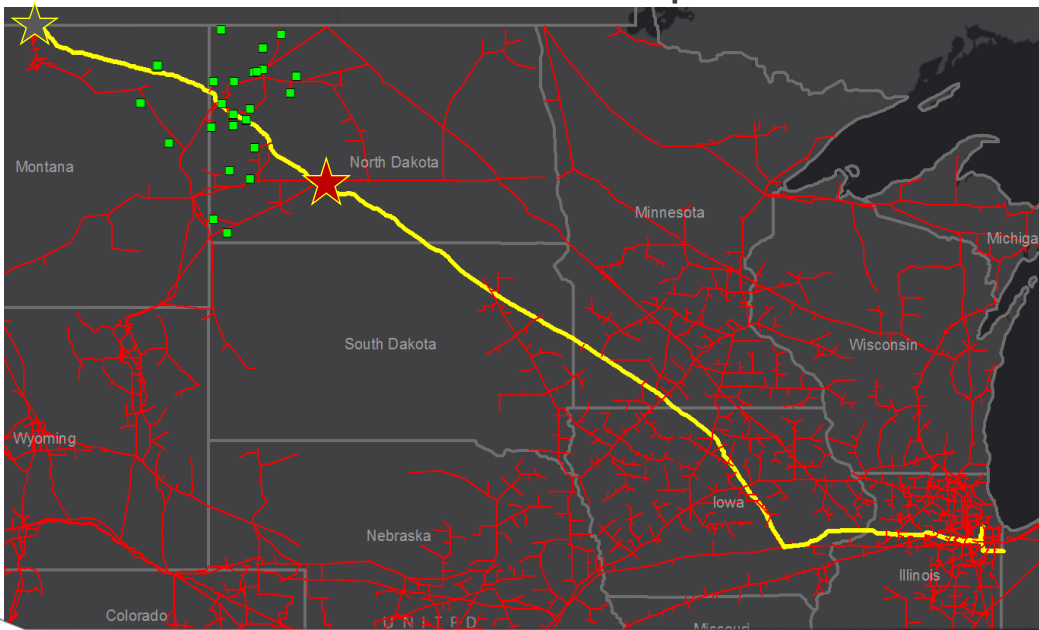
# Residue Gas Pipeline Flow Directions\*



JJ Kringstad - North Dakota Pipeline Authority

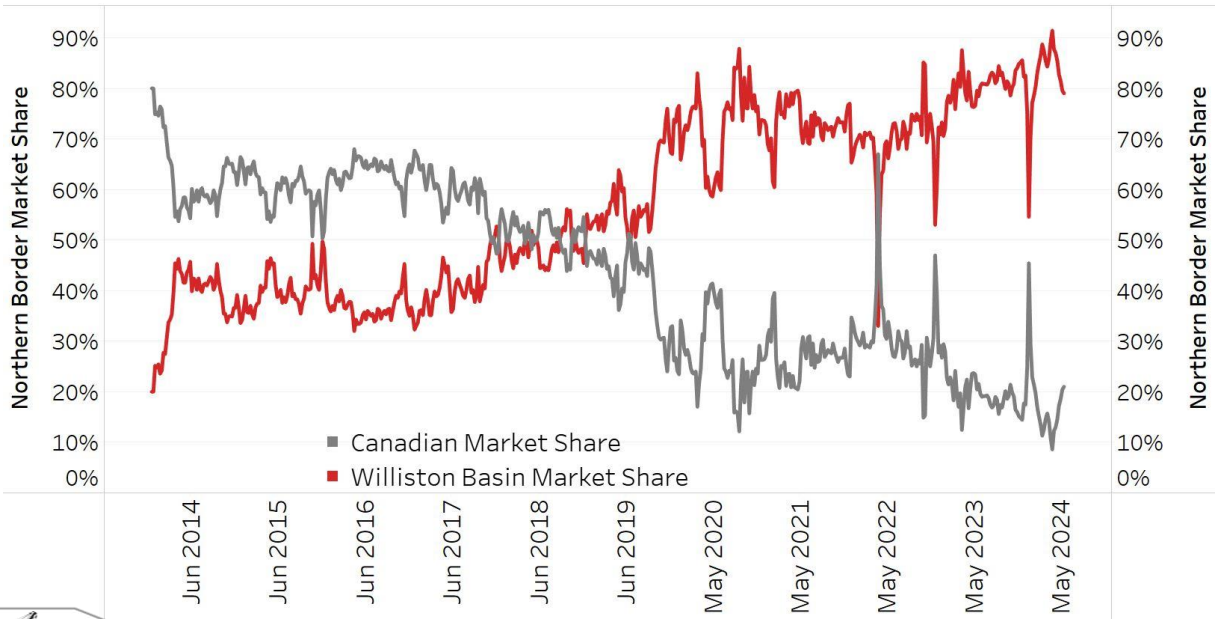
\*Arrow Size Does Not Indicate Capacity/Volume

# Northern Border Pipeline



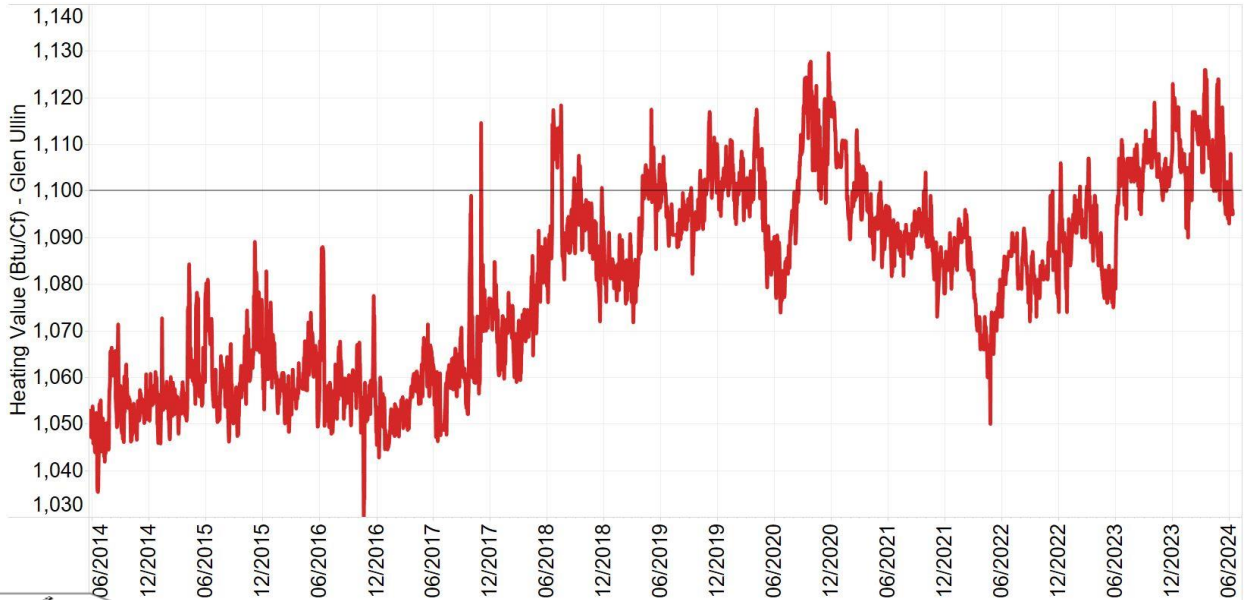
JJ Kringstad - North Dakota Pipeline Authority

# Northern Border Pipeline Market Share



JJ Kringstad - North Dakota Pipeline Authority

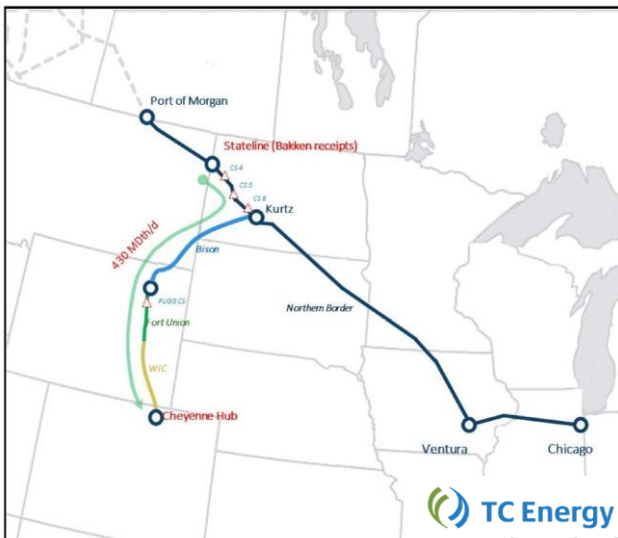
# Northern Border BTU at Glen Ullin, ND



JJ Kringstad - North Dakota Pipeline Authority

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# TC Energy / Kinder Morgan: Bakken xPress Project



## Project Highlights

- Non-binding open season April 4 - May 6, 2022
- Binding Open Season: June 1-30, 2023
- Three compressor upgrades in North Dakota
- Reverse the idle Bison Pipeline (30" – 302 Mile)
- Capacity 300,000 Dth/Day (430,000 Offered)
- March 2026 targeted in-service date
- Fort Union Gas Gathering and Wyoming Interstate Company provide further transport to Cheyenne hub.
- Seeking commitments 10yrs or Longer
- \$555 million: \$347 Replacement/\$208 Expansion

## Proposed Rates

- NBPL/Bison \$0.45/Dth + Fuel/Elec to WIC/FUG Interconnect
- WIC/FUG to Cheyenne \$0.30/Dth + Fuel/Elec
- Anchor Shipper Minimum: 50,000 Dth/Day

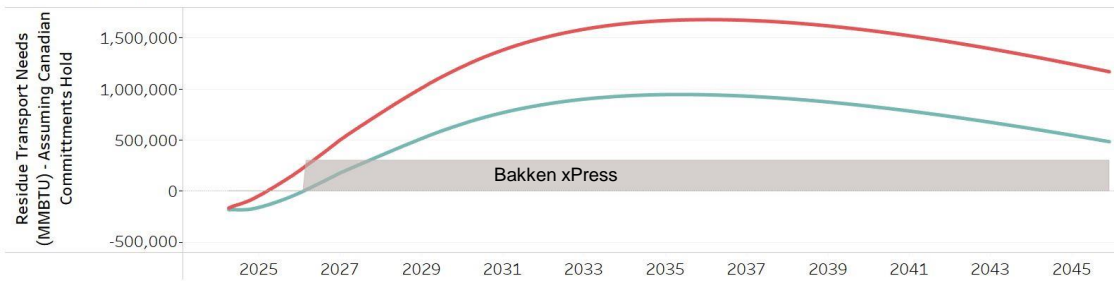


JJ Kringstad - North Dakota Pipeline Authority

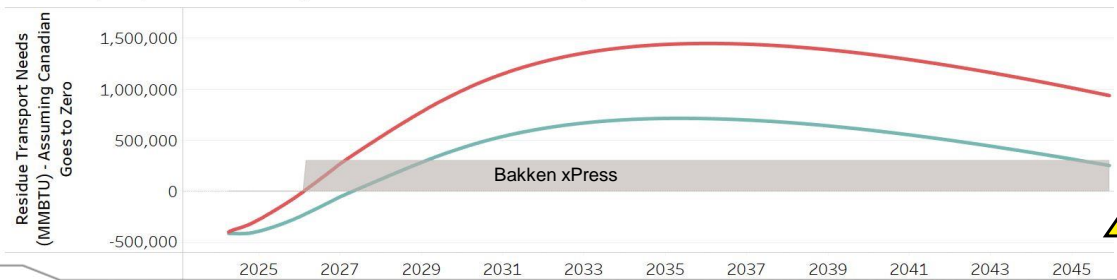
16

# Residue Capacity Needs : Glen Ullin 1,100 BTU

Residue Capacity Need: Port of Morgan at Contract Level: Glen Ullin BTU 1,100



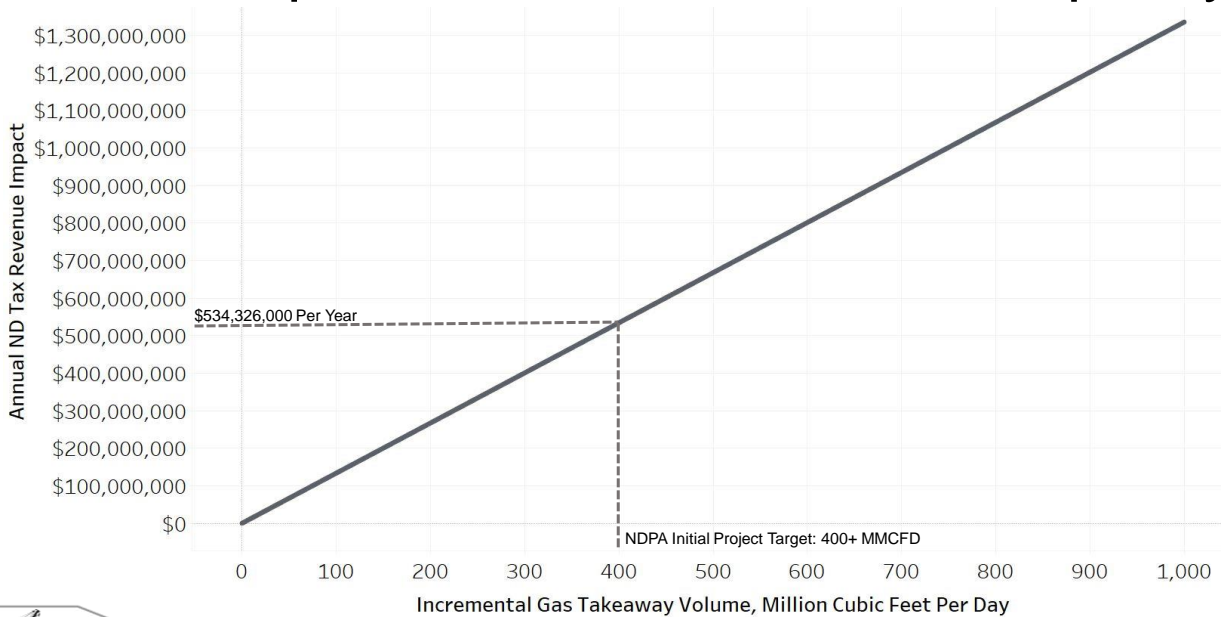
Residue Capacity Need: Port of Morgan Goes to Zero: Glen Ullin BTU 1,100



JJ Kringstad - North Dakota Pipeline Authority

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# ND Tax Impact of Incremental Gas Capacity



JJ Kringstad - North Dakota Pipeline Authority

Oil & Nat Gas Taxes Only - Assumes \$70/BBL Avg. Wellhead Oil Price 18

# Options Beyond 2026: The 5 “C’s”

## Construction (Interstate)

- Long-haul Pipe to New or Expanded Markets

## Compete

- Price Canadian Volumes to Flow Elsewhere

## Compression

- Increase Capacity on Existing Interstate Systems

## Consumption

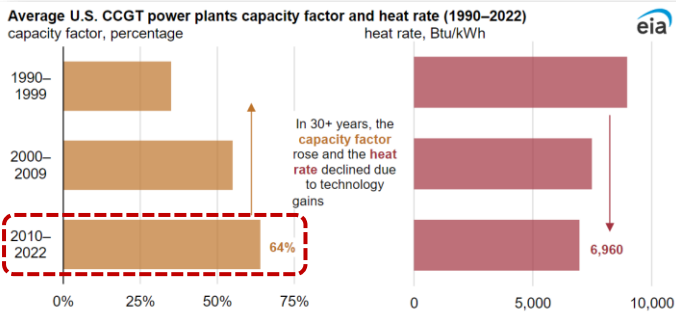
- Intra Region Gas Demand Expansion

## Contraction

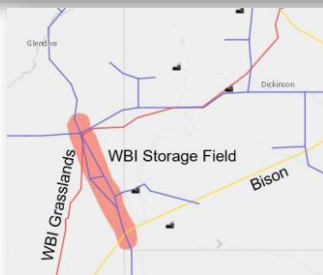
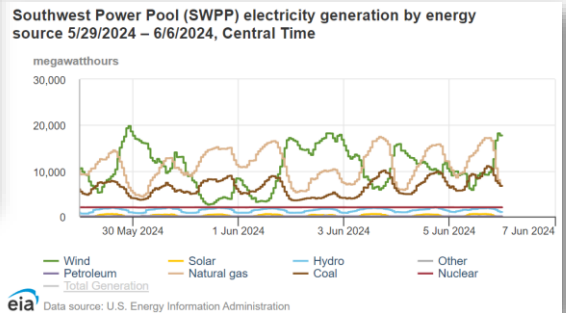
- Reduce E&P Activity to Meet Limited Gas Options



## Intermittent Gas-Fired Generation Challenging to Match Oilfield Output



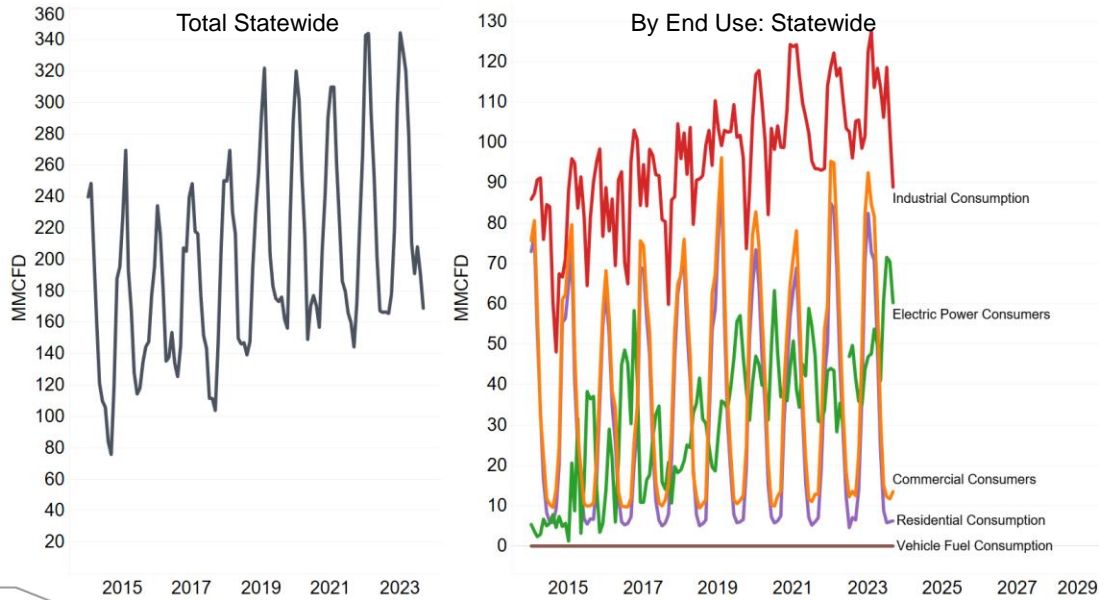
Gas-fired demand can fluctuate hourly, daily, and weekly, depending on system load, weather, etc.



Regional gas storage could provide a balancing solution for intermittent generation, but who pays for the required expansion?



# Non-Midstream Consumption (Monthly)



# Driving Forces for New Gas Pipelines



Supply Push



Demand Pull



System Reliability/Security

# Who Signs Up For Capacity?

Shippers



Producers/Midstream



Marketing Firms



Industrial Consumers/LDC



State of North Dakota (PA/IC)



# Early Stages of Pipeline Development

Opportunity for NDPA/NDIC Participation

Needs Analysis  
(Up to 2+ Years)

Non-Binding  
Solicitations of Interest

Binding Open Season

R.O.W. Fieldwork and  
Landowner Contacts

High Level Route  
Considerations

Detailed Corridor Analysis  
& Cost Estimates

Evaluate Results of Open  
Season

Formal Regulatory Process  
Begins (3+ years)





# Pipeline Authority Century Code– 54-17.7-04.

3. Acquire, purchase, hold, use, lease, license, sell, transfer, and dispose of an undivided or other interest in or the right to capacity in any pipeline system or systems, including interconnection of pipeline systems, within or without the state of North Dakota in order to facilitate the production, transportation, distribution, or delivery of energy-related commodities produced in North Dakota. If the authority acquires, purchases, holds, uses, or leases capacity positions, the authority shall sell, transfer, release, or dispose of the capacity positions at intervals that are no more frequent than monthly and in an amount that is equal to or greater than the market rate, but only if the sale, transfer, release, or disposal of the capacity positions is sufficient to cover the expenses and obligations incurred. The authority's contract obligations for the capacity positions are limited to the capacity rates, charges, and terms.



## Key Terms

### Shipper

- Holds contractual rights to transport natural gas on a pipeline system between two or more pipeline points.

### Anchor Shipper

- One of a few, large volume, long duration shippers supporting a new or expanding pipeline system.

### Asset Management Agreement (AMA)

- Contractual arrangement where one party agrees to manage gas marketing obligations for another party.

### Capacity Release

- Method for firm transportation capacity holders to resell all, or a portion, of their capacity to a third party on a short or long term basis.

### Tariff

- Formal documentation outlining a pipeline provider's transportation services, rates, terms, and conditions.



# Key Terms (Continued)

## Non-Binding Open Season

- Formal event where a pipeline operator solicits interest from potential shippers for a new or expanding project. No binding commitments required.

## Binding Open Season

- Formal solicitation of interest by a pipeline operator to secure contractual take or pay commitments from customers to use a new or expanding pipeline system.

## Reservation Rate

- AKA “demand charge”. Fee paid to reserve space on a gas pipeline based on contract specifications. Paid whether or not gas is transported.

## Residue Gas

- AKA “dry gas”. Consumer ready natural gas exiting the tailgate of a gas processing facility that has been stripped of heavier natural gas liquids. Mostly comprised of methane and some ethane. BTU is typically 1,010 to 1,200 in North Dakota.

## Gas Units

- 1 MCF = 1 MMBTU = 1 Dekatherm (Dth) @ 1,000 btu
- 1,150 btu “Bakken”: 1 MCF = 1.15 MMBTU = 1.15 Dth



# Firm Gas Transport Rate Breakdown

## Reservation Charge

- Fixed charge for firm shippers based on maximum daily contracted quantity. Must be paid for the duration of contract term regardless if gas moves or not.
- Units = \$/Dekatherm

## Commodity Charge

- Charges for physical gas transported.
- Units = \$/Dekatherm

## Fuel/Electric

- Charges for fuel used to operator system compressors and ancillary equipment.
- Typically expressed as a percentage of gas transported and/or \$/Dekatherm.

### Example Pipeline Case

Reservation: \$0.37356  
 Commodity: \$0.02546  
 Electric: \$0.00433  
**Subtotal: \$0.40335**

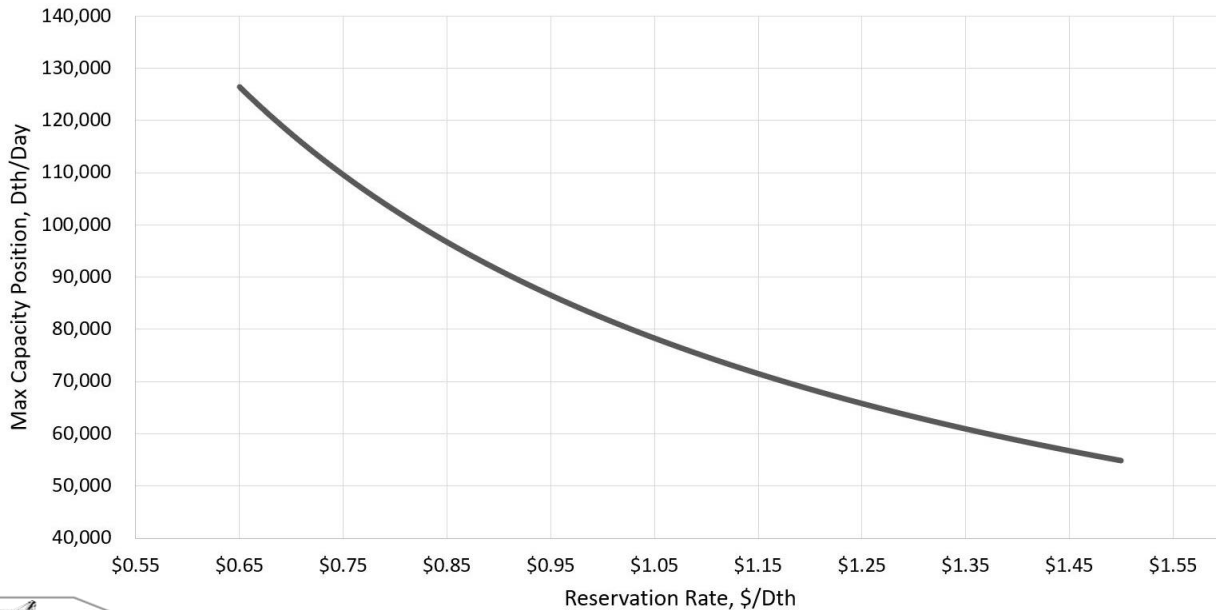
Fuel: 1.387%  
 If gas value is \$2.00/Dth  
**Fuel expense: \$0.02774**

**Total Transport:  
 \$0.43109/Dth**

Tariff Rate Charges (1)						
Firm Service Charges	Firm Service Charges		Fuel Reimbursement %		Electric Power Charge	
	Maximum	Minimum	Effective as of 4/1/2024	Effective as of 10/1/2023	Effective as of 4/1/24	Effective as of 10/1/2023
<b>FT-1 (Firm Transportation)</b>						
Reservation Charge (per month)	11.36247	.00000				
Commodity Charge (1)	.02546	.02546	1.387%	1.114%	.00433	.00724
Reservation Charge (per day)	.37356	.00000				



# Capacity and Reservation Rate at \$30M/Yr

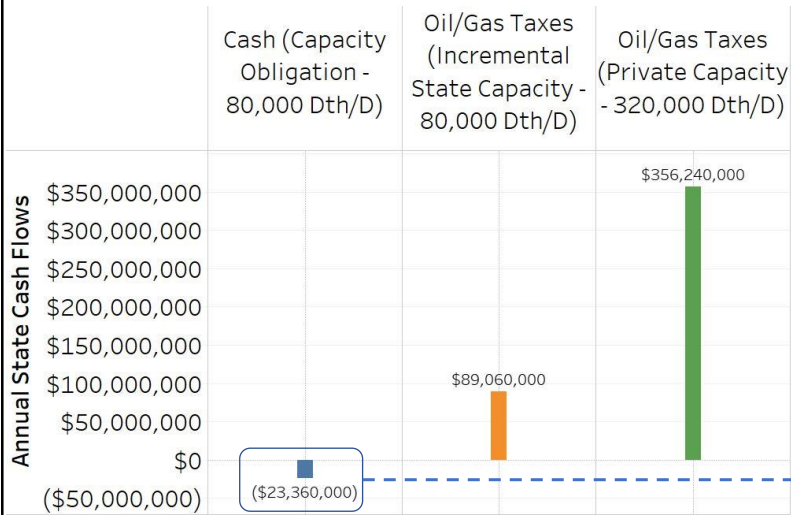


## Simple Project Example Case

- Total project: 400,000 Dth/Day (~333.3 MMCFD @ 1,200 btu)
- Private sector anchor shippers: 320,000 Dth/Day
- NDPA/NDIC is anchor shipper: 80,000 Dth/Day
- NDPA/NDIC Precedent Agreement @ \$0.80 (\$23.4 Million/Yr)
- Term timeline: 2028-2038
- Final project recourse rate \$0.83 (AKA "Max Rate")



# Example Operating Project Cashflows



**Hypothetical Project Needs 400,000 Dth/D Capacity Commitment to Move Forward**



### Options for State Capacity Obligation

- Release (full or partial) to private sector
- Monetize capacity through asset management agreement (AMA)
- Worst case – Continue to pay obligations without recovery or release on 80,000Dth

# Capacity Release Term Considerations

## 31 Days or Less

FERC permitted with certain criteria

Forbidden under NDCC 54-17.7-04 Subsection 3

## 32 Days to 1 Year

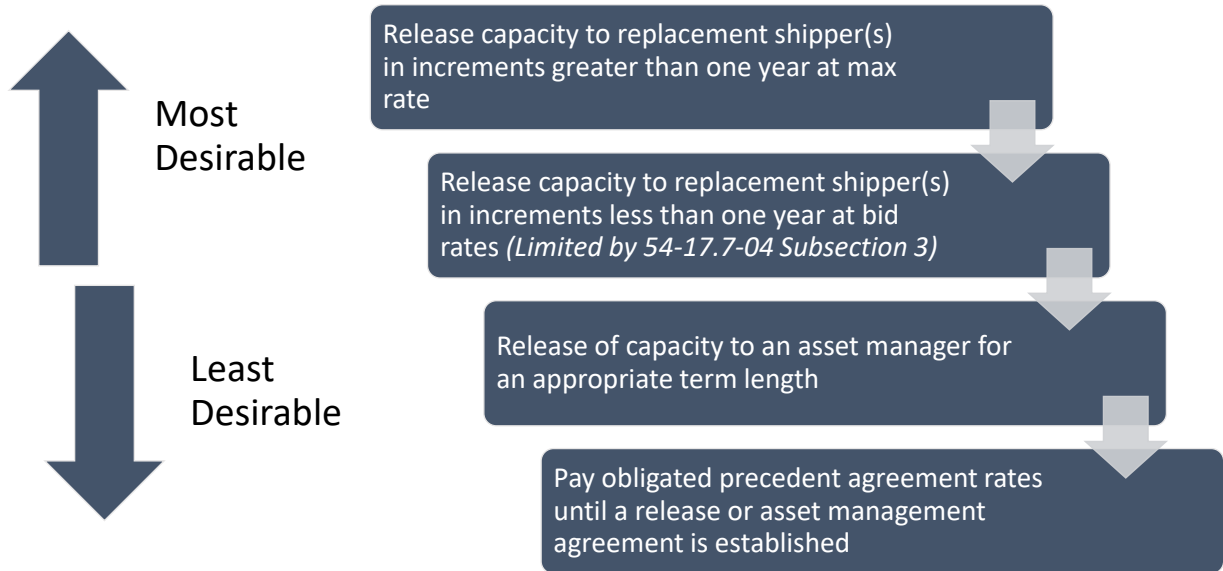
Any rate (*NDCC Restrictions*)

Bidding required  
AMA allowed without bidding  
Rollovers allowed

## Greater than 1 year

Max tariff rate only  
No bidding required  
AMA allowed without bidding  
Rollovers allowed at max rate only

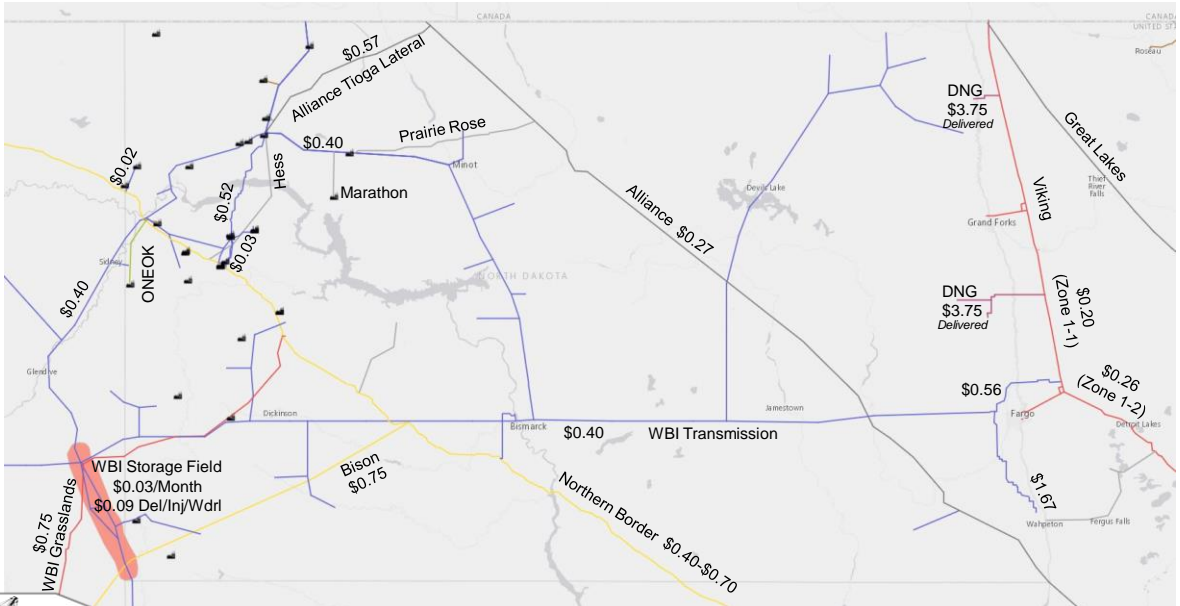
# How Will NDPA Manage Contracted Capacity?



## Example Capacity Release Scenarios

- New gas pipeline requiring 10 year anchor shipper terms
  - Party A: 3 year position (Years 1-3)
  - State of ND: 6 year position (Years 4-10)
  - State of ND has a prearranged agreement in place with Party A to release 13 month intervals of capacity at max rate with rollover (ROFR) rights to continue in 13 month intervals at max rate until term expires at year 10.
  - *May require similar arrangements with Parties B/C/... to release entire capacity position*
  
- New gas pipeline requiring 10 year anchor shipper terms
  - State of ND: 10 year position
  - ND has a prearranged agreement in place with Party A to release 13 month intervals of capacity at max rate with rollover (ROFR) rights to continue in 13 month blocks at max rate until term expires at year 10.
  - *May require similar arrangements with Parties B/C/... to release entire capacity position*

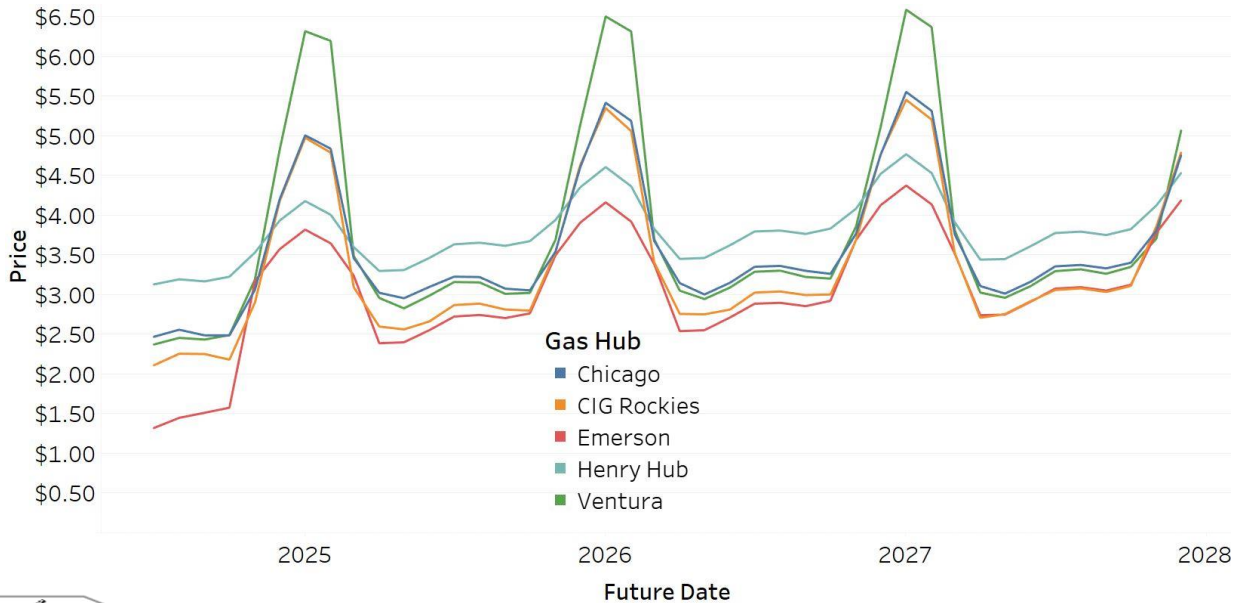
# Transport Rates (Generalized)



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Transport is generalized and does not include fuel/distribution unless noted 35

# Regional Gas Hub Pricing\*

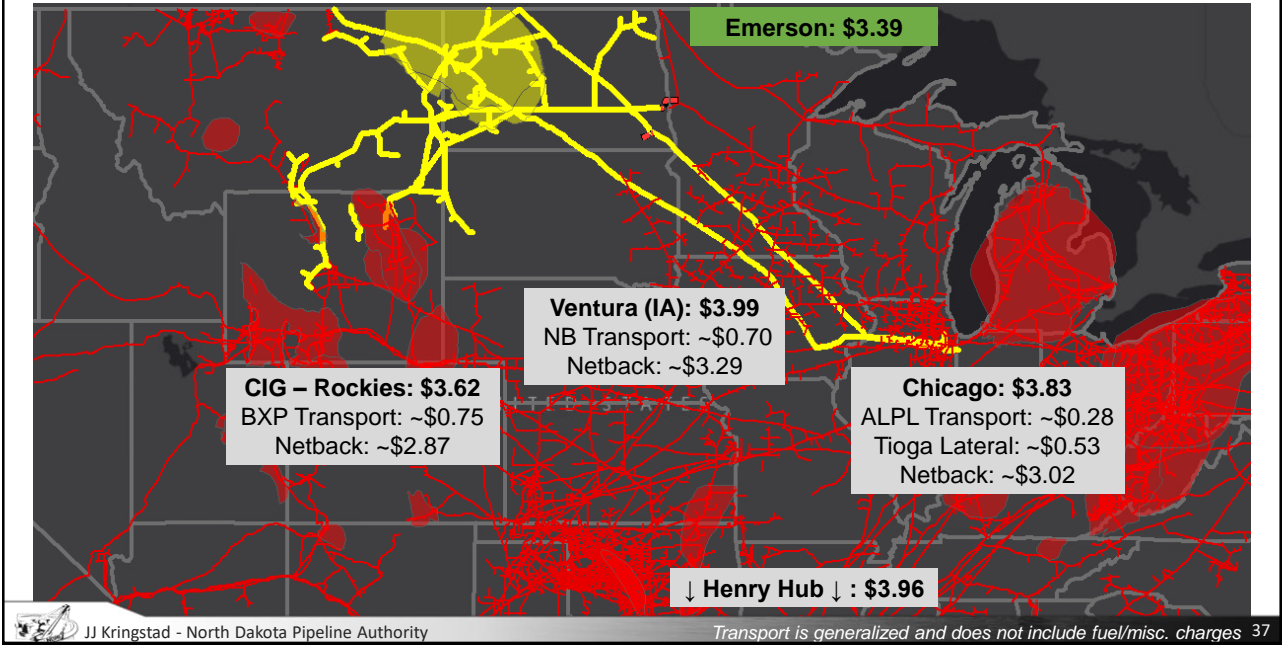


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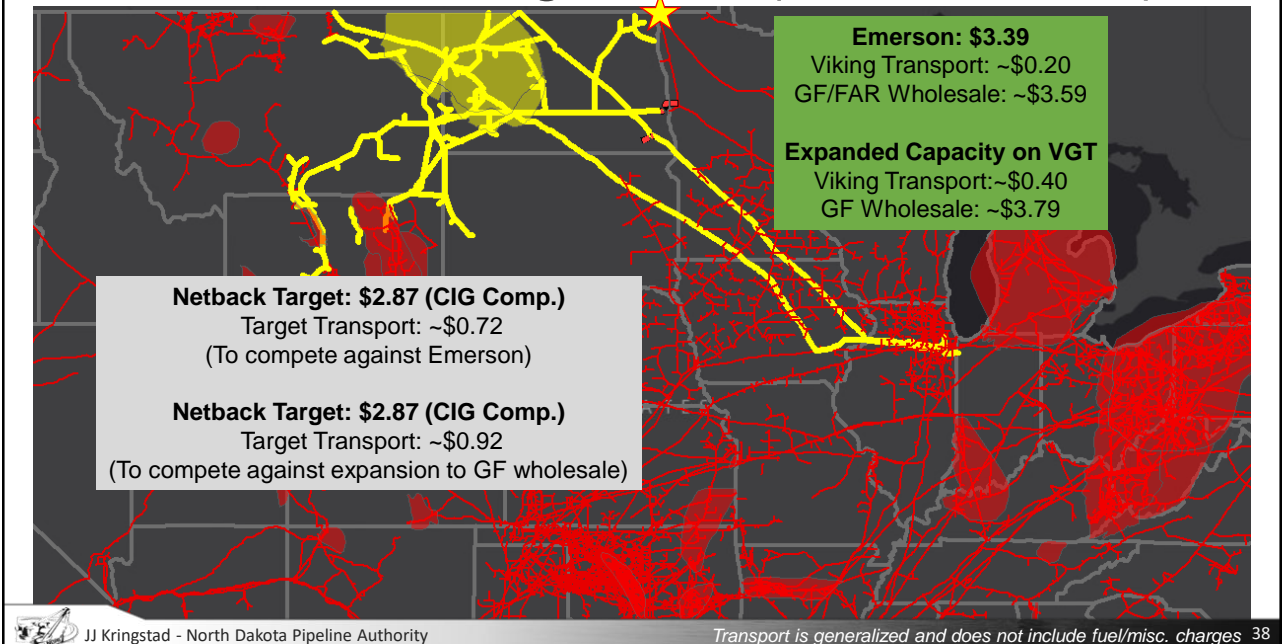
\*ICE Pricing: 6-11-2024

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# Natural Gas Pricing: 2027 (ICE: 6-11-24)



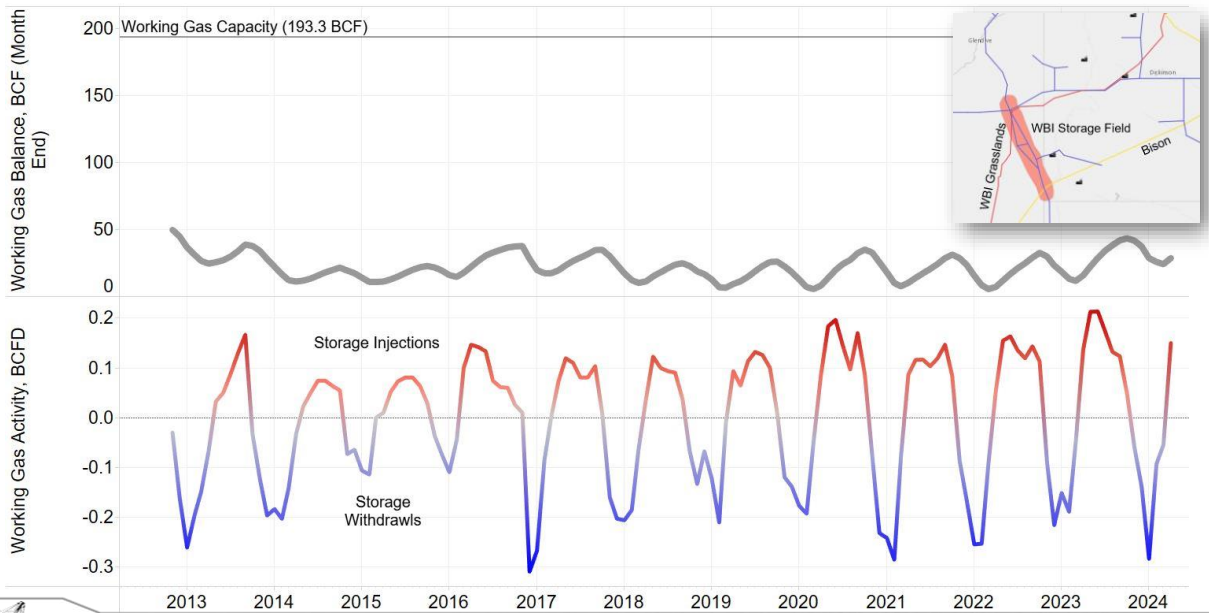
# Emerson/Viking: 2027 (ICE: 6-11-24)



# Regional Natural Gas Storage



## Residue Gas Storage – WBI Energy\*





# Contact Information

Justin J. Kringstad, Director  
North Dakota Pipeline Authority

600 E. Boulevard Ave. Dept. 405  
Bismarck, ND 58505-0840

Phone: (701)220-6227  
Fax: (701)328-2820  
E-mail: [jjkringstad@ndpipelines.com](mailto:jjkringstad@ndpipelines.com)



Know what's below.  
Call before you dig.

Websites:

[www.pipeline.nd.gov](http://www.pipeline.nd.gov)  
[www.northdakotapipelines.com](http://www.northdakotapipelines.com)



To: Industrial Commission  
From: Todd Steinwand, President/CEO  
Date: June 07, 2024  
Re: Letter of Resignation

Industrial Commission,

This letter is to inform you that I am retiring as President and CEO of the Bank of North Dakota, effective July 2<sup>nd</sup> of 2024. Serving as President of the Bank of North Dakota has been the highlight of my 42-year banking career. I want to thank the Industrial Commission for your support and friendship during my three-year term as President.

Sincerely,



Todd Steinwand  
President/CEO

## MEMORANDUM

TO: Executive Committee  
Advisory Board  
Industrial Commission

FROM: Kelvin Hullet, Chief Business Development Officer

DATE: June 7, 2024

RE: **Rural - Workforce Initiative to Support Housing (R-WISH) Pilot Program**

Bank of North Dakota (BND) is proposing to create a pilot program to address workforce housing needs in rural North Dakota communities. The program is designed to support projects that are challenged because of the disproportionate costs comparable to attainable market rents. BND is requesting the authority to contribute up to \$10 million of capital to the program.

While evaluating the issues and concerns work force housing projects are running into, it became apparent that an interest buydown program, which would allow for a reduced debt service obligation, did not fully meet the need. Various financial situations were analyzed to determine the projects need an alternative form of financial assistance to bring projects to fruition.

BND has met with various other state entities including HFA, HHA, and the DOC to determine the proposed program is not duplicating other available resources. Through these meetings, it has been determined the proposed program fulfills an unmet need.

BND shall develop program guidelines and administer the program. BND will work with the ND Housing Initiative Advisory Committee to jointly address workforce housing issues.

and extensions of credit" includes all direct or indirect advances of funds to a borrower made on the basis of any obligation of that borrower to repay the funds or repayable from specific property pledged by or on behalf of that borrower. For the purpose of determining loan lending limits, all loans which have a common source of primary repayment, along with any loan which the guarantor(s) have with the Bank, shall be taken into account, and any exposure that is government guaranteed may be excluded.

### **LETTERS OF CREDIT**

A request to the Bank to issue or to Participate in a letter of credit must be handled in the same manner as a request to make or to participate in a loan.

A letter of credit, direct, participation or confirming, issued by the Bank or in which the Bank is a participant must contain a specified expiration date or be for a definite term and the party for whose account a letter of credit is issued must have an unqualified reimbursement obligation for payments made under the letter of credit. The term not to exceed one year from the date of the Letter of Credit.

The form of any Letter of Credit which the Bank issues or in which the Bank has a participation interest must be reviewed by legal counsel.

A direct Letter of Credit which has already had a resolution executed by the Industrial Commission will only need to be approved by the Bank's Advisory Board level for total exposure over \$15MM. All other levels of approval based on exposure level remain unchanged.

### **CONCENTRATIONS OF CREDIT**

Concentrations of credit are reported on a quarterly basis to the Investment Committee, the Advisory Board and the Industrial Commission. The reporting includes concentrations of loan exposure levels that exceed regulatory defined categories relative to the twelve-month rolling average of forecasted Tier 1 Capital, based on the most recent month end. In addition, other concentrations of interest and related target levels established by Bank management are reported where additional monitoring is deemed necessary, for example, concentrations to specific industries, locations, borrowers and guarantors.

### **LOAN APPROVAL AUTHORITY**

The Industrial Commission has the responsibility and the authority for the general supervision of all affairs of the Bank. This responsibility and authority include the establishment and supervision of the lending policies of the Bank.

The authority and responsibility for the day-to-day management and administration of the lending practices of the Bank, in conformity with the loan policies approved and adopted by the Industrial Commission, rests with the President. The Chief Credit Officer shall supervise the administration of the Bank's lending activities.

For the purpose of determining loan approval authority, all loans which have a common source of primary repayment, along with any loan which the guarantor(s) have with the Bank, shall be taken into account. The amount guaranteed by the United States, its agencies or instrumentalities shall be exempt. Loan amounts secured by a certificate of deposit issued and held by the Bank or the originating lender shall be exempt. State Land Loans, New Venture Capital Loans, and administered loans shall be exempt. Personal residential loans or student loans without government guarantees shall be included in total loan exposure to a borrower. Loan approval authorities for watchlist credits are at 50% of non-watchlist authorities with the exception of the Special Assets Manager (see Loan Approval Table below). When

GENERAL LOAN POLICY BANK OF NORTH DAKOTA GENERAL LOAN POLICY

split risk ratings exist for aggregated credits, the risk rating of the borrower must be used in determining if the aggregate exposure falls into the non-watchlist or watchlist column of the Loan Approval Table. It is not appropriate to use a weighted average risk rating for multiple aggregated credits in determining whether it is a non-watchlist or watchlist credit for approval level purposes.

The President, with the advice of the Chief Lending Officer, Chief Business Development Officer, and Chief Credit Officer and Financial Institutions Market Manager, shall establish lending authority for individual business bankers, residential, and student loan staff consistent with their experience, expertise and demonstrated lending judgment and will be reviewed annually. Commercial and agriculture authorities shall be distinguished between non-watchlist and watchlist classifications. Non-watchlist includes credits that are risk rated 1-4. Watchlist includes credits that are risk rated 5-8. The Bank's lending authorities are as follows:

	<b>NON-WATCH LIST CREDITS</b> Authorities for all credit actions except: extensions	<b>WATCH LIST CREDITS</b> Authorities for all credit actions except: extensions, charge offs and moves to and from non-accrual
<b>Individual Loan Approval</b>		
Business Bankers	Up to \$1,000,000	Up to \$500,000
Direct Farm RE Loan Specialist	Up to \$1,000,000	Up to \$500,000
E.D. & Govt Program Manager	Up to \$1,000,000	Up to \$500,000
Special Assets Manager*	Up to \$1,500,000	Up to \$1,000,000
<b>Sole Serial Sign-Off (requires any of the following to approve):</b>		
President/CEO	Up to \$2,500,000	Up to \$1,250,000
Chief Credit Officer	Up to \$2,500,000	Up to \$1,250,000
Chief Business Development Officer	Up to \$2,500,000	Up to \$1,250,000
Chief Lending Officer	Up to \$2,500,000	Up to \$1,250,000
<b>Dual Serial Sign-Off (requires any two of the following to approve):</b>		
President/CEO	\$2,500,001 to \$10,000,000	\$1,250,001 to \$5,000,000
Chief Credit Officer	\$2,500,001 to \$10,000,000	\$1,250,001 to \$5,000,000
Chief Business Development Officer	\$2,500,001 to \$10,000,000	\$1,250,001 to \$5,000,000
Chief Lending Officer	\$2,500,001 to \$10,000,000	\$1,250,001 to \$5,000,000
<b>Investment Committee</b>	\$10,000,001 to \$25,000,000	\$5,000,001 to \$12,500,000
<b>Advisory Board</b>	\$25,000,001 to \$35,000,000	\$12,500,001 to \$17,500,000
<b>Industrial Commission</b>	Loans in excess of \$35,000,000	Loans in excess of \$17,500,000

**GENERAL LOAN POLICY BANK OF NORTH DAKOTA GENERAL LOAN POLICY**

	<b>NON-WATCH LIST CREDITS</b>	<b>WATCH LIST CREDITS</b>
	Authorities for all credit actions except: extensions	Authorities for all credit actions except: extensions, charge offs and moves to and from non-accrual
<b>Individual Loan Approval</b>		
Business Bankers	Up to \$1,000,000	Up to \$500,000
Direct Farm RE Loan Specialist	Up to \$1,000,000	Up to \$500,000
E.D. & Govt Program Manager	Up to \$1,000,000	Up to \$500,000
Special Assets Manager*	Up to \$1,500,000	Up to \$1,000,000
<b>Sole Serial Sign-Off (requires any of the following to approve):</b>		
President/CEO	Up to \$2,500,000	Up to \$1,250,000
Chief Credit Officer	Up to \$2,500,000	Up to \$1,250,000
Chief Business Development Officer	Up to \$2,500,000	Up to \$1,250,000
Chief Lending Officer	Up to \$2,500,000	Up to \$1,250,000
Financial Institutions Market Manager	Up to \$2,500,000	Up to \$1,250,000
<b>Dual Serial Sign-Off (requires any two of the following to approve):</b>		
President/CEO	\$2,500,001 to \$10,000,000	\$1,250,001 to \$5,000,000
Chief Credit Officer	\$2,500,001 to \$10,000,000	\$1,250,001 to \$5,000,000
Chief Business Development Officer	\$2,500,001 to \$10,000,000	\$1,250,001 to \$5,000,000
Chief Lending Officer	\$2,500,001 to \$10,000,000	\$1,250,001 to \$5,000,000
Financial Institutions Market Manager	\$2,500,001 to \$10,000,000	\$1,250,001 to \$5,000,000
<b>Investment Committee</b>	\$10,000,001 to \$25,000,000	\$5,000,001 to \$12,500,000
<b>Advisory Board</b>	\$25,000,001 to \$35,000,000	\$12,500,001 to \$17,500,000
<b>Industrial Commission</b>	Loans in excess of \$35,000,000	Loans in excess of \$17,500,000

\* Special Assets Manager authorities for non-accruals, charge-offs, OREO, and repossessed assets are outlined in a lending authorities memo approved by the President/CEO annually

All credit requests between \$25 million and \$35 million are required to be presented at the Industrial Commission meeting monthly; however, funding of these loans is not contingent upon Industrial Commission approval. Any credit request exceeding \$35 million in aggregate requires the approval of Industrial Commission prior to funding.

**INVESTMENT COMMITTEE**

Watchlist loans between \$5,000,001 and up to \$12,500,000 and non-watchlist loans between \$10,000,001 and up to \$25,000,000 require approval from the Investment Committee. The Investment Committee of the Bank shall consist of seven members appointed by the President with no more than three members combined from Business Development and Credit Administration. It is the responsibility of an absent voter to find a substitute to vote in their place. One-half or more of Committee members shall constitute a quorum. A majority of Committee members present must vote favorably to carry a motion.

For a credit relationship which exceeds \$25,000,000, the Investment Committee may renew the loan without further action by the Industrial Commission or Advisory Board provided: 1) the loan has a risk rating code of 4 or better; 2) the quality of the loan has not deteriorated; and 3) the Advisory Board and Industrial Commission have previously approved the loan. New monies for an existing credit relationship require the highest approval level up to and including Advisory Board and Industrial Commission unless the new monies are within discretionary lending thresholds established in this policy. All other loan modifications, pricing changes, maturity extensions, and restructures on previously approved existing exposure requires a maximum of Investments Committee approval regardless of exposure level.

An adverse answer on an Environmental Questionnaire may or may not require additional environmental due diligence depending on the nature of the issue. Proper discretion is required to determine if further due diligence is necessary. Contact the Credit Analysis Manager or Chief Credit Officer if uncertain how to handle an adverse answer on an Environmental Questionnaire when no additional environmental due diligence is being completed.

## ENVIRONMENTAL QUESTIONNAIRES

### Requirements for potential borrowers:

**Potential borrowers** are to complete an *Environmental Questionnaire* on any loan request exceeding \$100,000 to be secured by real estate except land that has never been previously developed, one to four family residential real estate, and agricultural land including farmsteads and farming-related improvements. The questionnaire is also to be completed by a customer if the banker or originating lender detected any potential contamination in the site inspection of a non-real estate secured loan request. The questionnaire is to be completed, dated, and signed by the customer or a party authorized by the customer (the customer may elect to contract with an outside expert to complete the questionnaire) and placed in the customer file. The questionnaire is to be reviewed ~~by the banker~~ prior to committing or funding these credit requests.

If answers on the questionnaire indicate any potential environmental contamination issues, a Transaction Screen Assessment (TSA) or Phase I or Phase II Assessment must be performed by a qualified third party with environmental expertise, at the customer's expense, before proceeding with the loan request, or the banker may need to decline the loan request. if the additional due diligence will not be completed, an exception must be noted and sufficiently mitigated or the loan request may need to be denied. Real estate taken as collateral that is on the Top 20 High Risk Industry List automatically requires a Phase I Environmental Assessment.

Existing borrowers that were not previously identified on the Top 20 High Risk Industry List will not require additional environmental due diligence at the time of renewal or new monies being advanced unless the use of the property has changed to a top 20 High Risk Industry since loan origination. If the existing borrower has previously been identified on the Top 20 High Risk Industry List, the borrower will be required to complete an Environmental Questionnaire prior to renewal of the loan or prior to advancing any new funds secured by the subject real estate.

The following table includes High Risk Industries for potential environmental contamination. An environmental questionnaire is not necessary for these high-risk industries, but they do require an automatic Phase I Assessment, with the exception of cattle feedlots. Cattle feedlots will require a copy of the most recent annual North Dakota Department of Health Environmental Quality NDPDES Inspection Report (NDPDES Inspection Report) in lieu of a Phase I Assessment. In the event the Phase I Assessment or the NDPDES Inspection Report identifies environmental concerns, further due diligence will be required.

## TOP 20 ENVIRONMENTAL RISK INDUSTRIES

**Rural Workforce Initiative to Support Housing (R-WISH)**

Bank of North Dakota shall administer the Rural Workforce Initiative to Support Housing (R-WISH) program. The intent of the program is to support rural communities with construction of market rate housing for workforce when a company is locating or expanding in a community of 20,000 and under in population.

The program is designed to support projects that are not viable due to disproportionate costs in comparison to attainable market rents to move forward; project must demonstrate that traditional financing terms are unfeasible. The program may provide equity or other financing alternatives. BND shall have the ability to utilize up to \$10MM of its capital for the program. BND shall develop and administer the program.

Adopted: June 26, 2024



**BULK PROPANE STORAGE TANK REVOLVING LOAN FUND**

The Bank shall administer the Bulk Propane Storage Tank Revolving Loan Fund established by N.D.C.C. § 6-09-52 for the purpose of providing loans to propane retailers to purchase and install storage containers to be used for the bulk storage of propane. This fund is a revolving loan fund and is a continuing appropriation.

**Qualifying Requirements for Borrower –**

The applicant must be a propane retailer conducting business in the state. Eligible Use of Loan Proceeds – To purchase and install storage containers to be used for the bulk storage of propane. Loan Amount – The maximum loan amount may not exceed ~~\$180,000-500,000~~ or 85% of the actual project costs per propane retailer. Maximum outstanding loan(s) balance may not exceed \$500,000. The Bank shall consider the applicant's ability to repay the loan when processing the application and shall issue loans only to applicants that provide reasonable assurance of sufficient future income to repay the loan.

**Repayment Terms –**

The term of the loan may not exceed 15 years.

**Interest Rate –**

The interest rate established for this program has been set at 2.00% with the fund receiving 1.50% and the Bank receiving a 0.50% administrative fee. A lead financial institution may receive a portion of BND's administrative fee as a service fee.

**Collateral** – The Bank may take all steps necessary and appropriate to preserve security under this program.

**Application Process** – All applications for loans under this program must be made to the Bank through a lead financial institution.

The Bank will require the following items from the applicant:

- Application
- Detail the proposed project, including the location of the storage container within the state;
- Demonstrate the need and viability of the project; and
- Include financial information as the Bank may determine appropriate.

**Fees and Costs –**

The lead financial institution may charge the borrower for all fees associated with the project or other loan servicing expenses.

Adopted: July 28, 2023

Amended: June 26, 2024

**BANK OF NORTH DAKOTA  
FINANCE AND CREDIT COMMITTEE TELECONFERENCE  
NONCONFIDENTIAL MINUTES**

**Wednesday, April 17, 2024 – 11:30 a.m. CT**

**MEMEBRS PRESENT**

**VIA PHONE:** Brenda Foster, Chairman  
Christie Obenauer  
Bill Price

**ALSO PRESENT**

**VIA PHONE:** Sara Schumacher, BND  
Rob Pfennig, BND  
Kirby Evanger, BND  
Craig Hanson, BND

Chairman Foster called the meeting to order at 11:30 a.m.

**Chairman Foster adjourned the nonconfidential portion of the meeting at 11:30 a.m. and the Advisory Board went into Executive Session pursuant to N.D.C.C. 6-09-35 to discuss those items on the agenda under Bank of North Dakota Confidential Business.**

\*\*\*\*\*  
The Executive Session began at 11:30 a.m. and was attended by Brenda Foster, Christie Obenauer, Bill Price, Sara Schumacher, Rob Pfennig, Kirby Evanger, Craig Hanson, Kaylen Hausauer, Gus Staahl, Jared Mosbrucker

The following items were considered during Executive Session:

- Recommendations of Loan Applications to the Advisory Board Committee
- Problem Loans – Adversely Classified Quarterly Recap/Detail
- First Quarter 2024 CECL Review
- Non-Accrual Loans Quarterly Recap/Detail
- Loan Charge-Offs and Recoveries Y.T.D. 03/31/2024

The Executive Session adjourned at 12:30 p.m.

\*\*\*\*\*  
Chairman Foster reconvened the Nonconfidential portion of the meeting.

Summary of Recommendations (Confidential Session):

- A recommendation will be made to the Advisory Board Committee to approve the loan application 1 as presented.
- A recommendation will be made to the Advisory Board Committee to approve the loan application 2 as presented.
- A recommendation will be made to the Advisory Board Committee to approve the consent agenda as presented.

Rob Pfennig presented the following items for review and discussion:

- Net income Projections
- 2024 BND Financial Plan Stress Scenario

Service Area Managers presented the First Quarter 2024 Performance Highlights.

Consent Agenda

- First Quarter 2024 Swap Analysis

NONCONFIDENTIAL FINANCE AND CREDIT COMMITTEE MEETING MINUTES

Wednesday, April 17, 2024

- Performance Management Dashboard

A recommendation will be made to the Advisory Board Committee to approve the consent agenda as presented.

The next Advisory Board Finance and Credit Committee meeting will be held Wednesday, May 15, 2024.

Being no further Bank of North Dakota business, Chairman Foster adjourned the nonconfidential portion of the meeting at 12:45 p.m.

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Sara Schumacher, Executive Assistant

**BANK OF NORTH DAKOTA  
AUDIT AND RISK MANAGEMENT TELECONFERENCE  
NONCONFIDENTIAL MINUTES  
Thursday, April 18, 2024 – 8:30 a.m. CT**

**MEMBERS PRESENT:** Dennis Johnson  
Jean Voorhees

**MEMBERS PRESENT  
VIA PHONE:** Pat Clement, Chairman

**ALSO PRESENT:** Sara Schumacher, BND  
Rob Pfennig, BND  
Alison Anderson, BND  
Christy Steffenhagen, BND  
Nick Leintz, BND  
Jenni Lang, BND  
Jennifer Bickel, BND  
Andrew Beyer, (Eide Bailly)

Chairman Clement called the meeting to order at 8:30 a.m.

**Chairman Clement adjourned the nonconfidential portion of the meeting at 8:30 a.m. and the Advisory Board went into Executive Session pursuant to N.D.C.C. 6-09-35, 44-04-27 & 44-04-24 to discuss those items on the agenda under Bank of North Dakota Confidential Business.**

\*\*\*\*\*

The Executive Session began at 8:30 a.m. and was attended by Pat Clement, Dennis Johnson, Jean Voorhees, Sara Schumacher, Alison Anderson, Christy Steffenhagen, Nick Leintz, Jenni Lang, Bonnie Schneider

The following items were considered during Executive Session:

- Annual Risk Acceptance Tracker
- First Quarter 2024 Outstanding Internal/External Audit Items
- Positive FinCEN Match
- CAPS Tabletop Exercise Report
- Vulnerability Management Update

The Executive Session adjourned at 9:05 a.m.

\*\*\*\*\*

Chairman Clement reconvened the Nonconfidential portion of the meeting.

Nick Leintz and Rob Pfennig presented the following items for review and discussion:

- Risk Acceptance – 2023 AgPACE

Jenni Lang and Jennifer Bickel presented the following items for review and discussion:

- Risk Acceptance – Variable Rate Loan with Fixed Rate Prom Note

Andrew Beyer, Eide Bailly, presented the following items for recommendation:

- Independent Auditor's Report and Financial Statement - (FASB) December 31, 2023
- Independent Auditor's Report and Financial Statement - (GASB) December 31, 2023

A recommendation will be made to the Advisory Board Committee to approve the audits as presented.

Andrew Beyer, Eide Bailly, presented the following items for review and discussion:

- North Dakota Guaranteed Student Loan Program December 31, 2023

Jennifer Bickel presented the following items for review and discussion:

- Student Loan System Issues Update Memo

Nick Leintz presented the following item for review and discussion:

- First Quarter 2024 Outstanding Internal/External Audit Items

Jenni Lang presented the following items for review and discussion:

- First Quarter 2024 Credit Review Report
- First Quarter 2024 Outstanding Internal/External Compliance Items

Audit Committee Consent Agenda:

- First Quarter 2024 Internal Audit Status Report
- Procurement, Contract Administration, and Project Management Audit
- Interest Rate Risk Management and Balance Sheet Liquidity and Funding Audit
- Consigned Items, Negotiable Instruments, and Foreign Drafts Audit
- First Quarter 2024 External Compliance Consulting Report (TIB)
- First Quarter 2024 External Compliance Consulting Report (TIB)

A recommendation will be made to the Advisory Board Committee to approve the Audit Committee Consent Agenda as presented.

A Risk Management, Quality Assurance Providers – ERM Discussion was held.

The next Advisory Board Audit and Risk Management meeting will be held Thursday, July 18, 2024.

Being no further Bank of North Dakota business, Chairman Clement adjourned the nonconfidential portion of the meeting at 11:00 a.m.

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Sara Schumacher, Administrative Assistant

**BANK OF NORTH DAKOTA  
ADVISORY BOARD MEETING  
NONCONFIDENTIAL MINUTES  
Thursday, April 18, 2024 – 1:00 p.m. CT**

**MEMBERS PRESENT:** Karl Bollingberg, Chairman  
Dennis Johnson  
Christie Obenauer  
Jean Voorhees  
Bill Price

**MEMBERS PRESENT  
VIA PHONE:** Pat Clement  
Brenda Foster

**ALSO PRESENT:** Todd Steinwand, BND  
Sara Schumacher, BND  
Rob Pfennig, BND  
Alison Anderson, BND  
Kirby Evanger, BND  
Lori Leingang, BND  
Christy Steffenhagen, BND  
Kelvin Hullet, BND  
Craig Hanson, BND  
Kris Ahmann, BND

**ALSO PRESENT  
VIA PHONE:** Reice Haase, Industrial Commission

Chairman Bollingberg called the meeting to order at 1:00 p.m.

**Chairman Bollingberg adjourned the nonconfidential portion of the meeting at 1:00 p.m. and the Advisory Board went into Executive Session pursuant to N.D.C.C. 6-09-35, 44-04-27 & 44-04-24 to discuss those items on the agenda under Bank of North Dakota Confidential Business.**

\*\*\*\*\*

The Executive Session began at 1:00 p.m. and was attended by Karl Bollingberg, Dennis Johnson, Pat Clement, Christie Obenauer, Jean Voorhees, Bill Price, Brenda Foster, Todd Steinwand, Sara Schumacher, Rob Pfennig, Alison Anderson, Kirby Evanger, Lori Leingang, Christy Steffenhagen, Kelvin Hullet, Craig Hanson, Reice Haase

The following items were considered during Executive Session:

- Loan Applications to the Bank of North Dakota
- Consent Agenda (see Finance and Credit Committee agenda)
- Finance and Credit Committee Reports Recap
- Audit and Risk Management Committee Reports Recap
- First Quarter 2024 Suspicious Activity Report
- Confidential Finance and Credit Committee Minutes (March 20, 2024)
- Confidential Advisory Board Minutes (March 21, 2024)
- Confidential Investment Committee Minutes (March 06, 13, 18, 20, 27, 2024)

The Executive Session adjourned at 1:55 p.m.

\*\*\*\*\*

Chairman Bollingberg reconvened the Nonconfidential portion of the meeting.

NONCONFIDENTIAL ADVISORY BOARD MEETING MINUTES

Thursday, April 18, 2024

Summary of Recommendations (Confidential Session):

- A motion was made by Ms. Obenauer to approve the application 1 as presented. Seconded by Mr. Price. Members Bollingberg, Johnson, Clement, Obenauer, Voorhees, Price, Foster voted aye. Motion carried.
- A motion was made by Ms. Obenauer to approve the application 2 as presented. Seconded by Mr. Price. Members Bollingberg, Johnson, Clement, Obenauer, Voorhees, Price, Foster voted aye. Motion carried.
- A motion was made by Ms. Obenauer to approve the Finance and Credit Committee items as presented. Seconded by Mr. Price. Members Bollingberg, Johnson, Clement, Obenauer, Voorhees, Price, Foster voted aye. Motion carried.
- A motion was made by Mr. Johnson to approve the consent agenda as presented. Seconded by Ms. Voorhees. The Suspicious Activity Report was pulled for review and discussion. Ms. Obenauer approved the report as presented. Seconded by Mr. Johnson. Members Bollingberg, Johnson, Clement, Obenauer, Voorhees, Price, Foster voted aye. Motion carried.

Finance and Credit Committee made a recommendation to approve the following:

- Consent Agenda (see Finance and Credit Committee agenda)

A motion was made by Ms. Obenauer to approve the items as presented. Seconded by Mr. Price. Members Bollingberg, Johnson, Clement, Obenauer, Voorhees, Price, Foster voted aye. Motion carried.

Christy Obenauer provided a Finance and Credit Committee Reports Recap for Brenda Foster

Advisory Board Audit and Risk Committee made a recommendation to approve the following:

- Independent Auditor's Report and Financial Statement-December 31, 2023 (FASB)
- Independent Auditor's Report and Financial Statement-December 31, 2023 (GASB)
- Risk Acceptance – 2023 AgPACE
- Risk Acceptance – Variable Rate Loan with Fixed Rate Prom Note
- Consent Agenda (see Audit and Risk Committee agenda)

A motion was made by Ms. Clement to approve the items as presented. Seconded by Mr. Johnson. Members Bollingberg, Johnson, Clement, Obenauer, Voorhees, Price, Foster voted aye. Motion carried.

Pat Clement provided an Audit and Risk Management Committee Reports Recap.

Todd Steinwand and Rob Pfennig provided a Cash Management Update.

Todd Steinwand and Lori Leingang provided a Retention and Recruitment Update.

Lori Leingang provided a CEO Search Update.

Kris Ahmann provided an Economic Forecasting Update.

BND Advisory Board Members presented a report of activity in their region of ND.

BND Executive Members had no Service Area Updates.

Consent Agenda:

- Nonconfidential Finance and Credit Committee Minutes (March 20, 2024)
- Nonconfidential Advisory Board Minutes (March 21, 2024)
- Nonconfidential Investment Committee Minutes (March 06, 13, 18, 20, 27, 2024)

A motion was made by Ms. Obenauer to approve the consent agenda as presented. Seconded by Mr. Price. Members Bollingberg, Johnson, Clement, Obenauer, Voorhees, Price, Foster voted aye. Motion carried.

NONCONFIDENTIAL ADVISORY BOARD MEETING MINUTES

Thursday, April 18, 2024

An Advisory Board Discussion was held.

The next Advisory Board meetings will be held:

- Finance and Credit Committee Meeting – Wednesday, May 15, 2024, 10:00 a.m., 3rd Floor Missouri River Room 301
- Leadership Development and Compensation Committee Meeting – Thursday, May 16, 2024, 8:30 a.m., Teleconference
- Group Advisory Board Meeting – Thursday, May 16, 2024, 10:00 a.m., 3rd Floor Missouri River Room 301/Teleconference

Being no further Bank of North Dakota business, Chairman Bollingberg adjourned the nonconfidential portion of the meeting at 4:30 p.m.

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Sara Schumacher, Executive Assistant



# Industrial Commission of North Dakota



Doug Burgum  
Governor

Drew H. Wrigley  
Attorney General

Doug Goehring  
Agriculture Commissioner

TO: Industrial Commission Members  
FR: Interim Executive Director Karen Tyler  
DT: June 26, 2024  
RE: Re-appointment of Public Finance Authority Advisory Committee Member

North Dakota Public Finance Authority Policy P-2A establishes:

The Public Finance Authority Advisory Committee consists of three members to be named by resolution of the Industrial Commission of North Dakota (the "Commission"). The Committee members must be appointed to three-year terms but shall serve at the pleasure of the Commission.

The current term for PFA Advisory Committee member Linda Svihovec will expire on July 1, 2024. Ms. Svihovec was first appointed to the advisory board in 2015 and is interested in continuing her service to the Committee. Ms. Svihovec is a research analyst at the ND Association of Counties, and her relationships with county treasurers and auditors is of significant value to the committee in its support of the PFA's programs. Her understanding of the needs and challenges faced by rural communities in funding infrastructure, along with her knowledge of the role and impact of the PFA, is crucial to the Authority's work. These qualities contribute significantly to her effectiveness as an advisory committee member.

**I recommend the Industrial Commission accept the recommendation of the PFA Executive Director and reappoint Linda Svihovec to the PFA Advisory Committee for a term ending July 1, 2027.**

# Industrial Commission of North Dakota



Doug Burgum  
Governor

Drew H. Wrigley  
Attorney General

Doug Goehring  
Agriculture Commissioner

TO: Industrial Commission Members  
FR: Interim Executive Director Karen Tyler  
DT: June 26, 2024  
RE: Re-appointment of Housing Finance Agency Advisory Board Members

North Dakota Century Code 54-17-07.1 directs that the Industrial Commission shall appoint a six-member advisory board consisting of representatives of lenders, the residential real estate industry, the mobile home and manufactured housing industry, and homeowners and buyers, and in consultation with such board may adopt rules and regulations for the conduct of its housing finance program which may, among other matters, establish requirements for the type and purchase price of dwelling units and multifamily facilities eligible to be financed, the income limits for eligible low or moderate income persons or families, the interest rates and other terms of mortgage loans to be financed, requirements relating to federal or private mortgage insurance or guarantees, and the general terms and conditions for the issuance and security of housing revenue bonds to be issued.

The current terms for HFA Advisory Board members Lisa Rotvold (home buyer/homeowner) and Larry Nygaard (ND Builders Association) will expire on July 1, 2024. Ms. Rotvold was first appointed to the advisory board on January 22, 2004, and currently serves as board Vice-Chair. Mr. Nygaard was first appointed to the board on December 14, 2017. Both members are interested in continuing their service on the Advisory Board.

**I recommend the Industrial Commission accept the recommendation of the HFA Advisory Board and reappoint Lisa Rotvold and Larry Nygaard for three-year terms and reappoint Ms. Rotvold as Vice-Chair.**



June 26, 2024

TO: Industrial Commission

FR: David Flohr, Executive Director

RE: **Issuance of Multifamily Revenue Bonds-Lashkowitz Riverfront 4**

The North Dakota Housing Finance Agency requests **that the Industrial Commission approve the issuance of multifamily tax-exempt revenue bonds Lashkowitz Riverfront 4 Series 2024A and 2024 B, in an aggregate amount not to exceed \$16,500,000.**

Fargo Housing and Redevelopment Authority, a North Dakota Housing Authority, demolished the existing 248-unit public housing complex known as the Lashkowitz Highrise and will replace it with the new construction of 110 units to be developed as a twin 4 percent/9 percent transaction. The 4 percent transaction, for which tax-exempt bonds will be issued, will consist of 83 units and comprise floors 2-4. The remaining 27 units will be financed as a separate asset using 9 percent competitive credits and a taxable bond issuance. This transaction will remove units from public housing and replace with traditional affordable housing as part of a repositioning strategy.

Total development costs for the entire deal is nearly \$38.5 million with about a 25/75 percent split between the 9% and 4% cost allocations. The total tax credit equity investment is projected to be over \$16 million. Co Developers BlueLine Development and Fargo Housing And Redevelopment Authority, lender is LUMENT/ORIX Real Estate Capital, LLC, and Equity Investor WNC.

The 4% issuance will have two series, a short term and long term. The total aggregate amount not to exceed a total principal amount of \$16,500,000. Series 2024A (18-yr maturity) and Series 2024B (paid off at conversion - earlier of 90% occupancy or 36 months)

The transaction is structured as a tax-exempt privately placed bond issuance, proceeds from which will be used for construction financing. The Agency has conditionally committed \$1,202,021 in 4% Low-Income Housing Tax Credits. A final determination of allocation will be based on total costs and allowable credit basis.

The operative documents for the tax-exempt transaction are:

- (a) A resolution authorizing the issuance of tax-exempt multifamily revenue bonds Series 2024 A and Series 2024B, in an aggregate principal amount not to exceed \$16,500,000
- (b) Trust Indenture
- (c) Financing Agreement
- (d) Regulatory Agreement

The Commission, by executing the authorizing resolution, is approving the operative documents in their respective current forms and authorizing the Executive Director and Chief Financial Officer (Authorized Officers) to execute the documents in their respective current forms with such changes as are consistent with the parameters set forth in the authorizing resolution and approved by the Authorized Officers, such approval being evidenced by an Authorized Officer's execution of the documents.

STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 4)  
SERIES 2024A

STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 4)  
SERIES 2024B

**A RESOLUTION AUTHORIZING THE ABOVE CAPTIONED INDEBTEDNESS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$16,500,000; APPROVING THE FORM OF CERTAIN FINANCING DOCUMENTS AND OTHER RELATED DOCUMENTS; AUTHORIZING THE EXECUTION OF SUCH DOCUMENTS; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.**

WHEREAS, the Industrial Commission of North Dakota (the “Commission”) acting in its capacity as the North Dakota Housing Finance Agency (the “Agency”), is empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the “Act”) to provide financing, directly or indirectly, of construction, permanent and combined construction and permanent loans for the acquisition, construction, refurbishing, reconstruction, construction or improvement of multifamily residential housing in which at least twenty percent of the units are held for occupancy by persons or families of low and moderate income; and

WHEREAS, the Agency intends to issue its Multifamily Revenue Bonds (Lashkowitz Riverfront 4), Series 2024A, and its Multifamily Revenue Bonds (Lashkowitz Riverfront 4), Series 2024B (the “Bonds”), in an aggregate principal amount not to exceed \$16,500,000, the proceeds of which will be used to finance a loan for the acquisition, construction and equipping of Lashkowitz Riverfront 4, an 83-unit multifamily residential rental project (the “Project”); and

WHEREAS, the Bonds will be issued pursuant to a Trust Indenture (the “Indenture”), between the Agency and Wilmington Trust, National Association, in its capacity as trustee (the “Trustee”), which will be in substantially the form attached hereto as Attachment A, whereby the Agency would be authorized to issue the Bonds subject to the terms, conditions and limitations established herein and in the Indenture; and

WHEREAS, the Bonds will be sold and delivered to ORIX Public Finance, LLC (the “Purchaser”) in the manner, at the purchase price and on the terms and conditions set forth in the Indenture; and

WHEREAS, the proceeds of the Bonds will be used to finance a loan (the “Bond Loan”) to Lashkowitz Riverfront Four, LLLP, a North Dakota limited liability limited partnership, or another affiliate thereof (the “Borrower”), pursuant to a Financing Agreement, by and among the

Agency, the Trustee, and the Borrower (the “Financing Agreement”), which will be in substantially the form attached hereto as Attachment B; and

WHEREAS, the interest on the Tax-Exempt Bonds is intended to qualify for a federal tax exemption under Section 142 of the Internal Revenue Code of 1986 (the “Code”), and to ensure that the Tax-Exempt Bonds maintain their tax exempt status, the Borrower will enter into a Regulatory Agreement and Declaration of Restrictive Covenants (the “Regulatory Agreement”), which will be in substantially the form attached hereto as Attachment C; and

NOW, THEREFORE, BE IT RESOLVED:

**Section 1. Findings.** The Commission hereby finds and determines that:

- (a) the Project financed through the issuance of the Bonds constitutes a “multifamily housing facility” within the meaning of Sections 54-17-07.2 and 54-17-07.3(3) of the Act; and
- (b) the Bond Loan will provide the Borrower with financing for the acquisition, construction, refurbishing, reconstruction, construction or improvement of the Project; and
- (c) that the Project will be of public use and will provide a public benefit.

**Section 2. Approval of Indenture.** The Indenture is hereby approved in the form hereinabove described, and the Executive Director, the Director of Planning and Housing Development or the Chief Financial Officer of the Agency (each, including any individual authorized to act on his or her behalf, an “Authorized Officer”) is hereby authorized and directed to execute and deliver the Indenture, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Indenture, and any other Authorized Officer is hereby authorized and directed to attest thereto.

**Section 3. Authorization and Sale of Bonds.** The issuance, sale and delivery of the Bonds to ORIX Public Finance, LLC (the “Purchaser”) are hereby authorized and approved. The final principal amount and terms of the Bonds shall be determined by any Authorized Officer, subject to the following conditions:

- (a) The Bonds shall not be general obligations of the Commission or the Agency but shall be limited obligations payable solely and only from moneys pledged under the Indenture as required by the Financing Agreement.
- (b) The Bonds shall mature no later than July 1, 2054, bear interest at a fixed rate or rates not to exceed 12% per annum, be in an aggregate principal amount not to exceed \$16,500,000, be sold to the Purchaser at not less than 100% of the principal amount thereof and have the other terms and provisions (including provisions with respect to the redemption of the Bonds prior to maturity, if any) as described to the Commission and definitively set forth in the Indenture upon execution and delivery as aforesaid in Section 2 hereof.

(c) The Bonds shall be executed and delivered substantially in the forms set forth in the Indenture, with such additions, omissions and changes as are required or permitted by the Indenture.

(d) The Bonds shall be executed in the name of the Commission by the manual or facsimile signature of each of the members of the Commission, with the official seal of the Commission (or a facsimile thereof) impressed, imprinted or otherwise reproduced thereon, and attested by the manual or facsimile signature of any Authorized Officer, and their execution shall evidence their approval of the final terms thereof. Such Bonds shall not be valid or obligatory for any purpose until authenticated by the manual signature of an authorized officer of the Trustee.

**Section 4. Approval of Financing Agreement.** The Financing Agreement is hereby approved in the form hereinabove described, and any Authorized Officer is hereby authorized to execute and deliver the Financing Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Financing Agreement.

**Section 5. Approval of Regulatory Agreement.** The Regulatory Agreement is hereby approved in the form hereinabove described, and any Authorized Officer is hereby authorized to execute and deliver the Regulatory Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Regulatory Agreement.

**Section 6. Ratification of Prior Actions.** All action previously taken by the officers, members or staff of the Agency within the authority granted herein, with respect to the Indenture, the Financing Agreement, the Bonds, and the Regulatory Agreement is approved, and a public hearing with respect to the issuance of the Tax-Exempt Bonds is hereby approved, confirmed and ratified.

**Section 7. Execution of Tax Documents.** Any Authorized Officer is hereby authorized to execute certifications as to the Agency's reasonable expectations regarding the amount and use of the proceeds of the Tax-Exempt Bonds, to file related forms with the Internal Revenue Service and to execute appropriate land use restriction agreements to comply with the Internal Revenue Code of 1986, as amended, particularly Sections 142 and 148 thereof.

**Section 8. Additional Actions Authorized.** Any Authorized Officer and any other officer, employee, agent, members or staff of the Agency, acting alone or acting with others, are each hereby authorized and directed to execute and deliver any or all other documents which may be required under the terms of the Indenture, the Financing Agreement, or the Regulatory Agreement, and to take such other action as may be required or appropriate for the performance of the duties imposed thereby or to carry out the purposes thereof.

**Section 9. Authorization of Authorized Officers.** Any Authorized Officer is hereby authorized to deliver an Agency Certificate, or such other document as may be necessary or appropriate, at the time of issuance of the Bonds which cures ambiguities, defects or omissions herein, corrects or supplements any provision herein, lessens the obligations of the Agency

hereunder, or adds to the rights or options of the Agency, all in furtherance of the purposes and programs of the Agency.

**Section 10. Effective Date.** This Resolution shall become effective immediately.



IN WITNESS WHEREOF, this Resolution has been signed on June \_\_, 2024.

INDUSTRIAL COMMISSION OF NORTH DAKOTA ACTING AS THE  
NORTH DAKOTA HOUSING FINANCE AGENCY

---

Doug Burgum, Governor

---

Drew Wrigley, Attorney General

---

Doug Goehring, Agriculture Commissioner

Attest:

---

Karen Tyler  
Interim Executive Director and Secretary

**ATTACHMENT A**  
**FORM OF TRUST INDENTURE**

**ATTACHMENT B**  
**FORM OF FINANCING AGREEMENT**

**ATTACHMENT C**

**FORM OF REGULATORY AGREEMENT**

**TRUST INDENTURE**

**between**

**STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY,  
as Issuer**

**and**

**WILMINGTON TRUST, NATIONAL ASSOCIATION,  
as Trustee**

**Relating to**

**\$\_[\_\_\_\_\_]  
STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 4)  
SERIES 2024A**

**\$\_[\_\_\_\_\_]  
STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 4)  
SERIES 2024B**

**Dated as of July 1, 2024**

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## TRUST INDENTURE

**THIS TRUST INDENTURE** (this “**Indenture**”), is made and entered into as of July 1, 2024, by and between the **INDUSTRIAL COMMISSION OF NORTH DAKOTA** (the “**Commission**”) acting in its capacity as the **NORTH DAKOTA HOUSING FINANCE AGENCY** (the “**Issuer**”), a public instrumentality and agency of the State of North Dakota organized and existing under the laws of the State of North Dakota (the “**State**”), and **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association, organized and operating under the laws of the United States of America and authorized to accept and execute trusts of the character herein set out, having a corporate trust office in Minneapolis, Minnesota, as trustee (the “**Trustee**”). Capitalized terms are defined in Section 1.01 of this Indenture.

### RECITALS

**A.** Pursuant to Chapter 54-17 of the North Dakota Century Code, as amended (the “**Act**”) and this Indenture, the Issuer has determined to issue its Multifamily Revenue Bonds (Lashkowitz Riverfront 4), Series 2024A (the “**Series 2024A Bonds**”) in the maximum aggregate principal amount of \$[\_\_\_\_\_] and its Multifamily Revenue Bonds (Lashkowitz Riverfront 4), Series 2024B (the “**Series 2024B Bonds**,” and together with the Series 2024A Bonds, the “**Bonds**”) in the original aggregate principal amount of \$[\_\_\_\_\_] , to provide for the financing of a multifamily rental housing development located at 101 2nd St S in Fargo, North Dakota known as Lashkowitz Riverfront 4 (the “**Project**”).

**B.** Pursuant to a Financing Agreement dated as of the date hereof (the “**Financing Agreement**”) among the Issuer, Lashkowitz Riverfront Four, LLLP, a limited liability limited partnership duly organized and existing under the laws of the State of North Dakota (the “**Borrower**”), and the Trustee, the Issuer has agreed to use the proceeds derived from the sale of Bonds to make a mortgage loan in the principal amount of \$[\_\_\_\_\_] (the “**Bond Mortgage Loan**”) to the Borrower in connection with the Project.

**C.** The Borrower has agreed to use the proceeds of the Bond Mortgage Loan to finance the acquisition, rehabilitation and/or construction of the Project and to pay certain costs of issuance of the Bonds.

**D.** The Borrower’s repayment obligations in respect of the Bond Mortgage Loan will be evidenced by two Bond Mortgage Notes, each dated the Delivery Date (together with all riders and addenda thereto, the “**Bond Mortgage Note**”) and delivered to the Issuer, which Bond Mortgage Note will be endorsed by the Issuer to the Trustee for the benefit of the holders of the Bonds from time to time.

**E.** ORIX Public Finance, LLC (“**ORIX**”) has agreed to facilitate the financing of the Project by purchasing all of the Bonds on the Delivery Date.

**F.** ORIX will act as initial Bondholder Representative with respect to the Bonds (in such capacity and any successor in such capacity, the “**Bondholder Representative**”).

**G.** To secure the Borrower’s obligations under the Bond Mortgage Note, the Borrower will execute and deliver to the Issuer a Multifamily Mortgage, Security Agreement,

Assignment of Leases and Rents and Fixture Filing dated as of the Delivery Date (the “**Bond Mortgage**”) with respect to the Project. Pursuant to the Assignment, the Bond Mortgage will be assigned by the Issuer to the Trustee.

**H.** The Borrower and the Bondholder Representative are entering into (i) a Continuing Covenant Agreement dated as of the date hereof (the “**Continuing Covenant Agreement**”), which sets forth various covenants with respect to the Borrower and Project, and (ii) a Construction Funding Agreement dated as of the date hereof (the “**Construction Funding Agreement**”), which sets forth conditions to disbursement of the proceeds of the Bond Mortgage Loan to the Borrower.

**I.** The Issuer has determined that all things necessary to make the Bonds, when executed by the Issuer and authenticated by the Trustee and issued in accordance with this Indenture, the valid, binding and legal obligations of the Issuer and to constitute this Indenture a valid lien on the properties, interests, revenues and payments herein pledged to the payment of the principal of, premium, if any, and interest on, the Bonds, have been duly taken, and the creation, execution and delivery of this Indenture and the execution and delivery of the Bonds, subject to the terms of this Indenture, have been duly authorized by the Issuer.

**J.** The Trustee has trust powers and the power and authority to enter into this Indenture, to accept trusts generally and to accept and execute the trust created by this Indenture; the Trustee has accepted the trust so created and, to evidence such acceptance, has joined in the execution of this Indenture.

**NOW, THEREFORE**, the Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the holders and owners thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect, and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, and the payment and performance of all amounts and obligations under the Continuing Covenant Agreement and the other Bond Mortgage Loan Documents, does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Trustee, and its successors in trust and its and their assigns in and to the following (said property being herein referred to as the “**Trust Estate**”), to wit:

#### **GRANTING CLAUSE FIRST**

All right, title and interest of the Issuer in and to all Revenues.

#### **GRANTING CLAUSE SECOND**

All right, title and interest of the Issuer in and to the Financing Agreement, the Bond Mortgage Note, the Bond Mortgage and the other Bond Mortgage Loan Documents (other than the Unassigned Rights), including all extensions and renewals of the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance benefits or condemnation awards), whether payable under the above-referenced documents or otherwise, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all

things which the Issuer or any other Person is or may become entitled to do under said documents.

### **GRANTING CLAUSE THIRD**

Except for funds, money or securities in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund, all funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Bonds by the Issuer or by anyone on its behalf or with its written consent to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in said trust and to them and their assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all Holders of the Bonds issued under and secured by this Indenture without privilege, priority or distinction as to lien or otherwise of any of the Bonds over any of the other Bonds, except as set forth in this Indenture;

PROVIDED, HOWEVER, that if the Issuer or its successors or assigns shall pay or cause to be paid to the Holders of the Bonds the principal, interest and premium, if any, to become due thereon at the times and in the manner provided in Article IX hereof, and if the Issuer shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then these presents and the estate and rights hereby granted shall, at the option of the Issuer, cease, terminate and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.09, 4.11 and 4.12 hereof and Article IX hereof, reconvey to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer any property at the time subject to the lien of this Indenture which may then be in its possession, except for the Rebate Fund and cash held by the Trustee for the payment of interest on and principal of the Bonds; otherwise this Indenture to be and remain in full force and effect and upon the trusts and subject to the covenants and conditions hereinafter set forth.

AND IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto, that the terms and provisions upon which the Bonds are to be issued, executed, authenticated, delivered and secured, and the trusts and conditions upon which the Trust Estate is to be held and disposed of, which said trusts and conditions the Trustee hereby accepts and agrees to discharge, are as follows (except that in the performance of the agreements of the Issuer herein contained, any obligation it may thereby incur for the payment of money shall not be a general obligation of the Issuer nor a debt or pledge of the faith and credit of the Issuer or the State, but shall be payable solely from the revenues and funds pledged for its payment in accordance with this Indenture):

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** The terms used in this Indenture (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified below. Terms used herein not otherwise defined shall have the respective meanings set forth in the Financing Agreement and the Continuing Covenant Agreement.

“*Act*” means Chapter 54-17 of the North Dakota Century Code, as amended.

“*Administration Fund*” means the Administration Fund established by the Trustee pursuant to Section 4.01 hereof.

“*Advance Termination Date*” means the earliest to occur of (i) the date when the sum of the aggregate advances of the Bonds made by the Bondholder Representative equals the Authorized Amount, (ii) the date that is [three] years after the Delivery Date, (iii) the Outside Conversion Date, (iv) the Conversion Date, (v) the date of a Determination of Taxability or (vi) the occurrence of an Event of Default hereunder.

“*Assignment*” means the Assignment of Security Instrument dated as of the date hereof by the Issuer assigning its interest in the Bond Mortgage to the Trustee and the Bondholder Representative, as their interests may appear.

“*Authorized Amount*” shall mean \$[\_\_\_\_\_], the maximum principal amount of the Bonds authorized under this Indenture.

“*Authorized Denomination*” means \$25,000 principal amount and any integral multiple of \$5,000 in excess thereof.

“*Authorized Officer*” means (a) when used with respect to the Issuer, the Chairman or any member of the Commission, the Executive Director or Chief Financial Officer of the Issuer and such additional Person or Persons, if any, duly designated by the Issuer in writing to act on its behalf, (b) when used with respect to the Borrower, any [\_\_\_\_\_] of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, (c) when used with respect to the Trustee, any authorized signatory of the Trustee, or any Person who is authorized in writing to take the action in question on behalf of the Trustee, (d) when used with respect to the Servicer, any Person or Persons duly designated by the Servicer in writing to act on its behalf, and (e) when used with respect to the Bondholder Representative, any Person who is authorized in writing to take the action in question on behalf of the Bondholder Representative.

“*Bankruptcy Code*” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor federal statute.

“*Bond Counsel*” means (a) on the Delivery Date, the law firm or law firms delivering the approving opinion(s) with respect to the Bonds, or (b) any other firm of attorneys selected by the Issuer that is experienced in matters relating to the issuance of obligations by states and their

political subdivisions that is listed as municipal bond attorneys in The Bond Buyer's Municipal Marketplace and is acceptable to the Bondholder Representative.

*"Bond Fee Component"* means the regular, ongoing fees due from time to time to the Issuer, the Trustee and the Rebate Analyst, if any, expressed as a flat, fixed amount or in terms of a percentage of the principal amount of Outstanding Bonds on an annual basis.

*"Bond Financing Documents"* means, collectively, this Indenture, the Bonds, the Tax Regulatory Agreement, the Tax Certificate, the Bond Mortgage Loan Documents and all other documents or instruments evidencing, securing or relating to the Bonds.

*"Bond Fund"* means the Bond Fund established by the Trustee pursuant to Section 4.01 hereof.

*"Bond Interest Rate"* means the interest rate of [ ]% per annum with respect to the Series 2024A Bonds and [ ]% per annum with respect to the Series 2024B Bonds; provided during the continuance of any Event of Default hereunder, the Bond Interest Rate shall be the Default Rate.

*"Bond Mortgage"* means the Multifamily Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of the Delivery Date, together with all riders and addenda thereto, granting a first priority mortgage and security interest in the Project to the Issuer to secure the repayment of the Bond Mortgage Loan and related obligations, which Bond Mortgage has been assigned by the Issuer to the Trustee, as the same may be amended, supplemented or restated.

*"Bond Mortgage Loan"* means the loan made by the Issuer to the Borrower in the original principal amount of \$[ ] pursuant to the Financing Agreement.

*"Bond Mortgage Loan Documents"* means the Bond Mortgage, the Bond Mortgage Note, the Financing Agreement, the Tax Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, the Construction Funding Agreement and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Bond Mortgage Loan or any portion thereof, including the other Financing Documents.

*"Bond Mortgage Loan Fund"* means the Bond Mortgage Loan Fund established by the Trustee pursuant to Section 2.11 hereof.

*"Bond Mortgage Note"* means the Series 2024A Bond Mortgage Note and the Series 2024B Bond Mortgage Note, each dated the Delivery Date from the Borrower, including all riders and addenda thereto, evidencing the Borrower's obligation to repay the Bond Mortgage Loan, as the same may be amended, supplemented or restated from time to time, which Bond Mortgage Note will be delivered to the Issuer and endorsed by the Issuer to the Trustee.

*"Bond Register"* means the books or other records maintained by the Bond Registrar setting forth the registered Holders from time to time of the Bonds.

*"Bond Registrar"* means the Trustee acting as such, and any other bond registrar appointed pursuant to this Indenture.

“*Bond Resolution*” means the resolution(s) adopted by the Issuer authorizing the issuance of the Bonds.

“*Bond Year*” means, with respect to an issue of Bonds, each one-year period that ends at the close of business on the day in the calendar year that is selected by Borrower as indicated in the Tax Certificate. The first and last Bond Years may be short periods. If no day is selected by Borrower before the earlier of the final maturity of an issue of Bonds or the date that is five years after the Delivery Date of such issue of Bonds, each Bond Year ends on each anniversary of the Delivery Date for such issue of Bonds and on the final maturity of such issue of Bonds.

“*Bondholder*” or “*Holder*” or “*Owner*” means any Person who shall be the registered owner of any Outstanding Bond or Bonds.

“*Bonds*” means, collectively, the Series 2024A Bonds and the Series 2024B Bonds, issued pursuant to the provisions of this Indenture.

“*Bondholder Representative*” means the Person or Persons designated by the Majority Bondholder to act on behalf of all of the Bondholders as provided in Section 11.06, or an assignee of such Person or Persons as provided in Section 11.06. The initial Bondholder Representative shall be ORIX Public Finance, LLC.

“*Borrower*” means Lashkowitz Riverfront Four, LLLP, a limited liability limited partnership duly organized and existing under the laws of the State of North Dakota, or any of its permitted successors or assigns, as owner of the Project.

“*Borrower Equity Account*” means the Borrower Equity Account of the Bond Mortgage Loan Fund established by the Trustee pursuant to Section 2.11 hereof.

“*Borrower Equity Deposit*” means \$[\_\_\_\_\_], which shall be comprised of sources other than the proceeds of the Bonds.

“*Business Day*” means any day other than (a) a Saturday or a Sunday, or (b) a day on which (i) trust companies or banking institutions in the City of New York, Wilmington, Delaware, or in the city in which the Principal Office of the Trustee is located are authorized or obligated by law, regulation, or executive order to be closed or (ii) the New York Stock Exchange is closed.

“*Certificate of the Issuer*” and “*Request of the Issuer*” mean, respectively, a written certificate or request signed in the name of the Issuer by an Authorized Officer of the Issuer or such other Person as may be designated and authorized to sign for the Issuer. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

“*Code*” means the Internal Revenue Code of 1986 and the regulations promulgated thereunder.

“*Continuing Covenant Agreement*” means the Continuing Covenant Agreement dated as of the date hereof by and between the Borrower and the Bondholder Representative, as the same may be amended, modified or supplemented from time to time.

“*Cost,*” “*Costs*” or “*Costs of the Project*” means costs paid with respect to the Project that (i) are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with United States Treasury Regulations Section 1.103-8(a)(1), (ii) are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) are paid after the earlier of 60 days prior to the date of a resolution of the Issuer to reimburse costs of the Project with proceeds of Bonds or the date of issue of the Bonds, and (iv) if the Costs of the Project were previously paid and are to be reimbursed with proceeds of the Bonds such costs were (A) costs of issuance of the Bonds, (B) preliminary capital expenditures (within the meaning of United States Treasury Regulations Section 1.150-2(f)(2)) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition, construction and/or rehabilitation of the Project that do not exceed twenty percent (20%) of the issue price of the Bonds (as defined in United States Treasury Regulations Section 1.148-1), or (C) were capital expenditures with respect to the Project that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid); provided however, that if any portion of the Project is being constructed or developed by the Borrower or an Affiliate (whether as a developer, a general contractor or a subcontractor), “*Cost,*” “*Costs*” or “*Costs of the Project*” shall include only (a) the actual out-of-pocket costs incurred by the Borrower or such Affiliate in developing or constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Borrower or such Affiliate (but excluding any profit component) and (c) any overhead expenses incurred by the Borrower or such Affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the acquisition, rehabilitation, construction and/or development of the Project or payments received by such Affiliate due to early completion of the Project (or any portion thereof).

“*Cost of Issuance Fund*” means the Cost of Issuance Fund established by the Trustee pursuant to Section 4.01 hereof.

“*Costs of Issuance*” means, as applicable, (i) the fees (excluding ongoing fees), costs and expenses of (a) the Issuer, the Issuer’s counsel and the Issuer’s financial advisor, (b) Bond Counsel, (c) the Trustee and the Trustee’s counsel, (d) the Bondholder Representative and the Bondholder Representative’s counsel, and (e) Borrower’s counsel attributable to the issuance of the Bonds and the Borrower’s financial advisor, if any, and (ii) all other fees, costs and expenses directly associated with the authorization, issuance, sale and delivery of the Bonds, including, without limitation, printing costs, costs of reproducing documents, filing and recording fees.

“*Costs of Issuance Deposit*” means the deposit to be made by the Borrower with the Trustee on the Delivery Date, which deposit shall equal \$[ ] and shall be comprised of sources other than the proceeds of the Bonds.



“*Default Rate*” means the lower of (i) the Bond Interest Rate otherwise in effect notwithstanding the default plus five percent (5%) per annum or (ii) the maximum rate allowed by law.

“*Delivery Date*” means [\_\_\_\_\_], the date of initial issuance and delivery of the Bonds.

“*Determination of Taxability*” shall mean, (a) a determination by the Commissioner or any District Director of the Internal Revenue Service, (b) a private ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service in which Issuer and Borrower were afforded the opportunity to participate, (c) a determination by any court of competent jurisdiction, (d) the enactment of legislation or (e) receipt by Trustee or Bondholder Representative, at the request of Issuer, Borrower, Trustee or Bondholder Representative, of an opinion of Bond Counsel, in each case to the effect that the interest on the Bonds is includable in gross income for federal income tax purposes of any bondholder or any former bondholder, other than a bondholder who is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (a) or (c) shall be deemed to have occurred if the Issuer (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (i) a final determination from which no appeal may be taken with respect to such determination, (ii) abandonment of such appeal by the Issuer or the Borrower, as the case may be, or (iii) one year from the date of initial determination.

“*DTC*” means The Depository Trust Company, New York, New York, as initial Securities Depository for the Bonds pursuant to Section 2.12 hereof or its successors.

“*Electronic Notice*” means delivery of notice in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.05 hereof; provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 11.05 hereof.

“*Event of Default*” or “*event of default*” means any of those events specified in and defined by the applicable provisions of Article VI hereof to constitute an event of default.

“*Extraordinary Services*” means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by the Trustee, including in its capacity as Paying Agent and Bond Registrar, in respect of or to prevent default under this Indenture or the Bond Mortgage Loan Documents, including any reasonable attorneys’ or agents’ fees and expenses and other litigation costs that are entitled to reimbursement under the terms of the Financing Agreement, and other actions taken and carried out by the Trustee which are not expressly set forth in this Indenture or the Bond Mortgage Loan Documents.

“*Extraordinary Trustee’s Fees and Expenses*” means all those fees, expenses and disbursements earned or incurred by the Trustee as described under Section 7.06 hereof during any Bond Year for Extraordinary Services, as set forth in a detailed invoice to the Borrower, the Servicer and the Bondholder Representative.

“*Fair Market Value*” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (c) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (d) any commingled investment fund in which the Issuer and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

“*Financing Agreement*” means the Financing Agreement dated as of the date hereof among the Borrower, the Issuer and the Trustee, as such Financing Agreement may from time to time be amended or supplemented.

“*Financing Documents*” has the meaning set forth in the Continuing Covenant Agreement.

“*Government Obligations*” means investments meeting the requirements of clause (a) or (b) of the definition of “Qualified Investments” herein.

“*Impositions*” has the meaning set forth in the Continuing Covenant Agreement.

“*Indenture*” means this Trust Indenture, as the same may have been from time to time amended or modified, together with any other indentures supplemental hereto.

“*Information Service*” means in accordance with then-current guidelines of the Securities and Exchange Commission, the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934, or any successor entity or entities designated by the Securities and Exchange Commission.

“*Initial Debt Service Deposit*” means an amount equal to the interest payable on the Bonds for the period commencing on the Delivery Date to but not including the first day of the calendar month immediately succeeding the Delivery Date.

“*Interest Payment Date*” means (i) the first day of each calendar month, commencing [September 1, 2024], (ii) for Bonds subject to redemption but only with respect to such Bonds, the date of redemption (or purchase in lieu of redemption), and (iii) the Maturity Date.

“*Investment Income*” means the earnings and profits derived from the investment of money pursuant to Section 4.08 hereof.

“*Issuer*” means the Industrial Commission of North Dakota acting in its capacity as the North Dakota Housing Finance Agency, a public instrumentality and agency of the State of North Dakota.

“*Issuer Fee*” means the closing fee of the Issuer of \$206,250, payable by the Borrower on the Delivery Date.

“*Loan Equalization Payment*” means a mandatory prepayment of the Bond Mortgage Loan in the amount determined by the Bondholder Representative pursuant to the Construction Funding Agreement.

“*Mandatory Sinking Fund Schedule*” means the Mandatory Sinking Fund Schedule attached hereto as Schedule 1.

“*Majority Bondholder*” means the Bondholder or Bondholders holding, in the aggregate, more than fifty percent (50%) in aggregate principal amount of a series of Bonds Outstanding, as of any date of determination.

“*Maturity Date*” means [\_\_\_\_\_] with respect to the Series 2024A Bonds and [\_\_\_\_\_] with respect to the Series 2024B Bonds.

“*Moody’s*” means Moody’s Investors Service, Inc., its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“*Net Proceeds*” when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of such insurance proceeds or condemnation award, including reasonable attorneys’ fees.

“*Ordinary Trustee’s Fees and Expenses*” means the annual administration fee for the Trustee’s ordinary fees and expenses in rendering its services under this Indenture during each twelve-month period, which fee is equal to (and shall not exceed) \$2,500 and shall be payable annually in advance on the Delivery Date and each anniversary thereof thereafter.

“*Outstanding*” when used with respect to the Bonds or “Bonds Outstanding” means, as of any date, all Bonds that have been duly authenticated and delivered by the Trustee under this Indenture, except:

- (i) Bonds surrendered and replaced upon exchange or transfer, or cancelled because of payment or redemption, at or prior to such date;
- (ii) Bonds for the payment, redemption or purchase for cancellation of which sufficient money has been deposited prior to such date with the Trustee (whether upon or prior to the maturity, amortization or redemption date of any such Bonds), or which are deemed to have been paid and discharged pursuant to the provisions of Section 9.01 hereof; provided that if such Bonds are to be redeemed prior to the maturity thereof, other than by scheduled amortization, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee shall have been filed with the Trustee; and

(iii) Bonds in lieu of which others have been authenticated (or payment, when due, of which is made without replacement) under Section 2.07 hereof; and also except that

(iv) For the purpose of determining whether the holders of the requisite amount of Bonds Outstanding have made or concurred in any notice, request, demand, direction, consent, approval, order, waiver, acceptance, appointment or other instrument or communication under or pursuant to this Indenture, Bonds known to the Trustee to be owned by or for the account of the Borrower or any Person owned, controlled by, under common control with or controlling the Borrower shall be disregarded and deemed to be not Outstanding, unless all Bonds shall be so owned, and provided that the Trustee has knowledge of the foregoing. The term “control” (including the terms “controlling”, “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. Beneficial ownership of 5% or more of a class of securities having general voting power to elect a majority of the board of directors of a corporation shall be conclusive evidence of control of such corporation.

“*Paying Agent*” means the Trustee acting as such, or any other paying agent appointed pursuant to this Indenture.

“*Person*” means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated association, a limited liability company or a government or any agency or political subdivision thereof, or any other organization or entity (whether governmental or private).

“*Prepayment Premium*” shall mean any premium payable by the Borrower under the Bond Mortgage Note in connection with a prepayment of the Bond Mortgage Loan.

“*Principal Office of the Trustee*” means the office of the Trustee referenced in Section 11.05(a) hereof, or such other office or offices as the Trustee may designate in writing from time to time, or the office of any successor Trustee where it principally conducts its business of serving as trustee under indentures pursuant to which municipal or governmental obligations are issued.

“*Project*” means, collectively, the leasehold and residential rental apartment units, and related fixtures, equipment, furnishings and site improvements known as Lashkowitz Riverfront 4 located at 101 2nd Street South in Fargo, North Dakota, including the leasehold interest described in the Bond Mortgage.

“*Project Account*” means the Project Account of the Bond Mortgage Loan Fund established by the Trustee pursuant to Section 2.11 hereof.

“*Qualified Investments*” means any of the following if and to the extent permitted by law: (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of Fannie

Mae; (e) demand deposits or time deposits with, or certificates of deposit issued by, the Trustee or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Trustee or such other institution has been rated at least “VMIG-1”/“A-1+” by Moody’s or S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency; (f) investment agreements with a bank or any insurance company or other financial institution which has a rating assigned by Moody’s or S&P to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by Moody’s or S&P, and which are approved by the Bondholder Representative; (g) shares or units in any money market mutual fund rated “Aaa”/“AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including mutual funds of the Trustee or its affiliates or for which the Trustee or an affiliate thereof serves as investment advisor or provides other services to such mutual fund receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax exempt obligations; (h)(i) tax-exempt obligations rated in the highest short term rating category by Moody’s or S&P, or (ii) shares of a tax-exempt municipal money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating of “Aaa”/“AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security), for which at least 95% of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Trustee or its affiliates receive a fee for investment advisory or other services to the fund; or (i) any other investments approved in writing by the Bondholder Representative. For purposes of this definition, the “highest rating” shall mean a rating of at least “VMIG-1”/“A-1+” for obligations with less than one year maturity; at least “Aaa”/“VMIG-1”/“AAA”/“A-1+” for obligations with a maturity of one year or greater but less than three years; and at least “Aaa”/“AAA” for obligations with a maturity of three years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index.

“*Rating Agency*” means Moody’s or S&P, as applicable, or any successor rating service thereof.

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

“*Rebate Fund*” means the Rebate Fund established by the Trustee pursuant to Section 4.01 hereof.

“*Record Date*” means the 15th day of the month preceding the month in which any Interest Payment Date falls.

“*Redemption Fund*” means the Redemption Fund established by the Trustee pursuant to Section 4.01 hereof.

“*Replacement Reserve Fund*” means the fund of that name created pursuant to Section 4.01(g) hereof.

“*Requisition*” means, with respect to the Bond Mortgage Loan Fund, the requisition in the form of **Exhibit E** to this Indenture required to be submitted in connection with disbursements from the Project Account and/or the Borrower Equity Account of the Bond Mortgage Loan Fund, and with respect to the Cost of Issuance Fund, the requisition in the form of **Exhibit D** to this Indenture required to be submitted in connection with disbursements from the Cost of Issuance Fund.

“*Responsible Officer*” means any officer of the Trustee employed within or otherwise having regular responsibility in connection with the corporate trust department of the Trustee and the trusts created hereunder.

“*Revenue Fund*” means the Revenue Fund established by the Trustee pursuant to Section 4.01 hereof.

“*Revenues*” means (a) all payments made with respect to the Bond Mortgage Loan pursuant to the Financing Agreement, the Bond Mortgage Note or the Bond Mortgage, including but not limited to all casualty or other insurance benefits and condemnation awards paid in connection therewith and all payments obtained through the exercise of remedies under the Bond Financing Documents, and (b) all money and securities held by the Trustee in the funds and accounts established pursuant to this Indenture (excluding money or securities designated for deposit into and held in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund), together with all investment earnings thereon.

“*S&P*” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“*Securities Depository*” means (a) The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, facsimile: (516) 227-4039 or (516) 227-4190; or (b) any replacement registered securities depository which has been designated in a certificate of the Issuer delivered to the Trustee and the Bondholder Representative pursuant to Section 2.12 hereof.

“*Series 2024A Bond Mortgage Note*” means that promissory note dated the Delivery Date in the original principal amount of \$[ ] by the Borrower in favor of the Issuer, as it may be amended or supplemented from time to time.

“*Series 2024A Bonds*” means the Issuer’s Multifamily Revenue Bonds (Lashkowitz Riverfront 4), Series 2024A.

“*Series 2024B Bond Mortgage Note*” means that promissory note dated the Delivery Date in the original principal amount of \$[ ] by the Borrower in favor of the Issuer, as it may be amended or supplemented from time to time.

“*Series 2024B Bonds*” means the Issuer’s Multifamily Revenue Bonds (Lashkowitz Riverfront 4), Series 2024B.

“*Servicer*” means any entity appointed by the Bondholder Representative to service the Bond Mortgage Loan and any successor in such capacity as appointed by the Bondholder Representative pursuant to Section 3.02 of the Financing Agreement. Initially, the Bondholder Representative shall be the Servicer.

“*State*” means the State of North Dakota.

“*Tax and Insurance Escrow Fund*” means the fund of that name created pursuant to Section 4.01(h) hereof.

“*Tax Certificate*” means the Tax Compliance Certificate executed by the Issuer and the Borrower on the Delivery Date.

“*Tax Regulatory Agreement*” means the Regulatory Agreement and Declaration of Restrictive Covenants dated as of July 1, 2024 among the Issuer, the Trustee and the Borrower.

“*Trustee*” means Wilmington Trust, National Association and its successors in trust hereunder.

“*Trust Estate*” shall have the meaning given to that term in the granting clauses of this Indenture.

“*Unassigned Rights*” means all of the rights of the Issuer and its directors, officers, commissioners, elected officials, attorneys, accountants, employees, agents and consultants to be held harmless and indemnified, to be paid its fees and expenses, to give or withhold consent to amendments, changes, modifications and alterations, to receive notices and the right to enforce such rights.

**Section 1.02 Interpretation.** The words “hereof,” “herein,” “hereunder,” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. 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. References to Articles, Sections, and other subdivisions of this Indenture are to the designated Articles, Sections and other subdivisions of this Indenture as originally executed. The headings of this Indenture are for convenience only and shall not define or limit the provisions hereof.

## ARTICLE II

### THE BONDS

## Section 2.01 *The Bonds.*

(a) The Bonds are authorized to be issued hereunder as revenue bonds of the Issuer in accordance with the Bond Resolution. The Bonds shall initially be designated “North Dakota Housing Finance Agency Multifamily Revenue Bonds (Lashkowitz Riverfront 4), Series 2024A” and “North Dakota Housing Finance Agency Multifamily Revenue Bonds (Lashkowitz Riverfront 4), Series 2024B,” respectively. The Bonds shall be fully registered as to principal and interest, without coupons, and shall be numbered by series, if any, in the manner and with any additional designation as the Trustee, as Bond Registrar, deems necessary for the purpose of identification. All of the Bonds are equally and ratably secured. Bonds issued on the Delivery Date shall be dated such date; Bonds issued after the Delivery Date shall be dated the date they are authenticated by the Trustee. The Bonds shall be due and payable in full on the Maturity Date.

(b) The Bonds shall be purchased by the Bondholder Representative, as initial Bondholder, on a draw-down basis in Authorized Denominations up to the Authorized Amount. The proceeds of the Bonds shall be advanced by the Bondholder Representative in installments directly to the Trustee for deposit to the Project Account upon satisfaction of the conditions to such advance set forth in the Construction Funding Agreement and the form of requisition attached as Exhibit E hereto. The Bondholder Representative by its acceptance of the Bonds agrees to fund the Bonds when required by the Construction Funding Agreement. Upon the advancement of the proceeds of the Bonds in accordance with the terms hereof, the principal amount of the Bonds in a principal amount equal to the amount so advanced shall be deemed to be increased automatically and without further acts on the part of the Issuer or the Trustee. The initial installment of the Bonds shall be in the amount of \$[\_\_\_\_\_] which amount shall be advanced by the Bondholder Representative and deposited in the Project Account on the Delivery Date for application as provided in Section 2.11. Notwithstanding anything in this Indenture to the contrary, no additional amounts of the Bonds may be drawn down and funded hereunder after the Advance Termination Date. Any extension of the Advance Termination Date shall be subject to the receipt by the Trustee of (i) the prior written consent of the Bondholder Representative and (ii) an opinion of Bond Counsel (which shall also be addressed to the Bondholder Representative) to the effect that such extension will not adversely affect the tax exempt status of the Bonds.

(c) The Trustee shall maintain in its books a log which shall reflect the principal amount of the Bonds advanced by the Bondholder Representative from time to time in accordance with the provisions of Section 2.01(b) above (the “**Record of Advances**”). The principal amount due on the Bonds shall be only such amount as has been advanced by the Bondholder Representative as reflected in the Record of Advances and not otherwise prepaid pursuant to the terms of this Indenture. The records maintained by the Trustee in such regard will be conclusive evidence of the principal amount of the Bonds (absent manifest error). The Trustee shall notify the Issuer and the Borrower if any advance of the proceeds of the Bonds is not made by the Bondholder Representative when due hereunder.

(d) Interest on the Bonds shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Interest on the Bonds shall be payable on each Interest Payment Date, in each case from the Interest Payment Date next preceding the date of authentication thereof to which interest has been paid or duly provided for, unless the date of authentication is an Interest



Payment Date to which interest has been paid or duly provided for, in which case from the date of authentication of the Bond, or unless no interest has been paid or duly provided for on the Bonds, in which case from the Delivery Date, until payment of the principal of the Bond has been made or duly provided for. Notwithstanding the foregoing, if a Bond is authenticated after a Record Date and before the following Interest Payment Date, such Bond shall bear interest from such Interest Payment Date; provided, however, that if there shall be a default in the payment of interest due on such Interest Payment Date, then the Bonds shall bear interest from the next preceding Interest Payment Date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for on the Bonds, from the Delivery Date.

(e) The Bonds shall be issued in Authorized Denominations and shall bear interest payable on each Interest Payment Date at the Bond Interest Rate and shall mature on the Maturity Date, subject to redemption prior to maturity as provided in Article III hereof.

(f) The Person in whose name any Bond is registered on the Record Date with respect to an Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date (unless such Bond has been called for redemption on a redemption date which is prior to such Interest Payment Date) notwithstanding the cancellation of such Bond upon any registration of transfer or exchange thereof subsequent to such Record Date and prior to such Interest Payment Date; provided, however, that if and to the extent the Issuer shall default in the payment of the interest due on any Interest Payment Date, such defaulted interest shall be paid as provided in the next paragraph.

(g) In the event that principal of or interest payable on the Bonds is not paid when due, there shall be payable on the amount not timely paid, on each Interest Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Bonds shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

(h) Subject to Section 2.12, payment of principal of, premium, if any, and interest on the Bonds shall be payable in lawful currency of the United States by check mailed on each Interest Payment Date to the registered Owner thereof at such registered Owner's address as it appears on the Bond Register on the Record Date; provided, however, upon written request of a registered Owner of at least \$1,000,000 in principal amount of Bonds Outstanding (or an Owner of any principal thereof if the sole Owner of the Bonds) received by the Trustee at least five (5) Business Days prior to a Record Date, all payments of principal, premium, if any, and interest on the Bonds shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by such registered Owner, without any necessity of presentation and surrender of Bonds upon any redemption thereof. In all events, the records of the Trustee shall be determinative of the aggregate principal amount of Bonds held by any Owner at any time, and such records shall be binding on the Issuer and all Owners absent manifest error.

(i) On or before the date fixed for redemption, money shall be deposited with the Trustee to pay, and the Trustee is hereby authorized and directed to apply such money to the payment of, the Bonds or portions thereof called for redemption, together with accrued interest thereon to the redemption date. CUSIP number identification with appropriate dollar amounts

for each CUSIP number must accompany all payments of principal, redemption price, premium, if any, and interest, whether by check or by wire transfer.

(j) No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total principal amount of Bonds that may be issued hereunder, or in substitution for other Bonds pursuant to Section 2.07 hereof, is expressly limited to \$[ ] with respect to the Series 2024A Bonds and \$[ ] with respect to the Series 2024B Bonds.

**Section 2.02 *Intentionally Omitted.***

**Section 2.03 *Limited Obligations.*** The Bonds shall be special limited obligations of the Issuer and the principal of and the interest thereon shall be payable equally and ratably solely from and secured solely by the Trust Estate and not from other revenues, funds, or assets of the Issuer. Notwithstanding anything to the contrary in the Bond Resolution, the Bonds or this Indenture, the Bonds do not and shall not represent or constitute a debt or pledge of the faith and credit or the taxing power of the Issuer, the City of Fargo, North Dakota, the State or any other political subdivision, municipality or other agency of the State.

**Section 2.04 *Indenture Constitutes Contract.*** In consideration of the purchase and acceptance of the Bonds issued hereunder by those who shall hold them from time to time, the provisions of this Indenture shall be part of the contract of the Issuer with the Holders of the Bonds and shall be deemed to be a contract between the Issuer and the Holders of the Bonds from time to time.

**Section 2.05 *Form and Execution.*** The Series 2024A Bonds shall be in substantially the form attached as *Exhibit A-1*, and the Series 2024B Bonds shall be in substantially the form attached as *Exhibit A-2*, with necessary and appropriate variations, omissions and insertions as are customary, permitted or required by this Indenture. The Bonds shall be executed in the name of the Commission by the manual or facsimile signature of each of the members of the Commission, with the official seal of the Commission (or a facsimile thereof) impressed, imprinted or otherwise reproduced thereon, and attested by the manual or facsimile signature of any Authorized Officer, and their execution shall evidence their approval of the final terms thereof. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Bonds. Any reproduction of the official seal of the Issuer on the Bonds shall have the same force and effect as if the official seal of the Issuer had been impressed on the Bonds.

In case any officer of the Issuer whose manual or facsimile signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery, and also any Bond may bear the facsimile signatures of, or may be signed by, such Persons as at the actual time of the execution of such Bond shall be the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

**Section 2.06 *Authentication.*** No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless a certificate of authentication on

such Bond, substantially in the form set forth in *Exhibit A-1* with respect to the Series 2024A Bonds and *Exhibit A-2* with respect to the Series 2024B Bonds, shall have been duly executed by an Authorized Officer of the Trustee; and such executed certificate of authentication upon any such Bond shall be conclusive evidence that such Bond has been duly executed, registered, authenticated and delivered under this Indenture. It shall not be necessary that the same Person sign the certificate of authentication on all of the Bonds.

**Section 2.07 *Mutilated, Lost, Stolen or Destroyed Bonds.*** In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer shall execute and the Trustee shall authenticate a new Bond of like denomination, interest rate, series, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated Bond or in lieu of and in substitution for such lost, stolen or destroyed Bond, upon payment by the Owner thereof of any applicable tax or governmental charge and the reasonable expenses and charges of the Issuer and the Trustee in connection therewith, and in the case of a Bond lost, stolen or destroyed, the filing with the Trustee of evidence satisfactory to it that such Bond was lost, stolen or destroyed, and of the ownership thereof, and furnishing the Issuer and the Trustee with indemnity satisfactory to each of them. In the event any such Bond shall have matured, instead of issuing a duplicate Bond or Bonds the Issuer may pay the same without surrender thereof.

**Section 2.08 *Transfer and Exchange of Bonds; Persons Treated as Owners.***

(a) The Trustee as Bond Registrar shall cause a Bond Register to be kept for the registration of transfers of Bonds. Any Bond may be transferred only upon an assignment duly executed by the registered Owner or such registered Owner's duly authorized representative in such form as shall be satisfactory to the Bond Registrar and upon surrender of such Bond to the Trustee for cancellation. Whenever any Bond or Bonds shall be surrendered for transfer, the Issuer shall execute and the Trustee shall authenticate and deliver to the transferee a replacement fully registered Bond or Bonds, of Authorized Denomination or Denominations and for the amount of such Bond or Bonds so surrendered.

(b) Unless the Bonds are rated "A" (without regard to a modifier) or better by a Rating Agency, the Bonds may be transferred only to (i) an "accredited investor" as that term is defined in Rule 501 of Regulation D under the Securities Act or a "qualified institutional buyer" as that term is defined under Rule 144A of the Securities Act (such "accredited investor" or "qualified institutional buyer" a "Qualified Transferee") or (ii) a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Bonds or securitized interests therein are not expected to be sold except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least "A" or better. No investor letter shall be required for transfers of the Bonds after the Delivery Date.

(c) Any Bond may, in accordance with its terms, be exchanged, at the office of the Trustee, for a new fully registered Bond or Bonds, of the same maturity, of any Authorized Denomination or Denominations and for the aggregate amount of such Bond then Outstanding.

(d) In all cases in which Bonds shall be transferred or exchanged hereunder, the Trustee may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange. The cost of printing Bonds

and any services rendered or expenses incurred by the Trustee in connection with any transfer or exchange shall be paid by the Borrower.

(e) The Person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of and premium, if any, and interest on any such Bond shall be made only to or upon the order of the registered Owner thereof, or such registered Owner's legal representative, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums to be paid.

(f) Neither the Issuer nor the Trustee shall be required to make any such exchange, registration or transfer of Bonds in the case of any proposed redemption of Bonds, during the period of fifteen (15) days immediately preceding the selection of Bonds for such redemption and after the giving of notice of redemption, the Trustee is not required to transfer or exchange any Bond or portion thereof which has been called for redemption.

**Section 2.09 *Reserved.***

**Section 2.10 *Delivery of Bonds.*** Upon 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 or upon the order of the Issuer upon receipt by the Trustee of the following:

(a) executed counterparts of this Indenture, the Financing Agreement, the Tax Regulatory Agreement and the Tax Certificate;

(b) an opinion of Bond Counsel or counsel to the Issuer to the effect that the Issuer is duly organized and existing under the laws of the State and has duly authorized, executed and delivered this Indenture, other loan documents to which it is a party and the Bonds and that the Bonds are entitled to the benefits of this Indenture and are valid and binding special, limited obligations of the Issuer enforceable in accordance with their terms subject to customary exceptions;

(c) initial advance of the proceeds of the Bonds;

(d) the Bond Mortgage Note;

(e) a copy of the Bond Mortgage, the Assignment, the Continuing Covenant Agreement and the Construction Funding Agreement;

(f) an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the agreements described herein to which it is a party, that its execution and delivery of and performance of its covenants in such agreements do not contravene law or any provision of any other agreement to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered

by the Borrower, and are legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their respective terms;

(g) a customary approving opinion of Bond Counsel, including but not limited to an opinion to the effect that the interest on the Bonds, under laws in effect on the date of such opinion, is excluded from gross income for federal income tax purposes and, where applicable, for State income tax purposes;

(h) a certified copy of the Bond Resolution;

(i) the written request and authorization to the Trustee by the Issuer to authenticate and deliver the Bonds upon payment to the Trustee, for the account of the Issuer, of the sum specified as the initial advance therefor in such request and authorization;

(j) receipt by the Trustee of the amounts specified in Section 2.11 of this Indenture and Section 3.3 of the Financing Agreement; and

(k) receipt by the Trustee of an investor letter substantially in the form attached hereto as *Exhibit C*.

**Section 2.11 *Establishment of Bond Mortgage Loan Fund; Application of Bond Proceeds and Other Money; Assignment of Bond Mortgage Loan to Trustee.***

(a) The Trustee shall establish, maintain and hold in trust and there is hereby established with the Trustee a Bond Mortgage Loan Fund and therein a Project Account and a Borrower Equity Account. No amount shall be charged against the Bond Mortgage Loan Fund except as expressly provided in this Section 2.11 and Section 4.02 hereof.

(b) The initial proceeds of the sale of the Bonds shall be delivered to the Trustee on the Delivery Date. The Trustee shall deposit such initial proceeds to the credit of the Project Account of the Bond Mortgage Loan Fund. Amounts in the Bond Mortgage Loan Fund shall be disbursed as provided in subparagraph (d) below, subject to the conditions set forth in Section 3.1 of the Financing Agreement. Upon the disbursement of all amounts in the Bond Mortgage Loan Fund, the Trustee shall close the Bond Mortgage Loan Fund.

(c) The Issuer shall cause the Borrower to deliver to the Trustee, on or prior to the Delivery Date, the Initial Debt Service Deposit for deposit to the credit of the Bond Fund, the Costs of Issuance Deposit for deposit to the credit of the Cost of Issuance Fund and the Borrower Equity Deposit for deposit to the credit of the Borrower Equity Account. The Trustee shall also deposit in the Borrower Equity Account any additional amounts delivered from time to time to the Trustee and directed by the Borrower or Servicer to be deposited therein, excluding any proceeds of the Bonds.

(d) Upon the making of the initial deposits described above in this Section 2.11, the Issuer shall originate the Bond Mortgage Loan pursuant to the Financing Agreement and the Trustee shall make disbursements of amounts in the Bond Mortgage Loan Fund to the Borrower or otherwise as provided in Section 4.02 hereof; provided that, prior to making any such

disbursements, \$[\_\_\_\_\_] of proceeds of the Bonds shall be transferred by the Trustee to the Cost of Issuance Fund without need of a Requisition therefor].

**Section 2.12 *Book-Entry Only System of Registration.***

(a) Notwithstanding the foregoing provisions of this Article II, each of the Bonds shall initially be issued in the form of one fully-registered bond for the aggregate principal amount of the Bonds of each maturity, which Bonds shall be registered in the name of Cede & Co., as nominee of DTC. Except as provided in paragraph (f) below, all of the Bonds shall be registered in the Bond Register in the name of Cede & Co., as nominee of DTC; provided that if DTC shall request that the Bonds be registered in the name of a different nominee, the Trustee shall exchange all or any portion of the Bonds for an equal aggregate principal amount of Bonds registered in the name of such nominee or nominees of DTC. No Person other than DTC or its nominee or any “FAST” agent for DTC shall be entitled to receive from the Issuer or the Trustee either a Bond or any other evidence of ownership of the Bonds, or any right to receive any payment in respect thereof unless DTC or its nominee shall transfer record ownership of all or any portion of the Bonds on the Bond Register in connection with discontinuing the book entry system as provided in paragraph (f) below or otherwise.

(b) So long as the Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all payments of the principal or redemption price of or interest on such Bonds shall be made to DTC or its nominee in same day funds on the dates provided for such payments under this Indenture. Each such payment to DTC or its nominee shall be valid and effective to fully discharge all liability of the Issuer and the Trustee with respect to the principal or redemption price of or interest on the Bonds to the extent of the sum or sums so paid. In the event of the redemption of less than all of the Bonds Outstanding of any series or maturity, the Trustee shall not require surrender by DTC or its nominee of the Bonds so redeemed, but DTC (or its nominee) may retain such Bonds and make an appropriate notation on the Bond certificate as to the amount of such partial redemption; provided that DTC shall deliver to the Trustee, upon request, a written confirmation of such partial redemption and thereafter the records maintained by the Trustee shall be conclusive as to the amount of the Bonds of such maturity which have been redeemed.

(c) The Issuer and the Trustee may treat DTC or its nominee as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal or redemption price of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Bondholders under this Indenture, registering the transfer of Bonds, obtaining any consent or other action to be taken by Holders and for all other purposes whatsoever; and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. Neither the Issuer nor the Trustee shall have any responsibility or obligation to any participant in DTC, any Person claiming a beneficial ownership interest in the Bonds under or through DTC or any such participant, or any other Person which is not shown on the Bond Register as being a Bondholder, with respect to: (1) the accuracy of any records maintained by DTC or any such participant; (2) the payment by DTC or any such participant of any amount in respect of the principal or redemption price of or interest on the Bonds; (3) the delivery to any participant or to any other Person, other than the Holders as shown on the Bond Register, of any notice which is permitted or required to be given to Holders under this Indenture; (4) the selection by DTC or any such participant of any Person to receive

payment in the event of a partial redemption of the Bonds; or (5) any consent given or other action taken by DTC as Holder. Notwithstanding the foregoing or anything to the contrary herein, the Bondholder Representative shall be entitled to all rights and privileges of the Bondholder Representative hereunder and under any of the other Bond Financing Documents, including, but not limited to, the giving of directions and the providing of consents on behalf of itself or the Bondholders, in each case as more fully set forth herein and in the other Bond Financing Documents.

(d) So long as the Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all notices required or permitted to be given to the Holders under this Indenture shall be given to DTC as provided in DTC's procedures, as the same may be amended from time to time.

(e) In connection with any notice or other communication to be provided to Holders pursuant to this Indenture by the Issuer or the Trustee with respect to any consent or other action to be taken by Holders, DTC shall consider the date of receipt of notice requesting such consent or other action as the record date for such consent or other action, provided that the Issuer or the Trustee may establish a special record date for such consent or other action. The Issuer or the Trustee shall give DTC notice of such special record date not less than 15 calendar days in advance of such special record date to the extent possible.

(f) The book-entry system for registration of the ownership of the Bonds may be discontinued at any time if either: (1) DTC determines to resign as securities depository for the Bonds; or (2) the Bondholder Representative determines to discontinue the system of book-entry transfers through DTC (or through a successor securities depository) subject to the rules and regulations of DTC regarding the discontinuation of the system of book-entry transfers in effect at such time. In either of such events (unless, in the case described in clause (2) above, a successor securities depository is appointed), the Bonds shall be delivered in registered certificate form to such Persons, and in such series, maturities and principal amounts, as may be designated by DTC, but without any liability on the part of the Issuer or the Trustee for the accuracy of such designation. If a successor securities depository is appointed, the Issuer and the Trustee shall cooperate with DTC in taking appropriate action after reasonable notice to arrange for such successor securities depository to obtain custody of certificates evidencing the Bonds.

### ARTICLE III

#### REDEMPTION OF BONDS PRIOR TO MATURITY

##### Section 3.01 *Redemption of Bonds Prior to Maturity.*

(a) **Optional Redemption.** The Bonds are not subject to optional redemption prior to [ ] 1, 20[ ]. On and after [ ] 1, 20[ ], the Bonds are subject to optional redemption (in whole on any date, or in part on the first day of any calendar month), upon optional prepayment of the Bond Mortgage Loan in accordance with the notice and other prepayment provisions set forth in the Bond Mortgage Note and Section 4.04 of the Financing Agreement, at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the redemption date, plus any Prepayment Premium applicable upon prepayment of the Bond Mortgage Loan under the Bond Mortgage Note. Any optional redemption shall be

conditioned on the receipt by the Trustee of funds in an amount sufficient to pay the foregoing redemption price of the Bonds at least one Business Day prior to the date the Bonds are to be redeemed (unless otherwise consented to by the Bondholder Representative).

(b) **Mandatory Redemption.** The Bonds are subject to mandatory redemption on any Business Day, in whole or in part as indicated below, at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the redemption date, plus any Prepayment Premium applicable upon prepayment of the Bond Mortgage Loan under the Bond Mortgage Note, at the earliest practicable date from funds deposited with the Trustee upon the occurrence of any of the following:

(i) in whole or in part, upon receipt by the Trustee of (1) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Bond Mortgage Loan as a result of casualty or condemnation of the Project and (2) a written direction by the Bondholder Representative to redeem such Bonds using such Net Proceeds; or

(ii) in whole or in part, upon the occurrence of an event of default under any Bond Financing Document and receipt by the Trustee of a written direction by the Bondholder Representative to redeem the Bonds; or

(iii) in whole, upon the occurrence of a Determination of Taxability and receipt by the Trustee of a written direction by the Bondholder Representative to redeem the Bonds; or

(iv) in part, as provided in subsection (c) of this Section 3.01; or

(v) in part, on the Interest Payment Date next following the completion of the Project, to the extent amounts remaining in the Project Account of the Bond Mortgage Loan Fund are transferred to the Redemption Fund pursuant to Section 4.02(e) hereof; or

(vi) in part, at the written direction of the Bondholder Representative, in the event the Borrower is required to make a Loan Equalization Payment; or

(vii) in whole or in part in connection with a mandatory prepayment of the Bond Mortgage Loan pursuant to the Bond Mortgage Note.

(c) **Mandatory Sinking Fund Redemption.** The Bonds are subject to mandatory sinking fund redemption on the dates and in the amounts set forth on the Mandatory Sinking Fund Schedule attached as Schedule 1 to this Indenture; provided that if less than all the Bonds shall have been redeemed pursuant to Section 3.01(a) or 3.01(b), the amount of Bonds to be redeemed in each year from sinking fund installments as provided in this Section 3.01(c) shall be decreased by an amount, in proportion, as nearly as practicable, to the decrease in the payments on the Bond Mortgage Loan in such year as determined by the Trustee (in consultation with and as verified by the Servicer).

### **Section 3.02 *Selection of Bonds for Redemption.***



(a) The Trustee shall select Bonds subject to mandatory sinking fund redemption pursuant to Section 3.01(c) hereof by lot within the appropriate maturity. If less than all the Bonds then Outstanding shall be called for redemption other than as a result of mandatory sinking fund redemption pursuant to Section 3.01(c) hereof, the Trustee shall redeem an amount of Bonds so that the resulting decrease in debt service on the Bonds in each semiannual period ending on an Interest Payment Date is proportional, as nearly as practicable, to the decrease in the payments on the Bond Mortgage Note in each such semiannual period, as verified by the Servicer, and the Bonds shall be selected by lot within each maturity, the cost of such selection being at the Borrower's expense.

(b) Except with respect to mandatory sinking fund redemptions pursuant to Section 3.01(c) hereof, in the event that a Bond subject to redemption is in a denomination larger than an Authorized Denomination, all or a portion of such Bond may be redeemed, but only in a principal amount such that the remaining principal amount of the Bond not so redeemed shall be an Authorized Denomination (provided at any time the aggregate principal amount of Bonds Outstanding is \$25,000 or less, any Bonds to be redeemed pursuant to this Article may be redeemed in increments of \$5,000 or more).

**Section 3.03 *Notice of Redemption.*** Notice of the intended redemption of each Bond shall be given by the Trustee by first class mail, postage prepaid, or by facsimile transmission, to the registered Owner at the address of such Owner shown on the Bond Register. All such redemption notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional or mandatory sinking fund redemptions) nor more than sixty (60) days prior to the date fixed for redemption.

Notices of redemption shall state the redemption date and the redemption price, the place or places where amounts due upon such redemption will be payable, and, if less than all of the then Outstanding Bonds are called for redemption, shall state (i) the numbers of the Bonds to be redeemed by giving the individual certificate number of each Bond to be redeemed or shall state that all Bonds between two stated certificate numbers, both inclusive, are to be redeemed or that all of the Bonds of one or more maturities have been called for redemption only if bonds cease to be book entry bonds; (ii) the CUSIP numbers of all Bonds being redeemed if available; (iii) the amount of each Bond being redeemed (in the case of a partial redemption); (iv) the date of issue of the Bond as originally issued; (v) the rate of interest borne by each Bond redeemed; (vi) the maturity date of each Bond being redeemed; (vii) the possibility of a purchase of Bonds in lieu of redemption, if applicable; (viii) solely with respect to optional redemptions, that the redemption is conditional upon receipt by the Trustee at least one Business Day prior to the redemption date of funds sufficient to pay the principal of and accrued interest on the Bonds to the redemption date, together with any Prepayment Premium due under Section 10 of the Bond Mortgage Note; and (ix) any other descriptive information needed to identify accurately the Bonds being redeemed.

Notice of such redemption shall also be sent by first class mail, overnight delivery service, facsimile transmission or other secure means, postage prepaid, to the Bondholder Representative and the Servicer, to all of the Securities Depositories and to the Information Service that disseminates securities redemption notices, when possible, not later than the time of mailing of notices required by the first paragraph above, and in any event no later than simultaneously with the mailing of notices required by the first paragraph above; provided, that

neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of such Bonds.

**Section 3.04 Cancellation.** All Bonds that have been redeemed shall be marked cancelled by the Trustee, and shall not be reissued. A counterpart of the certificate of cancellation evidencing such cancellation shall, upon request, be furnished by the Trustee to the Issuer.

## ARTICLE IV

### REVENUES AND FUNDS

**Section 4.01 Pledge of Revenues and Assets; Establishment of Funds.** The pledge and assignment of and the security interest granted in the Trust Estate pursuant to the Granting Clauses hereof 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.

In addition to the Bond Mortgage Loan Fund established pursuant to Section 2.11 hereof, the Trustee shall establish, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- (a) Revenue Fund;
- (b) Bond Fund;
- (c) Redemption Fund;
- (d) Administration Fund;
- (e) Cost of Issuance Fund;
- (f) Rebate Fund;
- (g) Replacement Reserve Fund; and
- (h) Tax and Insurance Escrow Fund.

The funds and accounts established pursuant to Section 2.11 and this Section 4.01 shall be maintained in the corporate trust department of the Trustee as segregated trust accounts, separate and identifiable from all other funds held by the Trustee. The Trustee shall, at the written direction of an Authorized Officer of the Issuer, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Issuer or the Trustee may deem necessary or useful for the purpose of identifying more precisely the

sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Indenture with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

**Section 4.02 *Bond Mortgage Loan Fund.***

(a) Deposit. The Trustee shall deposit the proceeds of each advance of the proceeds of the Bonds into the Project Account of the Bond Mortgage Loan Fund as provided in Section 2.11(b) hereof. The Trustee shall deposit the Borrower Equity Deposit into the Borrower Equity Account of the Bond Mortgage Loan Fund, as well as any additional amounts delivered from time to time to the Trustee and directed by the Borrower or Servicer to be deposited therein (excluding any proceeds of the Bonds), as provided in Section 2.11(c) hereof.

(b) Disbursements. Amounts on deposit in the Bond Mortgage Loan Fund shall be disbursed from time to time by the Trustee for the purpose of paying Costs of the Project. In addition, amounts in the Bond Mortgage Loan Fund shall be transferred to the Redemption Fund, the Rebate Fund and the Borrower at the times and in the manner provided in subsection (e) of this Section 4.02.

(c) Transfers and Requisitions. The Trustee shall make disbursements from the respective accounts of the Bond Mortgage Loan Fund for purposes described in subsection (b) of this Section 4.02 only upon the receipt of Requisitions signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer (signifying the consent to the Requisition by the Servicer). The Trustee shall have no right or duty to determine whether any requested disbursement from the Bond Mortgage Loan Fund complies with the terms, conditions and provisions of the Construction Funding Agreement. The countersignature of the Authorized Officer of the Servicer on a Requisition shall be deemed a certification and, insofar as the Trustee and the Issuer are concerned, constitute conclusive evidence, that all of the terms, conditions and requirements of the Construction Agreement applicable to such disbursement have been fully satisfied or waived. The Trustee shall, immediately upon each receipt of a completed Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer, initiate procedures with the provider of a Qualified Investment to make withdrawals as necessary to fund the Requisition.

Notwithstanding anything to the contrary contained herein, no signature of an Authorized Officer of the Borrower shall be required during any period in which a default has occurred and is then continuing under the Bond Mortgage Loan or any Bond Financing Document (notice of which default has been given in writing by the Bondholder Representative or the Servicer to the Trustee and the Issuer, and the Trustee shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such a default).

(d) If a Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer or (as permitted hereunder) solely by an Authorized Officer of the Servicer, is received by the Trustee, the requested disbursement shall be paid by the Trustee as soon as practicable, but in no event later than three (3) Business Days following receipt thereof by the Trustee. Upon final disbursement of all amounts on deposit in

the Bond Mortgage Loan Fund, including all interest accrued therein, the Trustee shall close the Bond Mortgage Loan Fund.

(e) Immediately prior to any mandatory redemption of Bonds pursuant to Section 3.01(b)(ii) hereof, any amount then remaining in the Bond Mortgage Loan Fund shall, at the written direction of the Bondholder Representative, be transferred to the Redemption Fund to pay amounts due on the Bonds. In addition, any amount remaining in the Project Account of the Bond Mortgage Loan Fund following completion of the Project in accordance with the Construction Funding Agreement, evidenced by an instrument signed by the Bondholder Representative or the Servicer, shall be transferred to the Redemption Fund and used to redeem Bonds in accordance with Section 3.01(b)(v) hereof, unless the Trustee receives an opinion of Bond Counsel (which shall also be addressed to the Bondholder Representative) to the effect that a use of such money for other than redemption of the Bonds will not adversely affect the tax exempt status of the Bonds; provided, that any amounts in the Project Account of the Bond Mortgage Loan Fund in excess of the amount needed to fund the related redemption of the Bonds shall be transferred to the Rebate Fund. In the event there are funds remaining in the Borrower Equity Account following completion of the construction and/or rehabilitation of the Project in accordance with the Construction Funding Agreement and the stabilization requirements have been satisfied under the Construction Funding Agreement, evidenced by an instrument signed by the Bondholder Representative, and provided no default by the Borrower exists under this Indenture or any Bond Mortgage Loan Document, such funds shall be paid by the Trustee to the Borrower at the written direction of the Bondholder Representative or the Servicer.

(f) Amounts on deposit in the Bond Mortgage Loan Fund shall be invested as provided in Section 4.08 hereof. All Investment Income on amounts on deposit in the Bond Mortgage Loan Fund shall be retained in and credited to and become a part of the amounts on deposit in the Bond Mortgage Loan Fund and shall constitute part of any transfers required by subsection (b) or (e) of this Section 4.02.

#### **Section 4.03 *Application of Revenues.***

(a) All Revenues shall be deposited by the Trustee, promptly upon receipt thereof, to the Revenue Fund, except (i) the proceeds of the Bonds received by the Trustee on the Delivery Date, which shall be applied in accordance with the provisions of Section 2.11 hereof; (ii) the Initial Debt Service Deposit, which shall be deposited in the Bond Fund; (iii) as otherwise specifically provided in subsection (c) of this Section 4.03 with respect to certain deposits into the Redemption Fund; (iv) with respect to Investment Income to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (v) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

(b) On the last Business Day of each month for so long as Bonds are Outstanding, the Trustee, out of money in the Revenue Fund, shall credit the following amounts to the following funds and accounts, but in the order and within the limitations hereinafter indicated with respect thereto, as follows:

**FIRST:** to the Bond Fund, an amount equal to the principal of and interest due on the Bonds on such date (excluding the principal and interest due on any Bonds scheduled to be redeemed on such date); and

**SECOND:** to the Redemption Fund, an amount equal to the principal and interest due and payable on the Bonds with respect to a mandatory sinking fund redemption on such date; and

**THIRD:** to the Redemption Fund, an amount equal to the principal and interest due on the Bonds on such date with respect to a mandatory redemption of all or a portion of the Bonds pursuant to Section 3.01(b) hereof (other than a mandatory sinking fund redemption or any extraordinary mandatory redemption as described in Section 4.03(c)(i) or (iii) below).

(c) Promptly upon receipt, the Trustee shall deposit directly to the Redemption Fund (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Bond Mortgage Loan, such amount to be applied to provide for the extraordinary mandatory redemption of all or a portion of the Bonds pursuant to Section 3.01(b)(i) hereof; (ii) funds paid to the Trustee to be applied to the optional redemption of all or a portion of the Bonds pursuant to Sections 3.01(a); and (iii) amounts transferred to the Redemption Fund from the Bond Mortgage Loan Fund pursuant to Section 4.02(e) hereof.

(d) Should the amount in the Bond Fund be insufficient to pay the amount due on the Bonds on any given Interest Payment Date, the Trustee shall credit to the Bond Fund the amount of such deficiency by charging the following funds and accounts in the following order of priority: (1) the Revenue Fund; and (2) the Redemption Fund, except no such charge to the Redemption Fund shall be made from money to be used to effect a redemption for which notice of redemption has been provided for or from money which is held for payment of Bonds which are no longer Outstanding hereunder.

**Section 4.04 *Application of Bond Fund.*** The Trustee shall charge the Bond Fund, on each Interest Payment Date, an amount equal to the unpaid interest and principal due on the Bonds on such Interest Payment Date as provided in Section 4.03(a) and (b), and shall cause the same to be applied to the payment of such interest and principal when due. Any money remaining in the Bond Fund on any Interest Payment Date after application as provided in the preceding sentence may, to the extent there shall exist any deficiency in the Redemption Fund to redeem Bonds called for redemption on such Interest Payment Date, be transferred to the Redemption Fund to be applied for such purpose.

Any Investment Income on amounts on deposit in the Bond Fund shall be deposited by the Trustee upon receipt thereof in the Revenue Fund.

No amount shall be charged against the Bond Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.05 *Application of Redemption Fund.*** Any money credited to the Redemption Fund shall be applied as set forth in Sections 4.03(b) and 4.03(c) hereof; provided, however, that to the extent any money credited to the Redemption Fund is in excess of the amount necessary to effect the redemptions described in Sections 4.03(b) and 4.03(c) hereof it

shall be applied to make up any deficiency in the Bond Fund on any Interest Payment Date, to the extent money then available in accordance with Section 4.03(d) hereof in the Revenue Fund is insufficient to make up such deficiency; provided that no money to be used to effect a redemption for which a conditional notice of redemption, the conditions of which have been satisfied, or an unconditional notice of redemption has been provided or money which is held for payment of Bonds which are no longer Outstanding hereunder shall be so transferred to the Bond Fund.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Redemption Fund shall be credited by the Trustee to the Revenue Fund.

No amount shall be charged against the Redemption Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.06 Administration Fund.** The Trustee shall deposit into the Administration Fund, promptly upon receipt thereof, all amounts received from the Borrower (or the Servicer is responsible for collecting such amounts) designated for deposit into such fund. Amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Trustee and used **FIRST**, to pay to the Trustee when due the Ordinary Trustee's Fees and Expenses; **SECOND**, to pay to the Issuer when due the Issuer Fee; **THIRD**, to pay when due the reasonable fees and expenses of a Rebate Analyst in connection with the computations relating to arbitrage rebate required under this Indenture and the Financing Agreement, upon receipt of an invoice from the Rebate Analyst; **FOURTH**, to pay to the Trustee any Extraordinary Trustee's Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to the Borrower and the Servicer; **FIFTH**, to pay to the Issuer any extraordinary expenses it may incur in connection with the Bonds or this Indenture from time to time, as set forth in an invoice submitted to the Trustee and the Servicer; **SIXTH**, to pay to the Bondholder Representative any unpaid amounts due under the Continuing Covenant Agreement, as certified in writing by the Bondholder Representative to the Trustee; **SEVENTH**, to make up any deficiency in the Redemption Fund on any redemption date of Bonds, to the extent money then available in accordance with Section 4.03(d) hereof in the Redemption Fund is insufficient to redeem Bonds called for redemption on such redemption date; and **EIGHTH**, to transfer any remaining balance after application as aforesaid to the Revenue Fund.

In the event that the amounts on deposit in the Administration Fund are not equal to the amounts payable from the Administration Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Trustee shall give notice to the Borrower and the Servicer of such deficiency and of the amount of such deficiency and request payment within two (2) Business Days to the Trustee of the amount of such deficiency. Upon payment by the Borrower or the Servicer of such deficiency, the amounts for which such deficiency was requested shall be paid by the Trustee.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Administration Fund not needed to pay the foregoing amounts shall be credited by the Trustee to the Revenue Fund.

No amount shall be charged against the Administration Fund except as expressly provided in this Article IV and Section 6.05 hereof.

**Section 4.07 [Reserved].**

**Section 4.08 *Investment of Funds.*** The money held by the Trustee shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Trustee, at the written direction of the Borrower (or, in the case of the Rebate Fund, as provided in Section 5.07(b)), in Qualified Investments which mature or shall be subject to redemption or withdrawal at par without penalty on or prior to the earlier of (i) six months from the date of investment and (ii) the date such money is needed; provided, that if the Trustee shall have entered into any investment agreement requiring investment of money in any fund or account hereunder in accordance with such investment agreement and if such investment agreement constitutes a Qualified Investment, such money shall be invested in accordance with such requirements. In the absence of written direction from the Borrower, the Trustee shall hold all such amounts uninvested. Such investments may be made through the investment or securities department of the Trustee. The Trustee may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized. The Trustee shall be entitled to assume, absent receipt by the Trustee of written notice to the contrary, that any investment which at the time of purchase is a Qualified Investment remains a Qualified Investment thereafter.

Qualified Investments representing an investment of money attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the Revenue Fund, and any loss resulting on the sale thereof shall be charged against the Revenue Fund. Such investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary so to do in order to provide money to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Trustee shall not be liable or responsible for any loss resulting from any investment made in accordance herewith. The parties agree that the Trustee is not providing investment supervision, recommendations, or advice.

The Issuer acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Issuer the right to receive brokerage confirmations of the security transactions as they occur, to the extent permitted by law, the Issuer specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Trustee hereunder, that no brokerage confirmations need be sent relating to the security transactions as they occur.

In computing for any purpose hereunder the amount in any fund or account on any date, obligations so purchased shall be valued at Fair Market Value.

**Section 4.09 *Money Held for Particular Bonds; Funds Held in Trust.*** The amounts held by the Trustee for the payment of the interest, principal or redemption price due on any date with respect to particular Bonds pending such payment, shall 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 redemption price, after the due date thereof, shall no longer be considered to be unpaid.

All money held by the Trustee for such purpose 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 4.10 *Accounting Records.*** The Trustee shall maintain accurate books and records for all funds and accounts established hereunder.

**Section 4.11 *Amounts Remaining in Funds.*** After full payment of the Bonds (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Issuer and the Trustee and other amounts required to be paid hereunder or under any Bond Mortgage Loan Document, including, but not limited to, the Continuing Covenant Agreement (as certified in writing to the Trustee by the Issuer with respect to amounts due to the Issuer and by the Bondholder Representative or the Servicer on its behalf with respect to amounts owed under the Continuing Covenant Agreement), any amounts remaining in any fund or account hereunder other than the Rebate Fund shall be paid to the Borrower.

**Section 4.12 *Rebate Fund; Compliance with Tax Certificate.*** The Rebate Fund shall be established by the Trustee and held and applied as provided in this Section 4.12. On any date on which any amounts are required by applicable federal tax law to be rebated to the federal government, amounts shall be deposited into the Rebate Fund by the Borrower for such purpose. All money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the rebate requirement (as set forth in the Tax Certificate) and as calculated by the Rebate Analyst, for payment to the government of the United States of America, and neither the Issuer, the Borrower nor the Bondholders shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section 4.12 and by the Tax Certificate. The Trustee shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Issuer, Bond Counsel or the Rebate Analyst, including supplying all necessary information in the manner set forth in the Tax Certificate, and shall not be required to take any actions under the Tax Certificate in the absence of written instructions from the Issuer, Bond Counsel or the Rebate Analyst.

Within 55 days of the end of each fifth Bond Year, the Borrower shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exceptions of Section 148(f)(4)(B) and (C) of the Code)), for this purpose treating the last day of the applicable Bond Year as a (computation) date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the “**Rebatable Arbitrage**”). Pursuant to Section 2.4 of the Financing Agreement, the Borrower shall cause the Rebate Analyst to provide such calculations to the Trustee and the Issuer. In the event that the Borrower fails to provide such information to the Trustee and the Issuer within 55 days of the end of each fifth Bond Year, the Trustee, at the expense of the Borrower, shall select the Rebate Analyst, with the prior written approval of the Issuer, and shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage as required herein.



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

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

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

(ii) Not later than 60 days after the payment of all the Bonds, an amount equal to 100% of the Rebatable Arbitrage calculated as of the end of such applicable Bond Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Code.

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

Notwithstanding any provision of this Indenture to the contrary, the obligation to remit payment of the Rebatable Arbitrage to the United States of America and to comply with all other requirements of Sections 2.4 and 4.3 of the Financing Agreement and this Section 4.12, and the requirements of the Tax Certificate shall survive the defeasance or payment in full of the Bonds.

Any funds remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Trustee, shall be withdrawn and remitted to the Borrower.

The Trustee shall obtain and keep such records of the computations made pursuant to this Section 4.12 as are required under Section 148(f) of the Code to the extent furnished to the Trustee. The Borrower shall or shall cause the Rebate Analyst to provide to the Issuer and the Trustee copies of all rebate computations made pursuant to this Section 4.12. The Trustee shall keep and make available to the Borrower such records concerning the investments of the gross proceeds of the Bonds and the investments of earnings from those investments made by the Trustee as may be requested by the Borrower in order to enable the Borrower to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code.

Notwithstanding the foregoing, the computations and payments of Rebatable Arbitrage need not be made to the extent that neither the Issuer nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on an opinion of Bond Counsel, to the effect that such failure will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds, a copy of which shall be provided to the Trustee and the Bondholder Representative, at the expense of the Borrower.

**Section 4.13 *Cost of Issuance Fund.*** The Trustee shall use money on deposit to the credit of the Cost of Issuance Fund to pay the costs of issuance on the Delivery Date or as soon as practicable thereafter in accordance with a Requisition in the form of Exhibit D to be given to the Trustee by the Borrower on the Delivery Date, along with appropriate invoices for such expenses. Amounts in the Cost of Issuance Fund funded with proceeds of the Bonds, if any, shall be expended prior to the application of the Costs of Issuance Deposit. Investment Income on amounts on deposit in the Cost of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Cost of Issuance Fund six (6) months after the Delivery Date shall be transferred to the Borrower. Upon such final disbursement, the Trustee shall close the Cost of Issuance Fund.

**Section 4.14 *Replacement Reserve Fund.*** There shall be deposited in the Replacement Reserve Fund all moneys received for such purpose by the Trustee from the Borrower or the Servicer pursuant to the Continuing Covenant Agreement. Moneys in the Replacement Reserve Fund shall be disbursed by the Trustee upon receipt of a written request therefor executed by the Borrower and approved in writing by the Bondholder Representative or the Servicer, in accordance with the terms of the Continuing Covenant Agreement; provided that, upon the occurrence and continuation of an Event of Default hereunder, all moneys and investments in the Replacement Reserve Fund (other than moneys held to pay costs required to be paid but not yet payable) shall be disbursed solely at the written direction of the Bondholder Representative to pay any costs and expenses of the Project, to pay costs of enforcement of the Bond Financing Documents and to pay any and all amounts owed by the Borrower under the Financing Documents, in whatever amounts and whatever order the Bondholder Representative may determine. Upon the payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 9.01 hereof, upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Continuing Covenant Agreement, any amounts remaining in the Replacement Reserve Fund shall be paid to the Borrower as soon as practicable.

**Section 4.15 *Tax and Insurance Escrow Fund.*** There shall be deposited in the Tax and Insurance Escrow Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to the Continuing Covenant Agreement. Moneys in the Tax and Insurance Escrow Fund shall be applied to payment of Impositions and insurance premiums at the written direction of the Borrower, Bondholder Representative or the Servicer; provided, however, that upon the occurrence and continuation of an Event of Default hereunder (provided that the Bondholder Representative shall have no obligation to accept a cure of any Event of Default) all money and investments held in the Tax and Insurance Escrow Fund shall be disbursed solely at the written direction of the Bondholder Representative to pay costs and expenses of the Project, to pay costs of enforcement of the Financing Documents and to pay any and all amounts owed by the Borrower under any of the Financing Documents, in whatever amounts and in whatever order the Bondholder Representative may determine. Upon the payment in full of the Bonds and the fees and expenses of the Issuer and the Trustee, or provision for the payment of the Bonds having been made pursuant to Section 9.01 hereof, and upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Continuing Covenant, any amounts remaining in the Tax and Insurance Escrow Fund shall be paid to the Borrower.

**Section 4.16 Reports From the Trustee.** Upon request of the Bondholder Representative or the Servicer, the Trustee shall provide a statement setting forth the following in respect of any calendar month:

- (i) the amount withdrawn or transferred by it, and the amount deposited within or on account of each fund and account held by it under the provisions of this Indenture, including the amount of investment income on each fund and account;
- (ii) the amount on deposit with it at the end of such month to the credit of each fund and account;
- (iii) a brief description of all obligations held by it as an investment of money in each such fund and account; and
- (iv) any other information which the Bondholder Representative or the Issuer may reasonably request and to which the Trustee has access in the ordinary course of its operations.

Upon the written request of any Bondholder, the Trustee, at the cost of the Borrower, shall provide a copy of such statement to such Bondholder. All records and files pertaining to the Trust Estate shall be open at all reasonable times to the inspection of the Issuer and the Bondholder Representative or the Servicer and their agents and representatives upon reasonable prior notice during normal business hours.

## ARTICLE V

### GENERAL COVENANTS AND REPRESENTATIONS

**Section 5.01 Payment of Principal and Interest.** The Issuer covenants that it will promptly pay or cause to be paid, but only from the sources identified herein, sufficient amounts to provide for the payment of the principal of, premium, if any, and interest on the Bonds at the place, on the dates and in the manner provided herein and in the Bonds, according to the true intent and meaning thereof.

**Section 5.02 Performance of Covenants.** The Issuer covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings pertaining thereto.

**Section 5.03 Instruments of Further Assurance.** The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto, and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Trustee all and singular its interest in the property herein described and the revenues, receipts and other amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Issuer or the Trustee, become and be subject to the lien of this Indenture as fully and completely as though specifically

described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Issuer under this Section 5.03. The Issuer covenants and agrees that, except as herein otherwise expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Trust Estate or the revenues or receipts therefrom.

The Issuer will promptly notify the Trustee, the Bondholder Representative and the Servicer in writing of the occurrence of any of the following:

- (i) the submission of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against the Issuer with respect to the Bonds;
- (ii) any change in the location of the Issuer's principal office or any change in the location of the Issuer's books and records relating to the transactions contemplated hereby;
- (iii) the occurrence of any default or Event of Default of which the Issuer has actual knowledge;
- (iv) the commencement of any proceedings or any proceedings instituted by or against the Issuer in any federal, state or local court or before any governmental body or agency, or before any arbitration board, relating to the Bonds; or
- (v) the commencement of any proceedings by or against the Issuer under any applicable bankruptcy, reorganization, liquidation, rehabilitation, insolvency or other similar law now or hereafter in effect or of any proceeding in which a receiver, liquidator, conservator, trustee or similar official shall have been, or may be, appointed or requested for the Issuer or any of its assets relating to the Bonds.

**Section 5.04 *Inspection of Project Books.*** The Issuer covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Trustee or the Bondholder Representative may from time to time reasonably designate.

**Section 5.05 *No Modification of Security; Additional Indebtedness.*** The Issuer covenants to and for the benefit of the Bondholders that it will not, without the prior written consent of the Bondholder Representative, take any of the following actions:

- (i) alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Issuer is a party, or which has been assigned to the Issuer, and which relates to or affects the security for the Bonds or the payment of any amount owed under the Bond Financing Documents; or
- (ii) create or suffer to be created any lien upon the Trust Estate or any part thereof other than the lien created hereby and by the Bond Mortgage.

**Section 5.06 *Damage, Destruction or Condemnation.*** Net Proceeds resulting from casualty to or condemnation of the Project shall be applied as provided in the Continuing Covenant Agreement and, to the extent consistent therewith, Section 3.01(b)(i) hereof.

**Section 5.07 *Tax Covenants.***

(a) *Issuer's Covenants.* The Issuer covenants to and for the benefit of the Holders of the Bonds that it will:

(i) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Bonds or the money and investments held in the funds and accounts in any manner which would cause the Bonds to be arbitrage bonds under Section 148 of the Code and the Regulations issued under Section 148 of the Code (the “**Regulations**”) or which would otherwise cause the interest payable on the Bonds to be includable in gross income for federal income tax purposes;

(ii) enforce or cause to be enforced all obligations of the Borrower under the Tax Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Tax Regulatory Agreement within a reasonable period after it first discovers or becomes aware of any such violation;

(iii) not take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Bonds to be includable in gross income for federal income tax purposes;

(iv) at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Issuer on the Bonds will be excluded from the gross income for federal income tax purposes, of the Bondholders pursuant to the Code, except in the event where any such owner of Bonds is a “substantial user” of the facilities financed with the Bonds or a “related person” within the meaning of the Code; and

(v) 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 the Regulations.

In furtherance of the covenants in this Section 5.07, the Issuer and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which is by this reference incorporated into this Indenture and made a part of this Indenture as if set forth in this Indenture in full, and by its acceptance of this Indenture the Trustee acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Indenture by this reference and agrees to comply with the terms specifically applicable to it.

(b) *Trustee's Covenants.* The Trustee agrees that it will invest funds held under this Indenture in accordance with the covenants and terms of this Indenture and the Tax Certificate (this covenant shall extend through the term of the Bonds, to all funds and accounts created under this Indenture and all money on deposit to the credit of any such fund or account). The Trustee covenants to and for the benefit of the Bondholders that, notwithstanding any other provisions of this Indenture or of any other Bond Financing Document, it will not knowingly

make or cause to be made any investment or other use of the money in the funds or accounts created hereunder which would cause the Bonds to be classified as “arbitrage bonds” within the meaning of Sections 103(b) and 148 of the Code or would cause the interest on the Bonds to be includable in gross income for federal income tax purposes; provided that the Trustee shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Issuer, the Bondholder Representative, Bond Counsel or the Rebate Analyst. This covenant shall extend, throughout the term of the Bonds, to all funds created under this Indenture and all money on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Indenture, the Trustee obligates itself to comply throughout the term of the issue of the Bonds with the requirements of Sections 103(b) and 148 of the Code; provided that the Trustee shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Issuer, Bond Counsel or the Rebate Analyst. The Trustee further covenants that should the Issuer or the Borrower file with the Trustee (it being understood that neither the Issuer nor the Borrower has an obligation to so file), or should the Trustee receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Bonds would cause the Bonds to become “arbitrage bonds,” then the Trustee will comply with any written instructions of the Issuer, the Borrower, the Bondholder Representative or Bond Counsel regarding such investment (which shall, in any event, be a Qualified Investment) or use so as to prevent the Bonds from becoming “arbitrage bonds,” and the Trustee will bear no liability to the Issuer, the Borrower, the Bondholders or the Bondholder Representative for investments made in accordance with such instructions.

**Section 5.08 *Representations and Warranties of the Issuer. The Issuer hereby represents and warrants as follows:***

- (a) The Issuer is duly organized and existing under the laws of the State.
- (b) The Issuer has all necessary power and authority to issue the Bonds and to execute and deliver this Indenture, the Financing Agreement and the other Bond Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.
- (c) The revenues and assets pledged for the repayment of the Bonds are and will be free and clear of any pledge, lien or encumbrance prior to, or equal with, the pledge created by this Indenture, and all action on the part of the Issuer to that end has been duly and validly taken.
- (d) The Bond Financing Documents to which the Issuer is a party have been validly authorized, executed and delivered by the Issuer, and assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors’ rights generally and the application of equitable principles.

## ARTICLE VI

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

**Section 6.01 *Events of Default.*** Each of the following shall be an event of default with respect to the Bonds (an “Event of Default”) under this Indenture:

(a) failure to pay the principal of, premium, if any, or interest on any Bond when due, whether on an Interest Payment Date, at the stated maturity thereof, by proceedings for redemption thereof, by acceleration or otherwise; or

(b) failure to observe the covenants set forth in Section 5.05 hereof; or

(c) failure to observe or perform any of the covenants, agreements or conditions on the part of the Issuer (other than those set forth in 6.01(a) and (b) above) set forth in this Indenture or in the Bonds and the continuance thereof for a period of thirty (30) days (or such longer period, if any, as is specified herein for particular defaults) after written notice thereof to the Issuer from the Trustee or the Bondholder Representative specifying such default and requiring the same to be remedied; provided that if such default cannot be cured within such thirty (30) day period through the exercise of diligence and the Issuer commences the required cure within such thirty (30) day period and continues the cure with diligence and the Issuer reasonably anticipates that the default could be cured within sixty (60) days, the Issuer shall have sixty (60) days following receipt of such notice to effect the cure; or

(d) receipt by the Trustee of written notice from the Bondholder Representative of the occurrence of an “Event of Default” under the Financing Agreement, the Continuing Covenant Agreement or the Construction Funding Agreement.

The Trustee will promptly notify the Issuer, the Servicer and the Bondholder Representative after a Responsible Officer obtains actual knowledge of the occurrence of an Event of Default or obtains actual knowledge of the occurrence of an event which would become an Event of Default with the passage of time or the giving of notice or both.

**Section 6.02 *Acceleration; Other Remedies Upon Event of Default.***

Upon the occurrence of an Event of Default, the Trustee shall, upon the written request of the Bondholder Representative, 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 interest shall continue to accrue thereon until such amounts are paid.

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 Trustee may, but only if directed in writing by the Bondholder Representative, by written notice to the Issuer and the Trustee, rescind and annul such declaration and its consequences if the Issuer or the Borrower 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) upon 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 fees and expenses of the Trustee (including its counsel) shall have been made good or cured or adequate provision shall have been made therefor, and all outstanding amounts then due and unpaid under the Bond Financing Documents (collectively, the “**Cure Amount**”) shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Bondholder Representative; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the occurrence and during the 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 with respect to which such an Event of Default has occurred, 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; provided that, the Trustee may undertake any such remedy only upon the receipt of the prior written consent of the Bondholder Representative (which consent may be given in the sole discretion of the Bondholder Representative):

(i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, premium, if any, or interest on the Bonds then Outstanding and to require the Issuer to carry out any covenants or agreements with or for the benefit of the Bondholders and to perform its duties under the Act, this Indenture, the Financing Agreement or the Tax Regulatory Agreement (as applicable) to the extent permitted under the applicable provisions thereof;

(ii) by pursuing any available remedies under the Financing Agreement, the Tax Regulatory Agreement or any other Bond Financing Document;

(iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and

(iv) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Holders of the Bonds and 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.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or the Bondholders hereunder or under the Financing Agreement, the Tax Regulatory Agreement, the Continuing Covenant Agreement or any other Bond Financing Document, as applicable, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Trustee or the Bondholders, shall



extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

**Section 6.03 *Bondholder Representative Control Proceedings.*** If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Bondholder Representative shall have the right at any time, subject to the provisions of Section 6.08 hereof, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Indenture. In addition, the Bondholder Representative shall have the directly enforce all rights and remedies hereunder and under the other Bond Financing Documents with or without the involvement of the Trustee or the Issuer (and in connection therewith the Trustee shall transfer or assign to the Bondholder Representative all of its interest in the Trust Estate at the request thereof).

**Section 6.04 *Waiver by Issuer.*** Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Issuer nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Indenture; and the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisement and redemption to which it may be entitled under the laws of the State and the United States of America.

**Section 6.05 *Application of Money After Default.*** All money 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 Revenue Fund. Such money so credited to the Revenue Fund and all other money from time to time credited to the Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the money credited to the Revenue Fund, the Bond Fund and the Redemption Fund available for the payment of interest or principal then due with respect to the Bonds shall be insufficient for such payment, such money (other than money held for the payment or redemption of particular Bonds as provided in Section 4.09 hereof) shall be applied as follows and in the following order of priority:

- (a) For payment of all amounts due to the Trustee incurred in performance of its duties under this Indenture, including, without limitation, the payment of all reasonable fees and expenses of the Trustee incurred in exercising any remedies under this Indenture.
- (b) To the extent directed in writing by the Bondholder Representative, to the reimbursement of any unreimbursed advances made by the Bondholder Representative pursuant to the Continuing Covenant Agreement or the Bond Mortgage.
- (c) Unless the principal of all 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.

(d) 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, premium and interest, to the Persons entitled thereto without any discrimination or preference except as to any differences in the respective rates of interest specified in the Bonds.

**Section 6.06 Remedies Not Exclusive.** No right or remedy conferred upon or reserved to the Trustee or the Bondholder Representative by the terms of this Indenture is intended to be exclusive of any other right or remedy, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy given to the Trustee or the Bondholder Representative under this Indenture or existing at law or in equity or by statute (including the Act).

**Section 6.07 Trustee May Enforce Rights Without Bonds.** All rights of action and claims, including the right to file proof of claims, under this Indenture or under any of the Bonds may be prosecuted and enforced by the Trustee at the written direction of the Bondholder Representative without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Bondholder Representative to direct proceedings hereunder, any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Bonds, and any recovery or judgment shall be for the mutual benefit as provided herein of all of the Holders of the Outstanding Bonds.

**Section 6.08 [Reserved].**

**Section 6.09 Termination of Proceedings.** In case the Trustee (at the direction of the Bondholder Representative) or the Bondholder Representative shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry or otherwise, and such

proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee, the Bondholder Representative, the Borrower and the Bondholders shall be restored to their former positions and rights hereunder with respect to the Trust Estate herein conveyed, and all rights, remedies and powers of the Trustee and the Bondholder Representative shall continue as if no such proceedings had been taken.

**Section 6.10 *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 and interest on the Bonds upon the written direction of the Bondholder Representative. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee, the Borrower, the Servicer, the Bondholder Representative and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

**Section 6.11 *Interest on Unpaid Amounts and Default Rate for Nonpayment.*** In the event that principal of or interest payable on the Bonds is not paid when due, there shall be payable on the amount not timely paid, on each Interest Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Bonds shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

**Section 6.12 *Assignment of Project Loan; Remedies Under the Project Loan.*** The Bondholder Representative shall have the right, with respect to the Bond Mortgage Loan, in its sole and absolute discretion, without directing the Trustee to effect an acceleration of the Bonds, to instruct the Trustee in writing to assign the Bond Mortgage Note, the Bond Mortgage and the other Bond Mortgage Loan Documents to the Bondholder Representative, in which event the Trustee shall (a) endorse and deliver the Bond Mortgage Note to the Bondholder Representative and assign (in recordable form) the Bond Mortgage, (b) execute and deliver to the Bondholder Representative all documents prepared by the Bondholder Representative necessary to assign (in recordable form if necessary) all other Bond Mortgage Loan Documents to the Bondholder Representative and (c) execute all such documents prepared by the Bondholder Representative as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (a) and (b). The Trustee's assignments to the Bondholder Representative pursuant to this Section 6.12 shall be without recourse or warranty except that the Trustee shall represent and warrant in connection therewith (A) that the Trustee has not previously endorsed or assigned any such documents or instruments and (B) that the Trustee has the corporate authority to endorse and assign such documents and instruments and such endorsements and assignments have been duly authorized.

(b) The Bondholder Representative shall have the right, in its own name or on behalf of the Issuer or the Trustee, to declare any default and exercise any remedies under the Financing Agreement, the Bond Mortgage Note or the Bond Mortgage, whether or not the Bonds have been accelerated or declared due and payable by reason of an Event of Default or the occurrence of a mandatory prepayment.

**Section 6.13 Substitution.** Upon receipt of written notice from the Bondholder Representative and the approval of the Issuer as and to the extent permitted under the Tax Regulatory Agreement, the Trustee shall exchange the Bond Mortgage Note and the Security Instrument for a new Bond Mortgage Note and Bond Mortgage, evidencing and securing a new loan (the “New Bond Mortgage Loan”), which may be executed by a person other than the Borrower (the “New Borrower”), provided that if the Trustee, the Bondholder Representative or a nominee of the Trustee or the Bondholder Representative has acquired the Project through foreclosure, by accepting a deed in lieu of foreclosure or by comparable conversion of the Project, no approval from the Issuer of such exchange shall be required. Prior to accepting a New Bond Mortgage Loan, the Trustee shall have received (i) written evidence that the New Borrower shall have executed and recorded a document substantially in the form of the Tax Regulatory Agreement (or executed and recorded an assumption of all of the Borrower’s obligations under the Tax Regulatory Agreement) and that the Bond Mortgage Loan Documents have been modified as necessary to be applicable to the New Bond Mortgage Loan, and (ii) an opinion of Bond Counsel, to the effect that such exchange and modification, in and of itself, shall not affect the exclusion, from gross income, for federal income tax purposes of the interest payable on the Bonds.

## CONCERNING THE TRUSTEE

**Section 7.01 Standard of Care.** The Trustee, prior to an Event of Default as defined in Section 6.01 hereof and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically and expressly set forth in this Indenture. These duties shall be deemed purely ministerial in nature, and the Trustee shall only be liable for acts and omissions related to the performance of such duties, and no implied covenants or obligations shall be read into this Indenture against the Trustee. The Trustee, during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person’s own affairs. The permissive rights of the Trustee to do things enumerated in this Agreement shall not be construed as a duty and, with respect to such permissive rights, the Trustee shall not be answerable for other than its negligence or willful misconduct.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its breach of trust, own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except with regard to the performance of such duties and obligations as are specifically set forth in this Indenture; and

(ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the

opinions expressed therein, upon any certificate or opinion furnished to the Trustee by the Person or Persons authorized to furnish the same;

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Trustee shall not be liable for any action taken or error of judgment made in good faith by its officers, employees or agents unless it shall have been negligent in ascertaining the pertinent facts; and

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Bondholder Representative relating to 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 under this Indenture.

**Section 7.02 *Reliance Upon Documents.*** Except as otherwise provided in Section 7.01 hereof:

(a) the Trustee may request and rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, bond, judgment, decree or other paper or document of the proper party or parties, including any facsimile transmission or Electronic Notice as permitted hereunder or under the Financing Agreement, not only as to due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein;

(b) any notice, request, direction, election, order, or demand of the Issuer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Issuer by an Authorized Officer of the Issuer (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Issuer may be evidenced to the Trustee by a copy of such resolution duly certified by an Authorized Officer of the Issuer;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Trustee by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Servicer by an Authorized Officer of the Servicer (unless other evidence in respect thereof be herein specifically prescribed);

(e) any notice, request, direction, election, order or demand of the Bondholder Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Bondholder Representative by any Authorized Officer of the Bondholder Representative (unless other evidence in respect thereof be herein specifically prescribed);

(f) neither the Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Agency, Borrower, Bondholder Representative, or any of their directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Trustee shall have no enforcement obligations relating to breaches of representations or warranties of any other Person;

(g) [Intentionally Omitted];

(h) in the administration of the trusts of this Indenture, the Trustee may execute any of the trusts or powers hereby granted directly or through its agents, receivers or attorneys, and the Trustee may act through and consult with counsel (who may be counsel for the Issuer, the Servicer or the Bondholder Representative) or other professionals, and the opinion or advice of such counsel or other professionals shall be full and complete authorization and protection in respect of any action taken or permitted by it hereunder in accordance with such opinion or advice, and the Trustee shall not be responsible for the acts or omissions of such counsel or other professionals appointed with due care;

(i) whenever in the administration of the trusts of this Indenture, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may be deemed to be conclusively proved and established by an opinion of counsel and/or a certificate of an officer or authorized agent of the Issuer or the Borrower and such opinion or certificate shall be full warrant to the Trustee for any action taken or permitted by it under the provisions of this Indenture, but in its discretion the Trustee may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(j) the recitals herein and in the Bonds (except the Trustee's certificate of authentication thereon) shall be taken as the statements of the Issuer and the Borrower and shall not be considered as made by or imposing any obligation or liability upon the Trustee. The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the title of the Issuer or the Borrower to the Trust Estate, or as to the security of this Indenture, or of the Bonds issued hereunder, and the Trustee shall incur no liability or responsibility in respect of any of such matters;

(k) the Trustee shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Trust Estate except for its own willful misconduct or negligence; and every provision of this Indenture relating to

the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.02(k);

(l) the Trustee shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Trustee) herein or in any contracts or securities assigned or conveyed to or pledged with the Trustee hereunder, except Events of Default that are evident under Section 6.01(a) or 6.01(b) hereof. The Trustee shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) or 6.01(b) hereof) unless a Responsible Officer of the Trustee shall receive from the Issuer or the Bondholder Representative written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Trustee may conclusively assume that there is no such default. Every provision contained in this Indenture or related instruments or in any such contract or security wherein the duty of the Trustee depends on the occurrence and continuance of such default shall be subject to the provisions of this Section 7.02(l);

(m) the Trustee shall be under no duty to confirm or verify any financial or other statements or reports or certificates furnished pursuant to any provisions hereof, except to the extent such statement or reports are furnished by or under the direction of the Trustee, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Holder of any Bond; and

(n) the Trustee shall be under no obligation to exercise those rights or powers vested in it by this Indenture, other than such rights and powers which it shall be obliged to exercise in the ordinary course of its trusteeship under the terms and provisions of this Indenture and as required by law, at the request or direction of the Bondholder Representative pursuant to Sections 6.03 and 6.08 hereof, unless the Bondholder Representative shall have offered to the Trustee security or indemnity satisfactory to the Trustee in its sole and absolute discretion against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction

(o) in no event shall the Trustee be responsible or liable for special, indirect, punitive, incidental or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(p) the Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; quarantine restrictions; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Trustee is authorized and directed to execute in its capacity as Trustee the Financing Agreement and the Tax Regulatory Agreement and shall have no responsibility 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.

The Trustee or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

The Trustee shall be entitled to request and receive written instructions from the Issuer, Borrower and/or Bondholder Representative, and shall have no responsibility or liability for any losses or damages of any nature that may arise from any action taken or not taken by the Trustee in accordance with the written direction of any such party. The Trustee agrees to accept and act upon facsimile transmission or Electronic Notice of written instructions and/or directions pursuant to this Indenture provided, however, that: (a) subsequent to such facsimile transmission or Electronic Notice of written instructions and/or directions the Trustee shall forthwith receive the originally executed instructions and/or directions, (b) such originally executed instructions and/or directions shall be signed by such Person as may be designated and authorized to sign for the party signing such instructions and/or directions, and (c) the Trustee shall have received a current incumbency certificate containing the specimen signature of such designated Person.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Trustee pursuant to this Section 7.02 shall remain in effect until the Trustee receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

The Trustee shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.17 hereof.

**Section 7.03 *Use of Proceeds.*** The Trustee shall not be accountable for the use or application of any of the Bonds authenticated or delivered hereunder or of the proceeds of the Bonds except as provided herein.

**Section 7.04 *Trustee May Hold Bonds.*** The Trustee and its officers and directors may acquire and hold, or become pledgees of Bonds and otherwise may deal with the Issuer and the Borrower in the same manner and to the same extent and with like effect as though it were not Trustee hereunder.

**Section 7.05 *Trust Imposed.*** All money received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which it was received.

**Section 7.06 *Compensation of Trustee.*** The Trustee shall be entitled to its Ordinary Trustee's Fees and Expenses in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Trustee hereunder or under any Bond Financing Document to the extent money is available



therefor, in accordance with Section 4.06 hereof, exclusive of Extraordinary Services. The Trustee shall be entitled to Extraordinary Trustee's Fees and Expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Bond Financing Documents; provided the Trustee shall not incur any Extraordinary Trustee's Fees and Expenses without the consent of the Bondholder Representative. If any property, other than cash, shall at any time be held by the Trustee subject to this Indenture, or any supplemental indenture, as security for the Bonds, the Trustee, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Indenture as such security for the Bonds, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Trustee for its services and reimbursement to the Trustee for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Financing Agreement and in Sections 4.06, 4.11 and 6.05 hereof. The Issuer shall have no liability for Trustee's fees, costs or expenses. Subject to the provisions of Section 7.09 hereof, the Trustee agrees that it shall continue to perform its duties hereunder (including, but not limited to, its duties as Paying Agent and Bond Registrar) and under the Bond Financing Documents even in the event that money designated for payment of its fees shall be insufficient for such purposes or in the event that the Borrower fails to pay the Ordinary Trustee's Fees and Expenses or, if applicable, the Extraordinary Trustee's Fees and Expenses as required by the Financing Agreement.

The Borrower shall indemnify and hold harmless the Trustee and its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants and servants, past, present or future, from and against (a) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with this Indenture or transactions contemplated hereby, the Project, or the issuance, offering or sale of the Bonds; (b) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project, or the issuance, offering or sale of the Bonds; and (c) all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Borrower shall not be required to indemnify any person for damages caused by the gross negligence, willful misconduct or unlawful acts of such person or which arise from events occurring after the Borrower ceases to own the Project. In the event that any action or proceeding is brought or claim made against the Trustee, or any of its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants or servants, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice thereof from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The indemnified party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section 7.06 shall survive the termination of this Indenture.

**Section 7.07 *Qualifications of Trustee.*** There shall at all times be a Trustee hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers. Any successor Trustee shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly-owned subsidiary of an association or corporation that has

such combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to Section 7.09 hereof. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then for the purposes of this Section 7.07, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.07 and another association or corporation is eligible, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.09 hereof.

**Section 7.08 *Merger of Trustee.*** Any association or corporation into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Trustee hereunder and vested with all the title to the whole property or 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 instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding, and shall also be and become successor Trustee in respect of the beneficial interest of the Trustee in the Bond Mortgage Loan.

**Section 7.09 *Resignation by the Trustee.*** The Trustee may at any time resign and be discharged from the trusts hereby created and its duties and obligations hereunder by giving written notice to the Issuer, the Borrower, the Servicer and the Bondholder Representative, and by giving notice (which notice may be by Electronic Means) to each Holder of the Bonds then Outstanding. Such notice to the Issuer, the Borrower, the Servicer and the Bondholder Representative may be delivered by Electronic Means and confirmed by certified mail or overnight delivery service. The resignation of the Trustee shall not be effective until a successor Trustee has been appointed as provided herein and such successor Trustee shall have agreed in writing to be bound by the duties and obligations of the Trustee hereunder.

**Section 7.10 *Removal of the Trustee.*** The Trustee may be removed at any time, either with or without cause, with the consent of the Bondholder Representative (which consent of the Bondholder Representative shall not be unreasonably withheld), by a written instrument signed by the Issuer and delivered to the Trustee, the Servicer and the Borrower. The Trustee may also be removed by a written instrument or concurrent instruments signed by the Bondholder Representative and delivered to the Trustee, the Servicer, the Issuer and the Borrower. In each case written notice of such removal shall be given to the Servicer, the Borrower and to each registered Owner of Bonds then Outstanding as shown on the Bond Registrar. Any such removal shall take effect on the day specified in such written instrument(s), but the Trustee shall not be discharged from the trusts hereby created until a successor Trustee has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Trustee hereunder.

**Section 7.11 *Appointment of Successor Trustee.***

(a) In case at any time the Trustee shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Trustee or of its property shall be appointed, or if a public supervisory office shall take charge or control of the Trustee or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Trustee hereunder, and the Issuer, with the written consent of the Bondholder Representative, shall promptly appoint a successor Trustee. Any such appointment shall be made by a written instrument executed by an Authorized Officer of the Issuer. If the Issuer fails to appoint a successor Trustee within ten (10) days following the resignation or removal of the Trustee pursuant to Section 7.09 or Section 7.10 hereunder, as applicable, the Bondholder Representative may appoint a successor Trustee.

(b) If no appointment of a successor Trustee shall be made pursuant to subsection (a) of this Section 7.11 within sixty (60) calendar days following delivery of all required notices of resignation given pursuant to Section 7.09 hereof or of removal of the Trustee pursuant to Section 7.10 hereof, the retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee and for other related relief. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee and grant such other related relief.

**Section 7.12 *Concerning Any Successor Trustee.*** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer a written instrument accepting such appointment hereunder, accepting assignment of the beneficial interest in the Bond Mortgage, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Trust Estate and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, the Borrower or the Bondholder Representative, or of its successor, and upon payment of all amounts due such predecessor, including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Trustee all the Trust Estate and the rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and money held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by a successor Trustee for more fully and certainly vesting in such successor the Trust Estate and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Trustee in each recording office where this Indenture shall have been filed and/or recorded. Each successor Trustee shall mail notice by first class mail, postage prepaid, at least once within 30 days of such appointment, to the Owners of all Bonds Outstanding at their addresses on the Bond Register.

**Section 7.13 *Successor Trustee as Trustee, Paying Agent and Bond Registrar.*** In the event of a change in the office of Trustee, the predecessor Trustee which shall have resigned or shall have been removed shall cease to be trustee and paying agent on the Bonds and Bond Registrar, and the successor Trustee shall become such Trustee, Paying Agent and Bond Registrar.

**Section 7.14 *Appointment of Co-Trustee or Separate Trustee.*** It is the intent of the Issuer and the Trustee that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in case of litigation under or connected with this Indenture, the Financing Agreement or any of the other Bond Financing Documents, and, in particular, in case of the enforcement of any remedies on default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Trustee or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee, with the consent of the Issuer and the Bondholder Representative, appoint an additional individual or institution as a co-trustee or separate trustee.

In the event that the Trustee appoints an additional individual or institution as a co-trustee or separate trustee, in the event of the incapacity or lack of authority of the Trustee, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Trustee herein or to hold title to the Trust Estate or to take any other action that may be necessary or desirable in connection therewith, each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be imposed upon, exercised by or vested in or conveyed to the Trustee with respect thereto shall be imposed upon, exercisable by and vest in such separate trustee or co-trustee, but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.14. Such co-trustee or separate trustee shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Issuer and the Trustee.

Should any instrument in writing from the Issuer be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer, the Trustee and the Borrower. If the Issuer shall fail to deliver the same within thirty (30) days of such request, the Trustee is hereby appointed attorney-in-fact for the Issuer to execute, acknowledge and deliver such instruments in the Issuer's name and stead. In case any co-trustee or separate trustee, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such co-trustee or separate trustee.

Every co-trustee or separate trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

- (a) The Bonds shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Trustee;

(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Trustee shall be conferred or imposed upon or exercised or performed by the Trustee, or by the Trustee and such co-trustee, or separate trustee jointly, as shall be provided in the instrument appointing such co-trustee or separate trustee, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or separate trustee;

(c) any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co-trustee or separate trustee;

(d) any co-trustee or separate trustee to the extent permitted by law shall delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Trustee at any time by an instrument in writing with the concurrence of the Issuer evidenced by a certified resolution may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section 7.14 and in case an Event of Default shall have occurred and be continuing, the Trustee shall have power to accept the resignation of or remove any such co-trustee or separate trustee without the concurrence of the Issuer, and upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section 7.14;

(f) no Trustee or co-trustee hereunder shall be personally liable by reason of any act or omission of any other Trustee hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Bondholder Representative and delivered to the Trustee shall be deemed to have been delivered to each such co-trustee or separate trustee; and

(h) any money, papers, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

The total compensation of the Trustee and any co-trustee or separate trustee shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

**Section 7.15 *Notice of Certain Events.*** The Trustee shall give written notice to the Issuer, the Servicer and the Bondholder Representative of any failure by the Borrower to comply with the terms of the Tax Regulatory Agreement or any Determination of Taxability of which a Responsible Officer has actual knowledge.

**Section 7.16 *Reserved.***

**Section 7.17 *Filing of Financing Statements.*** The Trustee may, in its discretion and solely upon the direction and, at the expense of the Borrower, file or record or cause to be filed or recorded all UCC continuation statements for the purpose of continuing without lapse the effectiveness of those financing statements which have been filed on or approximately on the Delivery Date in connection with the security for the Bonds pursuant to the authority of the UCC. Upon the filing of any such continuation statement the Trustee shall promptly notify the Issuer, the Borrower, the Bondholder Representative and the Servicer that the same has been done. If direction is given by the Servicer or the Bondholder Representative, the Trustee shall file all continuation statements in accordance with such directions.

**Section 7.18 *USA Patriot Act Requirements of the Trustee.*** To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a Trust, or other legal entity, the Trustee may request documentation to verify such Person's formation and existence as a legal entity. The Trustee may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

## ARTICLE VIII

### AMENDMENTS OF CERTAIN DOCUMENTS

**Section 8.01 *Amendments to the Indenture.*** Any of the terms of this Indenture and the Bonds may be amended or waived only by an instrument signed by the Trustee and the Issuer, and with the prior written consent of the Bondholder Representative.

**Section 8.02 *Amendments to other Bond Financing Documents Require Consent of Bondholder Representative.*** Neither the Issuer nor the Trustee shall consent to any amendment, change or modification of any other Bond Financing Document without the prior written consent of the Bondholder Representative. The Trustee shall enter into such amendments to the Bond Financing Documents as shall be directed by the Bondholder Representative.

**Section 8.03 *Opinion of Bond Counsel Required.*** No amendment to this Indenture, the Bonds, the Financing Agreement, the Bond Mortgage Note, the Bond Mortgage or the Tax Regulatory Agreement shall become effective unless and until (i) the Bondholder Representative shall have consented to the same in writing in its sole discretion and (ii) the Bondholder Representative, the Issuer and the Trustee shall have received, at the expense of the Borrower, (A) an opinion of Bond Counsel to the effect that such amendment, change or modification will not, in and of itself, cause interest on the Bonds to be includable in gross income of the holders thereof for federal income tax purposes, and (B) an opinion of counsel acceptable to the Bondholder Representative to the effect that any such proposed such amendment, change or modification is authorized and complies with the provisions of this Indenture and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations.

## ARTICLE IX

### SATISFACTION AND DISCHARGE OF INDENTURE

**Section 9.01 *Discharge of Lien.*** If the Issuer shall pay or cause to be paid to the Holders of the Bonds the principal, interest and premium, if any, to become due thereon at the times and in the manner stipulated therein and herein, in any one or more of the following ways:

- (a) by the payment of the principal of (including redemption premium, if any) and interest on all Bonds outstanding; or
- (b) by the deposit to the account of the Trustee, in trust, of money or securities in the necessary amount to pay the principal, redemption price and interest to the date established for redemption whether by redemption or otherwise; or
- (c) by the delivery to the Trustee, for cancellation by it, of all Bonds Outstanding;

and shall have paid all amounts due and owing under the other Bond Financing Documents, and shall have paid all fees and expenses of and any other amounts due to the Trustee, the Servicer, the Rebate Analyst and the Paying Agent, and if the Issuer shall keep, perform and observe all and singular the covenants and promises in the Bonds and in this Indenture expressed as to be kept, performed and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer any interest in property at the time subject to the lien of this Indenture which may then be in its possession, except amounts held by the Trustee for the payment of principal of, interest and premium, if any, on the Bonds, the payment of any amounts owed to the United States of America pursuant to Section 4.12 hereof.

Any Outstanding Bond shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 based on a deposit of moneys or securities with the Trustee pursuant to Section 9.01(b) if, under circumstances which do not cause interest on the Bonds to become includable in the Holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled: (a) in case such Bond is to be redeemed on any date prior to its maturity, the Trustee shall have given to the Bondholder irrevocable notice of redemption of such Bond on said date; (b) there shall be on deposit with the Trustee either money or noncallable and nonprepayable direct obligations of the United States of America (or other defeasance securities constituting Qualified Investments approved in writing by the Bondholder Representative) in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal or redemption price, if applicable, and interest due and to become due on such Bond on the redemption date or maturity date thereof, as the case may be; (c) the Trustee shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to the Trustee and the Bondholder Representative as to the adequacy of the amounts or securities so deposited to fully pay the Bonds deemed to be paid (provided such report shall not be required if the Bonds will

mature or be redeemed within 60 days of a cash-only deposit that the Trustee certifies in writing will be sufficient to fully pay such Bonds); (d) the Trustee and the Bondholder Representative shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Borrower, any general partner, member or guarantor of the Borrower, or the Issuer were to become a debtor in a proceeding under the Bankruptcy Code (x) payment of such money to holders of the Bonds would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (y) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Bonds; and (e) the Trustee and the Bondholder Representative shall have received an opinion of Bond Counsel to the effect that the defeasance of the Bonds is in accordance with the provisions of the Indenture and that such defeasance will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

The Trustee shall in no event cause the Bonds to be optionally redeemed from money deposited pursuant to this Article IX unless the requirements of Article III have been met with respect to such redemption.

**Section 9.02 *Discharge of Liability on Bonds.*** Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01 above) to pay or redeem Outstanding Bonds (whether upon or prior to their maturity or the redemption date of such Bonds) provided that, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article III provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, all liability of the Issuer in respect of such Bonds shall cease, terminate and be completely discharged, except only that thereafter the holders thereof shall be entitled to payment by the Issuer, and the Issuer shall remain liable for such payment, but only out of the money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 9.03 hereof.

**Section 9.03 *Payment of Bonds After Discharge of Indenture.*** Notwithstanding any provisions of this Indenture, and subject to applicable unclaimed property laws of the State, any money deposited with the Trustee or any paying agent in trust for the payment of the principal of, interest or premium on the Bonds remaining unclaimed for [\_\_\_\_\_] years after the payment thereof: [(a) shall be reported and disposed of by the Trustee in accordance with applicable unclaimed property laws; or (b)] to the extent permitted by applicable law, shall be paid to [the Issuer][the Borrower][other disposition], whereupon all liability of the Issuer and the Trustee with respect to such money shall cease, and the holders of the Bonds shall thereafter look solely to the Borrower for payment of any amounts then due. [All money held by the Trustee and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon.]

## ARTICLE X

### INTENTIONALLY OMITTED



## ARTICLE XI

### MISCELLANEOUS

**Section 11.01 *Consents and Other Instruments of Bondholders.*** Any consent, request, direction, approval, waiver, objection, appointment or other instrument required by this Indenture to be signed and executed by the Bondholders may be signed and executed in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such instrument, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under such instrument, namely:

(a) the fact and date of the execution by any Person of any such instrument may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the Person signing such instrument acknowledged the execution thereof. Where such execution is by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such affidavit or certificate shall also constitute sufficient proof of such authority;

(b) the ownership of registered Bonds shall be proved by the Bond Register;  
and

(c) any request, consent or vote of the Holder of any Bond shall bind every future Holder of the same Bond and the Holder of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or permitted to be done by the Trustee or the Issuer in pursuance of such request, consent or vote.

**Section 11.02 *Servicing of the Bond Mortgage Loan.*** The Bondholder Representative may appoint a Servicer (which may be the Bondholder Representative if the Bondholder Representative elects to service the Bond Mortgage Loan) to service the Bond Mortgage Loan as provided in Section 3.02 of the Financing Agreement.

**Section 11.03 *Limitation of Rights.*** With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the Parties hereto, the Bondholder Representative, the Servicer, the Borrower and the Holders of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions hereof.

**Section 11.04 *Entire Agreement; Construction of Conflicts; Severability.*** This Indenture and the exhibits hereto set forth the entire agreement and understanding of the parties related to this transaction and supersedes all prior agreements and understandings, oral or written. Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by the Borrower or any other arrangements agreed to by the Borrower in order to finance or refinance the Project with the

proceeds of the Bonds, the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Code are inconsistent with the Bond Mortgage Loan Documents, then the Bond Mortgage Loan Documents shall be controlling in all respects. If any provision of this Indenture shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Indenture contained, shall not affect the remaining portions of this Indenture, or any part thereof.

**Section 11.05 Notices.**

(a) Any provision of this Indenture relating to the mailing of notice or other communication to Bondholders shall be deemed fully complied with if such notice or other communication is mailed, by first class mail, postage prepaid, or overnight delivery service, to each registered Owner of any Bonds then Outstanding at the address of such registered Owner as it appears on the Bond Register. Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Issuer, the Trustee, the Bondholder Representative, the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Indenture by Electronic Notice or by a facsimile transmission for which a confirmation of receipt has been delivered. The Issuer, the Trustee, the Bondholder Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Issuer: North Dakota Housing Finance Agency  
2624 Vermont Ave  
Bismarck, ND 58504  
Attention: Executive Director  
Facsimile: (701) 328-8090

With a copy to:

Jaden Grossman  
Office of Attorney General

600 East Boulevard Avenue, Dept. 125  
Bismarck, ND 58505-0040  
Facsimile: (701) 328-2226  
E-mail: jfox@nd.gov

The Trustee: Wilmington Trust, National Association  
50 South Sixth Street, Suite 1290  
Minneapolis, MN 55402  
Attention: Corporate Trust Services  
Telephone: (612) 217-5672  
Facsimile: (612)-217-5651  
E-mail: LLewis6@wilmingtontrust.com

The Borrower: Lashkowitz Riverfront Four, LLLP  
c/o BlueLine Development, Inc.  
Attn: Maddy Mason  
1004 South Ave. W.  
Missoula, MT 48701  
Telephone: 612-741-9396  
Email: maddy@bluelinedevelopment.com

with a copy to: Winthrop Weinstine  
Capella Tower, Suite 3500  
225 South Sixth Street  
Minneapolis, MN 55402-4629  
Attention: Jason Harby  
Telephone: (612) 604-6788  
Email: jharby@winthrop.com

and a copy to: WNC Holding, LLC  
c/o WNC & Associates, Inc.  
17782 Sky Park Circle  
Irvine, California 92614-6404  
Attn: Melanie Wenk

and a copy to: WNC Housing, L.P.  
17782 Sky Park Circle  
Irvine, California 92614-6404  
Attn: Melanie Wenk

and a copy to: Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska 68102  
Attn: Shane Deaver, Esq.

Bondholder  
Representative

and Servicer:                   ORIX Public Finance, LLC  
2001 Ross Avenue  
Dallas, Texas 75201  
Attention: Ben Forrest

The Trustee agrees to accept and act upon facsimile transmission or Electronic Notice of written instructions and/or written directions pursuant to this Indenture.

(b) The Trustee shall provide to the Bondholder Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof and (ii) any written information or other written communication received by the Trustee hereunder within ten (10) Business Days of receiving a written request from the Bondholder Representative and the Servicer for any such information or other communication.

**Section 11.06 *Bondholder Representative.***

(a) ORIX Public Finance, LLC is the initial Bondholder Representative with respect to the Bonds. The Bondholder Representative shall be entitled to all the rights and privileges of the Bondholders hereunder and under the other Bond Financing Documents.

(b) The Bondholder Representative may provide written notice to the Trustee designating particular individuals or Persons authorized to execute any consent, waiver, approval, direction or other instrument on behalf of the Bondholder Representative, and such notice may be amended or rescinded by the Bondholder Representative at any time by subsequent written notice. The Bondholder Representative may be removed and a successor appointed by a written notice in the form of Exhibit B hereto given by the Majority Bondholder to the Trustee, the Issuer, the Servicer and the Borrower. The removal and reappointment shall be effective immediately upon receipt of such notice by the Trustee. The Majority Bondholder may appoint any Person to act as Bondholder Representative, including, without limitation, the Servicer. If, for any reason, a Bondholder Representative resigns by written notice provided to the Trustee, the Majority Bondholder, the Issuer, the Servicer and the Borrower, all references to Bondholder Representative herein and in the other Bond Financing Documents shall be deemed to refer to the Majority Bondholder until a successor Bondholder Representative is appointed by the Majority Bondholder.

(c) Whenever pursuant to this Indenture or any other Bond Financing Document, the Bondholder Representative exercises any right given to it to approve or disapprove, or any arrangement or term is to be acceptable to the Bondholder Representative, the decision of the Bondholder Representative to approve or disapprove or to decide whether arrangements or terms are acceptable or not acceptable shall be in the sole discretion of the Bondholder Representative, except as otherwise specifically indicated.

(d) Each Holder of the Bonds (and any beneficial owners thereof), by their purchase or other acquisition thereof, shall be deemed to have acknowledged and agreed to the provisions of this Indenture and the other Bond Financing Documents with respect to the Bondholder Representative and the rights and privileges thereof, including but not limited to the right to

control all remedies in respect of the Bonds and the Bond Mortgage Loan subject to Section 6.08 hereof.

**Section 11.07 *Trustee as Paying Agent and Bond Registrar.*** The Trustee is hereby designated and agrees to act as Paying Agent and Bond Registrar for and in respect to the Bonds. When acting in either such capacity, the Trustee will receive the same rights, protections and indemnifications afforded to the Trustee hereunder.

**Section 11.08 *Payments Due on Non-Business Days.*** In any case where a date of payment with respect to any Bonds shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date provided that payment is made on such next succeeding Business Day.

**Section 11.09 *Counterparts.*** This Indenture 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 11.10 *Laws Governing Indenture and Administration of Trust.*** The effect and meanings of this Indenture and the rights of all parties hereunder shall be governed by, and construed according to, the laws of the State without regard to conflicts of laws principles.

**Section 11.11 *No Recourse.*** No recourse under or upon any obligation, covenant or agreement contained in this Indenture or in any Bond shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Issuer, either directly or through the Issuer or its governing body or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Holder of any Bond issued hereunder, or otherwise, of any sum that may be due and unpaid by the Issuer or its governing body upon any such Bond. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Holder of any Bond issued hereunder or otherwise of any sum that may remain due and unpaid upon any Bond hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Indenture and the issuance of the Bonds.

**Section 11.12 *Successors and Assigns.*** All the covenants and representations contained in this Indenture by or on behalf of the parties hereto shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

[Signature Pages Follow]

**IN WITNESS WHEREOF**, the Issuer and the Trustee have caused this Trust Indenture to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

**NORTH DAKOTA HOUSING FINANCE  
AGENCY**

By \_\_\_\_\_  
David A. Flohr, Executive Director

[ISSUER'S SIGNATURE PAGE TO *LASHKOWITZ RIVERFRONT 4* INDENTURE]

**WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Trustee**

By: \_\_\_\_\_  
Lisa M. Lewis, Vice President

[TRUSTEE'S SIGNATURE PAGE TO *LASHKOWITZ RIVERFRONT 4* INDENTURE]

**SCHEDULE 1**

**MANDATORY SINKING FUND SCHEDULE**



**EXHIBIT A-1**

**FORM OF BOND**

**UNITED STATES OF AMERICA  
STATE OF NORTH DAKOTA  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 4)  
SERIES 2024A**

**NO. R-1**

**\$\_[\_\_\_\_\_]**

NOTICE: Unless this bond certificate is presented by an authorized representative of The Depository Trust Company to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owners hereof, Cede & Co., has an interest herein.

INTEREST RATE: [\_\_\_\_\_]%

MATURITY DATE: [MATURITY DATE]

DELIVERY DATE: [CLOSING DATE]

CUSIP NO.: [65889A \_\_\_\_]

REGISTERED OWNER: CEDE & CO.

MAXIMUM PRINCIPAL AMOUNT: [\_\_\_\_\_] AND NO/100 DOLLARS

The State of North Dakota (the “**State**”) acting through the Industrial Commission of North Dakota (the “**Commission**”) in its capacity as the North Dakota Housing Finance Agency (the “**Issuer**”), a public entity created and existing under the laws of the State of North Dakota, for value received, hereby promises (but solely from the sources and in the manner provided for in the hereinafter defined Indenture) to pay to the registered owner identified above, or registered assigns, on the maturity date set forth above, unless previously called for redemption, the principal sum as set forth above (subject to the last sentence of this paragraph), together with interest thereon at the rate set forth above (subject to adjustment to the Default Rate as provided in the Indenture (as defined below)) from the Interest Payment Date (as defined below) next preceding the date of authentication of this Bond to which interest has been paid or duly provided for, unless the date of authentication is an Interest Payment Date to which interest has been paid or duly provided for, in which case from the date of authentication of this Bond, or unless no interest has been paid or duly provided for on this Bond, in which case from the Delivery Date identified above, until the principal amount hereof shall have been fully paid, at

the rate per annum identified above, payable on (a) the first day of each calendar month, commencing [\_\_\_\_\_], 20[\_\_\_], (b) the maturity date identified above, and (c) the date of redemption of this Bond (each, an “**Interest Payment Date**”), computed on the basis of a 360-day year consisting of twelve 30-day months, as provided in the Indenture. Notwithstanding the foregoing, if this Bond is authenticated after a Record Date and before the following Interest Payment Date, this Bond shall bear interest from such Interest Payment Date; provided, however, that if there shall be a default in the payment of interest due on such Interest Payment Date, then this Bond shall bear interest from the next preceding Interest Payment Date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for on this Bond, from the Delivery Date. Payment of principal, premium, if any, and interest on this Bond are payable in lawful money of the United States of America. Payment of principal of this Bond, premium, if any, and interest on this Bond will be made by check mailed on the Interest Payment Date to the registered owner of this Bond as such address shall appear on the registration books for the Bonds on the 15<sup>th</sup> day of the month preceding each Interest Payment Date (a “**Record Date**”); provided, however, upon written request of a registered owner of at least \$1,000,000 aggregate principal amount of the Bonds (or an Owner of any principal amount thereof if the sole Owner of the Bonds) received by Wilmington Trust, National Association, as trustee (together with any successor trustee appointed in accordance with the terms of the hereinafter defined Indenture, the “**Trustee**”), at least five (5) Business Days prior to a Record Date, all payments of principal, premium, if any, and interest will be paid by wire transfer of immediately available funds to an account designated by such owner without any necessity of presentation and surrender of Bonds upon any redemption or tender thereof. All capitalized terms not defined herein shall have the meaning set forth in the Trust Indenture dated as of July 1, 2024, by and between the Issuer and the Trustee (the “**Indenture**”). Notwithstanding anything to the contrary herein, the outstanding principal balance of this Bond at any time shall be an amount equal to the proceeds of the Bonds advanced by the Bondholder Representative under the Indenture and not otherwise prepaid and interest shall accrue on the principal amount of the Bonds which have been advanced under the Indenture and is outstanding as reflected on the Record of Advances.

THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OR PLEDGE OF THE GENERAL CREDIT OF THE ISSUER WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION OF INDEBTEDNESS. THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER AND DO NOT CONSTITUTE OR CREATE A DEBT OR OBLIGATION, EITHER GENERAL OR SPECIAL, OR LIABILITY OR MORAL OBLIGATION OF THE STATE OF NORTH DAKOTA (THE “STATE”) OR ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS WHATSOEVER. NEITHER THE FAITH OR CREDIT NOR THE TAXING POWER OF THE STATE OR OF ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR PREMIUM, IF ANY, OR THE INTEREST ON THE BONDS. THE BONDS ARE NOT A GENERAL OBLIGATION OF THE ISSUER (WHICH HAS NO TAXING POWER) BUT ARE LIMITED REVENUE OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE PLEDGED THEREFOR UNDER THE INDENTURE. PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS SHALL BE A VALID CLAIM ONLY AS AGAINST THE PLEDGED REVENUES, IS NOT A GENERAL OBLIGATION OF THE STATE, OR ANY COUNTY, MUNICIPALITY OR POLITICAL

SUBDIVISION OF THE STATE, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE, OR ANY COUNTY, MUNICIPALITY, POLITICAL SUBDIVISION OF THE STATE OR THE ISSUER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS.

NO MEMBER, COMMISSIONER, OFFICER, AGENT, EMPLOYEE OR ATTORNEY OF THE ISSUER, INCLUDING ANY PERSON EXECUTING THE INDENTURE OR THE BONDS, SHALL BE LIABLE PERSONALLY ON THE BONDS OR FOR ANY REASON RELATING TO THE ISSUANCE OF THE BONDS. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BONDS, OR FOR ANY CLAIM BASED ON THE BONDS, OR OTHERWISE IN RESPECT OF THE BONDS, OR BASED ON OR IN RESPECT OF THE INDENTURE OR ANY SUPPLEMENTAL INDENTURE, AGAINST ANY MEMBER, COMMISSIONER, OFFICER, EMPLOYEE OR AGENT, AS SUCH, OF THE ISSUER OR ANY SUCCESSOR, 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, BY THE ACCEPTANCE OF THIS BOND AND AS PART OF THE CONSIDERATION FOR THE ISSUANCE OF THE BONDS, EXPRESSLY WAIVED AND RELEASED.

This Bond is one of a duly authorized issue of bonds of the Issuer known as its North Dakota Housing Finance Agency Multifamily Revenue Bonds (Lashkowitz Riverfront 4), Series 2024A, issued in the maximum aggregate principal amount of \$[ ] (the “**Bonds**”) under and pursuant to the Constitution and the laws of the State, particularly Chapter 54-17 of the North Dakota Century Code, as amended (the “**Act**”), and a bond resolution adopted by the Issuer on [June 27, 2024]. The Bonds are special, limited obligations of the Issuer payable solely from and secured by the Trust Estate pledged therefor pursuant to the Indenture. The Bonds are issued to provide funds to finance the acquisition, construction and/or rehabilitation of a multifamily rental housing development known as Lashkowitz Riverfront 4 located in Fargo, North Dakota owned by Lashkowitz Riverfront Four, LLLP, a North Dakota limited liability limited partnership (the “**Borrower**”).

Each series of Bonds is issuable as fully registered bonds in Authorized Denominations of \$25,000 and any amount in excess thereof.

To secure its obligation to make payments on the Bond Mortgage Note in accordance with its terms, the Borrower has caused to be delivered to the Issuer a Multifamily Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of [ ] (the “**Bond Mortgage**”), which has been assigned by the Issuer to the Trustee.

Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the Trust Estate under the Indenture, the nature and extent of the security, the terms and conditions upon which the Bonds are issued and secured and the rights of the holders thereof, to all of the provisions of which Indenture the registered Owner of this Bond, by acceptance hereof, assents and agrees. This Bond is equally and ratably secured under the Indenture with all other Bonds issued thereunder.

The Bonds are subject to optional and mandatory redemption in accordance with the provisions of the Indenture.

In the event of a redemption of less than all of the Bonds, the Bonds shall be selected by lot. Bonds shall only be redeemed in Authorized Denominations.

Unless notice of redemption is not required under this Bond and the terms of the Indenture, notice of redemption of this Bond shall be given by first class mail, postage prepaid, to the registered owner hereof at the address of such owner shown on the registration books maintained by the Trustee, as bond registrar. All such notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional or mandatory sinking fund redemptions) nor more than sixty (60) days prior to the date fixed for redemption. Failure to give notice by mailing to the registered owner of any Bond designated for redemption shall not affect the validity of the proceedings for the redemption of any other Bond if notice shall have been mailed as herein provided. Except in the event of a defeasance, the Trustee may provide a conditional notice with respect to an optional redemption upon the direction of the Borrower.

The owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond is transferable by the registered owner hereof in Person or by such owner's attorney duly authorized in writing at the principal corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer, a new registered Bond or Bonds of the same series, maturity and interest rate and of authorized denomination or denominations for the same aggregate principal amount will be issued to the transferee in exchange therefore. The Bonds are issuable only as fully registered Bonds without coupons.

The Issuer and the Trustee may deem and treat the registered holder hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until this Bond shall have been authenticated by the certificate of the Trustee endorsed hereon.

In the event of a conflict between the terms of this Bond and the Indenture, the terms of the Indenture shall control.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in the time, form and manner as required by law; that payment in full for this Bond has been received; and that this

Bond and the issue of which it forms a part does not exceed or violate any constitutional or statutory limitation.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Commission has caused this Bond to be executed in the name of the State and on its behalf by the manual or facsimile signature of the members of the Commission and the official seal of the Commission (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested to by the manual or facsimile signature of an Authorized Officer of the Commission.

INDUSTRIAL COMMISSION OF NORTH  
DAKOTA

\_\_\_\_\_  
Agriculture Commissioner

By \_\_\_\_\_  
Governor and Chairman

Attest:

\_\_\_\_\_  
Executive Director of the Agency

By \_\_\_\_\_  
Attorney General

[SEAL]

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds issued under the provisions of and described in the within-mentioned Indenture.

Date of Authentication: \_\_\_\_\_

WILMINGTON TRUST, NATIONAL  
ASSOCIATION

By: \_\_\_\_\_  
Authorized Signer

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto  
(Please insert Social Security Number or other identifying number of assignee)

(Please print or Typewrite Name and Address of Assignee)

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

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

Signature Guaranteed

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by an eligible guaranty institution.

\_\_\_\_\_  
Signature

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 whatever.

**EXHIBIT A-2**

**FORM OF BOND**

**UNITED STATES OF AMERICA  
STATE OF NORTH DAKOTA  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 4)  
SERIES 2024B**

**NO. R-1**

**\$\_[\_\_\_\_\_]**

NOTICE: Unless this bond certificate is presented by an authorized representative of The Depository Trust Company to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owners hereof, Cede & Co., has an interest herein.

INTEREST RATE: [ ]%  
MATURITY DATE: [MATURITY DATE]  
DELIVERY DATE: [CLOSING DATE]  
CUSIP NO.: [65889A \_\_\_\_]  
REGISTERED OWNER: CEDE & CO.  
MAXIMUM PRINCIPAL AMOUNT: [ \_\_\_\_\_ ] AND NO/100 DOLLARS

The State of North Dakota (the “**State**”) acting through the Industrial Commission of North Dakota (the “**Commission**”) in its capacity as the North Dakota Housing Finance Agency (the “**Issuer**”), a public entity created and existing under the laws of the State of North Dakota, for value received, hereby promises (but solely from the sources and in the manner provided for in the hereinafter defined Indenture) to pay to the registered owner identified above, or registered assigns, on the maturity date set forth above, unless previously called for redemption, the principal sum as set forth above (subject to the last sentence of this paragraph), together with interest thereon at the rate set forth above (subject to adjustment to the Default Rate as provided in the Indenture (as defined below)) from the Interest Payment Date (as defined below) next preceding the date of authentication of this Bond to which interest has been paid or duly provided for, unless the date of authentication is an Interest Payment Date to which interest has been paid or duly provided for, in which case from the date of authentication of this Bond, or unless no interest has been paid or duly provided for on this Bond, in which case from the Delivery Date identified above, until the principal amount hereof shall have been fully paid, at



the rate per annum identified above, payable on (a) the first day of each calendar month, commencing [\_\_\_\_\_], 20[\_\_\_], (b) the maturity date identified above, and (c) the date of redemption of this Bond (each, an “**Interest Payment Date**”), computed on the basis of a 360-day year consisting of twelve 30-day months, as provided in the Indenture. Notwithstanding the foregoing, if this Bond is authenticated after a Record Date and before the following Interest Payment Date, this Bond shall bear interest from such Interest Payment Date; provided, however, that if there shall be a default in the payment of interest due on such Interest Payment Date, then this Bond shall bear interest from the next preceding Interest Payment Date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for on this Bond, from the Delivery Date. Payment of principal, premium, if any, and interest on this Bond are payable in lawful money of the United States of America. Payment of principal of this Bond, premium, if any, and interest on this Bond will be made by check mailed on the Interest Payment Date to the registered owner of this Bond as such address shall appear on the registration books for the Bonds on the 15<sup>th</sup> day of the month preceding each Interest Payment Date (a “**Record Date**”); provided, however, upon written request of a registered owner of at least \$1,000,000 aggregate principal amount of the Bonds (or an Owner of any principal amount thereof if the sole Owner of the Bonds) received by Wilmington Trust, National Association, as trustee (together with any successor trustee appointed in accordance with the terms of the hereinafter defined Indenture, the “**Trustee**”), at least five (5) Business Days prior to a Record Date, all payments of principal, premium, if any, and interest will be paid by wire transfer of immediately available funds to an account designated by such owner without any necessity of presentation and surrender of Bonds upon any redemption or tender thereof. All capitalized terms not defined herein shall have the meaning set forth in the Trust Indenture dated as of July 1, 2024, by and between the Issuer and the Trustee (the “**Indenture**”). Notwithstanding anything to the contrary herein, the outstanding principal balance of this Bond at any time shall be an amount equal to the proceeds of the Bonds advanced by the Bondholder Representative under the Indenture and not otherwise prepaid and interest shall accrue on the principal amount of the Bonds which have been advanced under the Indenture and is outstanding as reflected on the Record of Advances.

THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OR PLEDGE OF THE GENERAL CREDIT OF THE ISSUER WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION OF INDEBTEDNESS. THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER AND DO NOT CONSTITUTE OR CREATE A DEBT OR OBLIGATION, EITHER GENERAL OR SPECIAL, OR LIABILITY OR MORAL OBLIGATION OF THE STATE OF NORTH DAKOTA (THE “STATE”) OR ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS WHATSOEVER. NEITHER THE FAITH OR CREDIT NOR THE TAXING POWER OF THE STATE OR OF ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR PREMIUM, IF ANY, OR THE INTEREST ON THE BONDS. THE BONDS ARE NOT A GENERAL OBLIGATION OF THE ISSUER (WHICH HAS NO TAXING POWER) BUT ARE LIMITED REVENUE OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE PLEDGED THEREFOR UNDER THE INDENTURE. PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS SHALL BE A VALID CLAIM ONLY AS AGAINST THE PLEDGED REVENUES, IS NOT A GENERAL OBLIGATION OF THE STATE, OR ANY COUNTY, MUNICIPALITY OR POLITICAL

SUBDIVISION OF THE STATE, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE, OR ANY COUNTY, MUNICIPALITY, POLITICAL SUBDIVISION OF THE STATE OR THE ISSUER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS.

NO MEMBER, COMMISSIONER, OFFICER, AGENT, EMPLOYEE OR ATTORNEY OF THE ISSUER, INCLUDING ANY PERSON EXECUTING THE INDENTURE OR THE BONDS, SHALL BE LIABLE PERSONALLY ON THE BONDS OR FOR ANY REASON RELATING TO THE ISSUANCE OF THE BONDS. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BONDS, OR FOR ANY CLAIM BASED ON THE BONDS, OR OTHERWISE IN RESPECT OF THE BONDS, OR BASED ON OR IN RESPECT OF THE INDENTURE OR ANY SUPPLEMENTAL INDENTURE, AGAINST ANY MEMBER, COMMISSIONER, OFFICER, EMPLOYEE OR AGENT, AS SUCH, OF THE ISSUER OR ANY SUCCESSOR, 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, BY THE ACCEPTANCE OF THIS BOND AND AS PART OF THE CONSIDERATION FOR THE ISSUANCE OF THE BONDS, EXPRESSLY WAIVED AND RELEASED.

This Bond is one of a duly authorized issue of bonds of the Issuer known as its North Dakota Housing Finance Agency Multifamily Revenue Bonds (Lashkowitz Riverfront 4), Series 2024B, issued in the maximum aggregate principal amount of \$[ ] (the “**Bonds**”) under and pursuant to the Constitution and the laws of the State, particularly Chapter 54-17 of the North Dakota Century Code, as amended (the “**Act**”), and a bond resolution adopted by the Issuer on [June 27, 2024]. The Bonds are special, limited obligations of the Issuer payable solely from and secured by the Trust Estate pledged therefor pursuant to the Indenture. The Bonds are issued to provide funds to finance the acquisition, construction and/or rehabilitation of a multifamily rental housing development known as Lashkowitz Riverfront 4 located in Fargo, North Dakota owned by Lashkowitz Riverfront Four, LLLP, a North Dakota limited liability limited partnership (the “**Borrower**”).

Each series of Bonds is issuable as fully registered bonds in Authorized Denominations of \$25,000 and any amount in excess thereof.

To secure its obligation to make payments on the Bond Mortgage Note in accordance with its terms, the Borrower has caused to be delivered to the Issuer a Multifamily Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of [ ] (the “**Bond Mortgage**”), which has been assigned by the Issuer to the Trustee.

Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the Trust Estate under the Indenture, the nature and extent of the security, the terms and conditions upon which the Bonds are issued and secured and the rights of the holders thereof, to all of the provisions of which Indenture the registered Owner of this Bond, by acceptance hereof, assents and agrees. This Bond is equally and ratably secured under the Indenture with all other Bonds issued thereunder.

The Bonds are subject to optional and mandatory redemption in accordance with the provisions of the Indenture.

In the event of a redemption of less than all of the Bonds, the Bonds shall be selected by lot. Bonds shall only be redeemed in Authorized Denominations.

Unless notice of redemption is not required under this Bond and the terms of the Indenture, notice of redemption of this Bond shall be given by first class mail, postage prepaid, to the registered owner hereof at the address of such owner shown on the registration books maintained by the Trustee, as bond registrar. All such notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional or mandatory sinking fund redemptions) nor more than sixty (60) days prior to the date fixed for redemption. Failure to give notice by mailing to the registered owner of any Bond designated for redemption shall not affect the validity of the proceedings for the redemption of any other Bond if notice shall have been mailed as herein provided. Except in the event of a defeasance, the Trustee may provide a conditional notice with respect to an optional redemption upon the direction of the Borrower.

The owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond is transferable by the registered owner hereof in Person or by such owner's attorney duly authorized in writing at the principal corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer, a new registered Bond or Bonds of the same series, maturity and interest rate and of authorized denomination or denominations for the same aggregate principal amount will be issued to the transferee in exchange therefore. The Bonds are issuable only as fully registered Bonds without coupons.

The Issuer and the Trustee may deem and treat the registered holder hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until this Bond shall have been authenticated by the certificate of the Trustee endorsed hereon.

In the event of a conflict between the terms of this Bond and the Indenture, the terms of the Indenture shall control.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in the time, form and manner as required by law; that payment in full for this Bond has been received; and that this

Bond and the issue of which it forms a part does not exceed or violate any constitutional or statutory limitation.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Commission has caused this Bond to be executed in the name of the State and on its behalf by the manual or facsimile signature of the members of the Commission and the official seal of the Commission (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested to by the manual or facsimile signature of an Authorized Officer of the Commission.

INDUSTRIAL COMMISSION OF NORTH  
DAKOTA

\_\_\_\_\_  
Agriculture Commissioner

By \_\_\_\_\_  
Governor and Chairman

Attest:

\_\_\_\_\_  
Executive Director of the Agency

By \_\_\_\_\_  
Attorney General

[SEAL]

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds issued under the provisions of and described in the within-mentioned Indenture.

Date of Authentication: \_\_\_\_\_

WILMINGTON TRUST, NATIONAL  
ASSOCIATION

By: \_\_\_\_\_  
Authorized Signer

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto  
(Please insert Social Security Number or other identifying number of assignee)

(Please print or Typewrite Name and Address of Assignee)

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

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

Signature Guaranteed

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by an eligible guaranty institution.

\_\_\_\_\_  
Signature

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 whatever.

**EXHIBIT B**

**FORM OF NOTICE OF APPOINTMENT  
OF BONDHOLDER REPRESENTATIVE**

Wilmington Trust, National Association  
Minneapolis, MN

Lashkowitz Riverfront Four, LLLP, c/o BlueLine Development, Inc.  
Missoula, MT

North Dakota Housing Finance Agency  
Bismarck, ND

ORIX Public Finance, LLC  
Dallas, Texas

STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 4)  
SERIES 2024A and SERIES 2024B

Ladies and Gentlemen:

The undersigned is the Majority Bondholder of the above-referenced Bonds (the “**Bonds**”), as such term is defined in the Industrial Commission of North Dakota acting in its capacity as the North Dakota Housing Finance Agency (the “**Issuer**”) and Wilmington Trust, National Association (the “**Trustee**”). Pursuant to Section 11.06 of the Indenture, you are hereby notified that, effective immediately upon receipt of this notice by the Trustee, the Bondholder Representative appointed under Section 11.06 of the Indenture shall be \_\_\_\_\_ . [The person or entity previously appointed as Bondholder Representative shall upon the effectiveness of this notice no longer have any further rights or obligations as Bondholder Representative.]

The following individual or individuals shall have the authority to execute any consent, waiver, approval, direction or other instrument on behalf of the Bondholder Representative and the signature(s) set forth next to his/her (their) name(s) is (are) his/her (their) true and correct signature(s).

NAME	SIGNATURE
_____	_____
_____	_____
_____	_____
_____	_____

Additional individuals may be given such authority by written notice to you from the Bondholder Representative or from the Majority Bondholder.

This notice is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**[MAJORITY BONDHOLDER SIGNATURE  
BLOCK]**

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



## EXHIBIT C

### FORM OF INVESTOR LETTER

[To be prepared on letterhead of Purchaser]

[Date]

North Dakota Housing Finance Agency  
Bismarck, ND

Wilmington Trust, National Association  
Minneapolis, MN

STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 4)  
SERIES 2024A and SERIES 2024B

Ladies and Gentlemen:

The undersigned (the "Investor") hereby acknowledges receipt of \$\_\_\_\_\_ in aggregate principal amount of the above-referenced bonds (the "Bonds") issued pursuant to the terms of the Trust Indenture dated as of July 1, 2024 (the "Indenture") between the Industrial Commission of North Dakota acting in its capacity as the North Dakota Housing Finance Agency (the "Issuer") and Wilmington Trust, National Association (the "Trustee"). Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Indenture.

In connection with the purchase of the Bonds by the Investor, the Investor hereby makes the following representations upon which you may rely:

1. The Investor has authority to purchase the Bonds and to execute this letter, and any other instruments and documents required to be executed by the Investor in connection with the purchase of the Bonds.
2. The Investor is an "accredited investor" under Regulation D of the Securities Act of 1933 (the "Act") or a "qualified institutional buyer" under Rule 144(a) of said Act (such "accredited investor" or "qualified institutional buyer", a "Qualified Transferee"), and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Bonds.
3. The Investor acknowledges that it is purchasing the Bonds for investment for its own account and not with a present view toward resale or the distribution thereof, in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Bonds; provided, however, that the Investor may in the future transfer or dispose of the Bonds as permitted by the Indenture.

4. The Investor understands that the Bonds are not registered under the Act and that such registration is not legally required as of the date hereof; and further understands that the Bonds (a) are not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable.

5. The Investor understands that (a) the Bonds are not secured by any pledge of any moneys received or to be received from taxation by the State of North Dakota or any political subdivision thereof and that the Issuer has no taxing power, (b) the Bonds do not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Issuer, the State of North Dakota or any political subdivision thereof; and (c) the liability of the Issuer with respect to the Bonds is limited to the Trust Estate as set forth in the Indenture.

6. The Investor has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision in connection with the purchase of the Bonds. The Investor has not relied upon the Issuer for any information in connection with its purchase of the Bonds.

7. The Investor has made its own inquiry and analysis with respect to the Bonds and the security therefor, and other material factors affecting the security and payment of the Bonds. The Investor is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Bonds.

All agreements, representations and warranties made herein shall survive the execution and delivery of this letter agreement and, notwithstanding any investigation heretofore or hereafter, shall continue in full force and effect.

**[INVESTOR SIGNATURE BLOCK]**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**EXHIBIT D**

**COSTS OF ISSUANCE REQUISITION  
(Cost of Issuance Fund)**

Wilmington Trust, National Association, as Trustee

STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 4)  
SERIES 2024A and SERIES 2024B

Trustee:

You are requested to disburse funds from the Cost of Issuance Fund pursuant to Section 4.13 of the Indenture 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 Trust Indenture (the “**Indenture**”), dated as of July 1, 2024, by and between the Industrial Commission of North Dakota acting in its capacity as the North Dakota Housing Finance Agency and Wilmington Trust, National Association, as trustee, securing the above referenced Bonds.

REQUISITION NO.:  
PAYMENT DUE TO:  
AMOUNT TO BE DISBURSED: \$

The undersigned, on behalf of Lashkowitz Riverfront Four, LLLP, a limited liability limited partnership duly organized and existing under the laws of the State of North Dakota (the “**Borrower**”), certifies that:

(a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Cost of Issuance Fund, have not been included in any previous requisition and are set forth in the Schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and

(b) the money requisitioned is not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance.

Attached to this Requisition is a Schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

Date of Requisition: \_\_\_\_\_

**LASHKOWITZ RIVERFRONT FOUR, LLLP,**  
a North Dakota limited liability limited partnership

By: Lashkowitz BL Four GP, LLC,  
a North Dakota limited liability company  
Its: Managing General Partner

By: BlueLine, LLC,  
a Montana limited liability company  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Nathan Richmond  
Its Member

**EXHIBIT E**

**BOND MORTGAGE LOAN FUND REQUISITION  
(Bond Mortgage Loan Fund)**

Wilmington Trust, National Association, as Trustee

STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 4)  
SERIES 2024A and SERIES 2024B

You are requested to disburse funds from the Bond Mortgage Loan Fund pursuant to Section 4.02 of the Indenture 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 Trust Indenture (the “**Indenture**”), dated as of July 1, 2024, by and between the Industrial Commission of North Dakota acting in its capacity as the North Dakota Housing Finance Agency and Wilmington Trust, National Association, as trustee, securing the above referenced Bonds.

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT(S) TO BE DISBURSED: \$ \_\_\_\_\_ from the Project Account  
\$ \_\_\_\_\_ from the Borrower Equity Account

The undersigned Borrower hereby represents and warrants that the following information and certifications provided in connection with this Requisition are true and correct as of the date hereof and authorizes Servicer to submit this Requisition to Bond Trustee on behalf of Borrower:

1. Purposes for which disbursement is requested are specified in the **attached Schedule**.
2. Party or parties to whom the disbursements shall be made are specified in the **attached Schedule** (may be the undersigned in the case of reimbursement for advances and payments made or cost incurred for work done by the undersigned); provided, that no reimbursement shall be made for advances and payments made prior to \_\_\_\_\_, 20\_\_).
3. The undersigned certifies that:
  - a. the conditions precedent to disbursement set forth in the Construction Funding Agreement have been satisfied;
  - b. the disbursement requested pursuant to this Requisition will be used solely to pay a cost or costs allowable under the Indenture and the Construction Funding Agreement;

- c. none of the items for which disbursement is requested pursuant to this Requisition has formed the basis for any disbursement previously made from the Bond Mortgage Loan Fund and all such items have been properly recorded in Borrower's books and are set forth on the Schedule attached hereto, along with paid invoices attached for any sum for which reimbursement is requested and invoices or bills of sales for all other items;
- d. all labor and materials for which disbursements have been requested have been incorporated into the Project in accordance with reasonable and standard building practices, the Construction Funding Agreement and all Legal Requirements (as defined in the Construction Funding Agreement);
- e. the materials, supplies and equipment furnished or installed for the Improvements are not subject to any lien or security interest or that the funds to be disbursed pursuant to this Requisition are to be used to satisfy any such lien or security interest;
- f. all of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Indenture, the Financing Agreement and the Tax Certificate, including that none of the proceeds of the Bonds (including investment earnings thereon) will be used to provide an airplane, a skybox or any other private luxury box, any facility primarily used for gambling, health club facility or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;
- g. with respect to amounts from the Project Account of the Bond Mortgage Loan Fund, not less than 95% of the sum of:
  - (A) the amounts requisitioned by this Requisition; plus
  - (B) all amounts previously requisitioned and disbursed from the Project Account of the Bond Mortgage Loan Fund;
 have been or will be applied by Borrower to pay the Costs of the Project;
- (h) Borrower is not in default under the Financing Agreement, the Construction Funding Agreement or any other Bond Mortgage Loan Document to which it is a party and nothing has occurred to the knowledge of Borrower that would prevent the performance of its obligations under such documents;
- (i) no amounts being requisitioned hereby will be used to pay, or reimburse, any Costs of Issuance incurred in connection with the issuance of the Bonds or pay debt service with respect to the Bond Mortgage Loan; and
- h. Funds deposited with Borrower for further disbursement to third parties shall be paid to such third parties by check dated the date of such deposit and Borrower reasonably expects such funds will be

disbursed from its account within five Business Days of such deposit.

[Following items may not required for Initial Disbursement]

- 4. Estimated costs of completing the uncompleted Improvements (as defined in the Construction Funding Agreement) as of the date of this Requisition:  
\_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned has executed this Requisition as of the day and date first above written.

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

**LASHKOWITZ RIVERFRONT FOUR, LLLP,**  
a North Dakota limited liability limited partnership

By: Lashkowitz BL Four GP, LLC,  
a North Dakota limited liability company  
Its: Managing General Partner

By: BlueLine, LLC,  
a Montana limited liability company  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Nathan Richmond  
Its Member

**APPROVED:**

**[SERVICER SIGNATURE BLOCK]**

By: \_\_\_\_\_  
Name:  
Title:

**FINANCING AGREEMENT**

**among**

**STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY,  
as Issuer**

**WILMINGTON TRUST, NATIONAL ASSOCIATION,  
as Trustee**

**and**

**LASHKOWITZ RIVERFRONT FOUR, LLLP,  
as Borrower**

**Relating to**

**\$[\_\_\_\_\_]  
STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 4)  
SERIES 2024A**

**\$[\_\_\_\_\_]  
STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 4)  
SERIES 2024B**

**Dated as of July 1, 2024**

**All of the right, title and interest of the Industrial Commission of North Dakota acting in its capacity as the North Dakota Housing Finance Agency (except for its Unassigned Rights) in and to this Financing Agreement are being assigned to Wilmington Trust, National Association, as Trustee, as security for the above-referenced bonds pursuant to a certain Trust Indenture dated as of July 1, 2024**



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## FINANCING AGREEMENT

**THIS FINANCING AGREEMENT** (this “**Financing Agreement**”) is made and entered into as of [\_\_\_\_], by and among the **INDUSTRIAL COMMISSION OF NORTH DAKOTA** (the “**Commission**”) acting in its capacity as the **NORTH DAKOTA HOUSING FINANCE AGENCY** (the “**Issuer**”), a public instrumentality and agency of the State of North Dakota organized and existing under the laws of the State of North Dakota (the “**State**”), **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association, duly organized and existing under the laws of the United States (together with any successor trustees appointed under the Indenture, the “**Trustee**”), and **LASHKOWITZ RIVERFRONT FOUR, LLLP**, a limited liability limited partnership duly organized and existing under the laws of the State of North Dakota (together with its successors and assigns permitted hereunder, the “**Borrower**”).

### RECITALS

**A.** Pursuant to Chapter 54-17 of the North Dakota Century Code, as amended (the “**Act**”) and the Trust Indenture dated as of July 1, 2024 (the “**Indenture**”) between the Issuer and the Trustee, the Issuer has determined to issue its Multifamily Revenue Bonds (Lashkowitz Riverfront 4), Series 2024A (the “**Series 2024A Bonds**”) in the original aggregate principal amount of \$[\_\_\_\_] and its Multifamily Revenue Bonds (Lashkowitz Riverfront 4), Series 2024B (the “**Series 2024B Bonds**,” and together with the Series 2024A Bonds, the “**Bonds**”) in the original aggregate principal amount of \$[\_\_\_\_], to provide for the financing of a multifamily rental housing development located at 101 2nd St S in Fargo, North Dakota known as Lashkowitz Riverfront 4 (the “**Project**”).

**B.** The Issuer has agreed to use the proceeds derived from the sale of Bonds to make a mortgage loan in the principal amount of \$[\_\_\_\_] (the “**Bond Mortgage Loan**”) to the Borrower in connection with the Project on the terms specified in this Financing Agreement and upon the satisfaction of various conditions contained herein and in the Indenture.

**C.** The Borrower has agreed to use the proceeds of the Bond Mortgage Loan to finance the acquisition, construction, and equipping of the Project [and to pay certain costs of issuance of the Bonds].

**D.** The Borrower’s repayment obligations in respect of the Bond Mortgage Loan will be evidenced by a Bond Mortgage Note dated [\_\_\_\_] (together with all riders and addenda thereto, the “**Bond Mortgage Note**”) delivered to the Issuer, which Bond Mortgage Note will be endorsed by the Issuer to the Trustee for the benefit of the holders of the Bonds from time to time.

**E.** ORIX Public Finance, LLC (“**ORIX**”) has agreed to facilitate the financing of the Project by purchasing all of the Bonds on the Delivery Date.

**F.** ORIX will act as initial Bondholder Representative with respect to the Bonds (in such capacity and any successor in such capacity, the “**Bondholder Representative**”).

**G.** To secure the Borrower’s obligations under the Bond Mortgage Note, the Borrower will execute and deliver to the Issuer a Multifamily Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated the Delivery Date (the “**Bond Mortgage**”) with respect to the Project. Pursuant to the Assignment, the Bond Mortgage will be assigned by the Issuer to the Trustee.

**H.** The Borrower and the Bondholder Representative are entering into (i) a Continuing Covenant Agreement dated as of the date hereof (the “**Continuing Covenant Agreement**”), which sets forth various other covenants with respect to the Borrower and Project, and (ii) a Construction Funding Agreement dated as of the date hereof (the “**Construction Funding Agreement**”), which sets forth conditions to disbursement of the proceeds of the Bond Mortgage Loan to the Borrower.

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

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01 Definitions.** All words and phrases (except for Event of Default) defined in the Indenture and the Continuing Covenant Agreement shall have the same meanings for the purposes of this Financing Agreement. In addition to the words and phrases defined in the Indenture and elsewhere herein, the following words and phrases shall have the following meanings:

“*Bond Mortgage Loan Payment*” means each payment of the Bond Mortgage Loan on each Bond Mortgage Loan Payment Date pursuant to the Note and this Financing Agreement.

“*Bond Mortgage Loan Payment Date*” means (A) the first day of each calendar month, commencing [September 1, 2024], or (B) any other date on which the Bond Mortgage Loan is prepaid or paid, whether at scheduled maturity or upon prepayment or acceleration of the maturity thereof; provided, however, that if a Bond Mortgage Loan Payment Date is not a Business Day, payment shall be made on the first Business Day following such Bond Mortgage Loan Payment Date.

“*Event of Default*” means any of those events specified in and defined by the applicable provisions of Article VII hereof to constitute an event of default.

“*Financing Agreement*” means this Financing Agreement, together with any amendments hereto.

**Section 1.02 Interpretation.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. References to Articles, Sections and

other subdivisions of this Financing Agreement are the Articles, sections and other subdivisions of this Financing Agreement as originally executed.

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Financing Agreement; the term “heretofore” means before the date of execution of this Financing Agreement; and the term “hereafter” means after the date of execution of this Financing Agreement.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 2.01** *Representations, Warranties and Covenants of the Issuer.* The Issuer makes the following representations, warranties and covenants:

(a) The Issuer is a public instrumentality and agency of the State of North Dakota organized and existing under the laws of the State of North Dakota, organized and validly existing under the laws of the State.

(b) The Issuer has all necessary power and authority to issue the Bonds and to execute and deliver this Financing Agreement, the Indenture, and the other Bond Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The Issuer has taken all action on its part for the issuance of the Bonds and for the sale, execution and delivery thereof.

(d) Each of the Bond Financing Documents to which the Issuer is a party has been duly validly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors’ rights generally and the application of equitable principles.

(e) The Issuer has complied with the provisions of the laws of the State, including, but not limited to, the Act, which are prerequisites to the consummation of the transactions on the part of the Issuer described or contemplated in the Bond Financing Documents. The execution and delivery of the Bonds and the Bond Financing Documents to which the Issuer is a party, the consummation of the transactions on the part of the Issuer contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Issuer is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Issuer under the terms of any instrument or agreement.

(f) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained, is required for the due execution and delivery by the Issuer of, and performance by the Issuer of its obligations under, the Bond Financing Documents.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Issuer, threatened against the Issuer by or before any court, governmental agency or public board or body, nor, to the Issuer's knowledge, is there any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the Issuer or the title to office of any member of the governing body of the Issuer; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Bond Financing Documents or the issuance, sale, execution or delivery of the Bonds; (iii) affects or questions the validity or enforceability of the Bonds or any Bond Financing Document; (iv) questions the tax-exempt status of the Bonds; or (v) questions the power or authority of the Issuer to perform its obligations under the Bonds or any Bond Financing Document, or to carry out the transactions contemplated by the Bonds and the Bond Financing Documents.

(h) No officer or other official of the Issuer has any personal financial interest in the Project or the Borrower or in the transactions contemplated by this Financing Agreement.

(i) Upon the discovery by the Issuer of any noncompliance by the Borrower with this Financing Agreement or the Tax Regulatory Agreement, the Issuer will notify the Trustee, the Servicer and the Bondholder Representative of such noncompliance and will, subject to the provisions of Article VII hereof, promptly institute action, or cause the Trustee to institute action, to correct such noncompliance, will diligently pursue such action and will attempt to correct such noncompliance within sixty (60) days after such discovery, subject to the provisions of the Indenture, this Financing Agreement and the Tax Regulatory Agreement.

It is expressly acknowledged that the Issuer makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the issuance, sale, execution and delivery of the Bonds, or as to the correctness, completeness or accuracy of such statements.

**Section 2.02 *Representations, Warranties and Covenants of the Borrower.***

The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Financing Agreement, are relied upon by the Issuer, the Bondholder Representative, the Servicer and the Trustee and serve as a basis for the undertakings of the Issuer, the Servicer and the Trustee contained in this Financing Agreement:

(a) The Borrower is a limited liability limited partnership duly organized, validly existing and in good standing under the laws of the state in which it has been

organized and duly qualified to conduct its business under the laws of the State and in every other state in which the nature of its business requires such qualification, has full legal right, power and authority to enter into this Financing Agreement and the other Bond Financing Documents, and to carry out and consummate all transactions contemplated hereby and by the other Bond Financing Documents, and by proper action has duly authorized the execution, delivery and performance of this Financing Agreement and the other Bond Financing Documents. All limited liability company general partners, if any, of the Borrower are duly organized and in good standing under the laws of their respective states of organization and are duly qualified to transact business in the State as either domestic or foreign corporations, as applicable. All partnership general partners, if any, are duly formed and in good standing under the laws of their respective states of formation and, to the extent required by the laws of the State, are duly qualified to transact business in the State as either domestic or foreign partnerships or limited liability companies, as applicable.

(b) The Borrower has the legal right, power and authority to (i) own its properties and assets, including, but not limited to, the Project, (ii) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project and (iii) execute and deliver, carry out its obligations under, and close the transactions provided for in, the Bond Financing Documents to which it is a party.

(c) Each of the Bond Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity.

(d) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained or those necessary to be obtained during the course of construction of the Project, is required for the due execution and delivery or approval, as the case may be, by the Borrower of, and the performance by the Borrower of its obligations under, the Bond Financing Documents.

(e) (e) To the best of the Borrower's knowledge, none of the execution and delivery of the Bond Financing Documents to which the Borrower is a party, the consummation of the transactions provided for in the Bond Financing Documents, or the Borrower's fulfillment of or compliance with the terms and conditions of the Bond Financing Documents (i) violates or will violate any law, rule or regulation of any governmental agency or body having jurisdiction over the Borrower, or any of its activities or properties, or any judgment, order, writ, injunction or decree to which the Borrower is subject, or any of the organizational or other governing documents of the Borrower, (ii) conflicts or will conflict with any agreement, instrument or license to which the Borrower is now a party or by which it or any of its properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default



(with due notice or the passage of time or both) under, any such agreement, instrument or license, (iii) contravenes or will contravene any such law, rule or regulation or any such judgment, order, writ, injunction or decree, or (iv) 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 any lien, charge or encumbrance permitted under the terms of the Bond Financing Documents.

(f) Within the six (6) month period preceding the Delivery Date, the Borrower has not acquired the Project or any interest therein, nor has the Borrower transferred or acquired any capital interest in the owner of the Project. The Borrower shall not cause or permit the Project, or any interest therein, to be sold, assigned or transferred, except as provided in the Bond Financing Documents, and shall not sell the Project or any interest therein or in its ownership structure for a period of six (6) months following the Delivery Date.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its properties (including, without limitation, the Project), which, if adversely determined, would (i) materially impair the right of the Borrower to carry on its business substantially as now conducted and as contemplated by the Bond Financing Documents, (ii) have a material adverse effect the financial condition of the Borrower, (iii) prohibit, restrain or enjoin the issuance, sale or delivery of the Bonds, or the loaning of the proceeds of the Bonds to the Borrower or the execution and delivery of the Bonds or any of the Bond Financing Documents, (iv) adversely affect the validity or enforceability of the Bonds or any of the Bond Financing Documents, or (v) adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(h) The Project and the operation of the Project (in the manner contemplated by the Bond Financing Documents) conform and, following completion of the construction of the Project, will continue to conform in all material respects with the requirements of the Act as well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

(i) The Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed or has obtained appropriate extensions therefor, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

(j) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party which default would materially adversely affect the transactions contemplated by the Bond Financing Documents or the operations of the Borrower or the enforceability of the Bond Financing Documents to which the Borrower is a party or the ability of the Borrower to perform all obligations thereunder.

(k) The Borrower agrees to pay all costs of maintenance and repair, all Taxes and assessments, insurance premiums (including public liability insurance and insurance against damage to or destruction of the Project) concerning or in any way related to the Project, or any part thereof, and any expenses or renewals thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

(l) If the Borrower is a partnership, all of the partnership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests except as provided for in the Borrower [Amended and Restated Limited Liability Limited Partnership Agreement] related to the Project. If the Borrower is a limited liability company, all of the ownership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. Nothing in this Financing Agreement shall prevent the Borrower from issuing additional partnership interests or ownership interests if such units are issued in accordance with all applicable securities laws.

(m) The representations and warranties of the Borrower contained in the Tax Certificate and Tax Regulatory Agreement are true and accurate in all material respects.

(n) The information, statements or reports furnished in writing to the Issuer, the Servicer and the Bondholder Representative by the Borrower in connection with this Financing Agreement or the consummation of the transactions contemplated hereby do not contain any untrue statement of a material fact or omit 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 Delivery Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or the assumptions contained in any certificate of the Borrower delivered as of the Delivery Date are reasonable.

(o) To the knowledge of the Borrower, no commissioner, member, officer 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 Bond Financing 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 Financing Documents.

(p) 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.

(q) The Project is located wholly within the boundaries of Fargo, North Dakota.

(r) 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 exclusion from gross income for federal income tax purposes of the interest on the Bonds. The Borrower shall operate the Project as required by the Tax Regulatory Agreement.

(s) 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 drafting of the Indenture and that it is bound by, shall adhere to the provisions of, covenants and agrees to perform all obligations required of the Borrower pursuant to, and shall have the rights set forth by the applicable terms and conditions of, the Indenture.

(t) The Borrower will have a leasehold interest in the land and improvements on the Project, subject only to liens permitted under the Bond Mortgage.

(u) The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (iv) it has not relied on the Issuer, the Trustee, the Bondholder Representative or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Bond Financing Documents or otherwise relied on the Issuer, the Trustee, the Bondholder Representative or the Servicer in any manner.

**Section 2.03 *Representations and Warranties of the Trustee.*** The Trustee makes the following representations and warranties:

(a) The Trustee is a national banking association, duly organized and existing under the laws of the United States. The Trustee is duly authorized to act as a fiduciary and to execute the trust created by the Indenture, and meets the qualifications to act as Trustee under the Indenture.

(b) The Trustee has complied with the provisions of law which are prerequisite to the consummation of, and has all necessary power (including trust powers) and authority (i) to execute and deliver this Financing Agreement and the other Bond Financing Documents to which it is a party, (ii) to perform its obligations under this Financing Agreement and the other Bond Financing Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Financing Agreement and the other Bond Financing Documents to which it is a party.

(c) The Trustee has duly authorized (i) the execution and delivery of this Financing Agreement and the other Bond Financing Documents to which it is a party, (ii) the performance by the Trustee of its obligations under this Financing Agreement and

the other Bond Financing Documents to which it is a party, and (iii) the actions of the Trustee contemplated by this Financing Agreement and the other Bond Financing Documents to which it is a party.

(d) Each of the Bond Financing Documents to which the Trustee is a party has been duly executed and delivered by the Trustee and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the Trustee, enforceable against the Trustee in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) The Trustee meets the qualifications to act as Trustee under the Indenture.

(f) The Trustee has complied with the provisions of law which are prerequisites to the consummation of the transactions on the part of the Trustee described or contemplated in the Bond Financing Documents.

(g) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Trustee as a prerequisite to (i) the execution and delivery of this Financing Agreement and the other Bond Financing Documents to which the Trustee is a party, (ii) the authentication or delivery of the Bonds, (iii) the performance by the Trustee of its obligations under this Financing Agreement and the other Bond Financing Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Financing Agreement and the other Bond Financing Documents to which the Trustee is a party. The Trustee makes no representation or warranty relating to compliance with any federal or state securities laws.

**Section 2.04 *Arbitrage and Rebate Fund Calculations.*** The Borrower shall (a) take or cause to be taken all actions reasonably necessary or appropriate in order to fully and timely comply with Section 4.12 of the Indenture, and (b) if required to do so under Section 4.12 of the Indenture, select at the Borrower's expense, a Rebate Analyst reasonably acceptable to the Issuer for the purpose of making any and all calculations required under Section 4.12 of the Indenture. Such calculations, if required, shall be made in the manner and at such times as specified in Section 4.12 of the Indenture. The Borrower shall cause the Rebate Analyst to provide such calculations to the Trustee and the Issuer at such times and with such directions as are necessary to comply fully with the arbitrage and rebate requirements set forth in the Indenture and to comply fully with Section 148 of the Code, including the timely payment of any arbitrage rebate owed.

**Section 2.05 *Tax Covenants of the Borrower.*** The Borrower covenants and agrees that:

(a) It will at all times comply with the terms of the Tax Certificate and the Tax Regulatory Agreement;

(b) It will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Bonds to be included in gross income, for federal income tax purposes, and will take such action as may be reasonably necessary in the opinion of Bond Counsel to continue such exclusion from gross income, including, without limitation, the preparation and filing of all statements required to be filed by it in order to maintain the exclusion (including, but not limited to, the filing of all reports and certifications required by the Tax Regulatory Agreement);

(c) No changes will be made to the Project, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Bonds;

(d) It will comply with the requirements of Section 148 of the Code and the Regulations issued thereunder throughout the term of the Bonds and will not make any use of the proceeds of the Bonds, or of any other funds which may be deemed to be proceeds of the Bonds under the Code and the related regulations of the United States Treasury, which would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code;

(e) If the Borrower becomes aware of any situation, event or condition which would, to the best of its knowledge, result in the interest on the Bonds becoming includable in gross income for purposes of federal income tax purposes, it will promptly give written notice of such circumstance, event or condition to the Issuer, the Trustee, the Bondholder Representative and the Servicer;

(f) The full amount of each disbursement from the Project Account of the Bond Mortgage Loan Fund will be applied to pay or to reimburse the Borrower for the payment of Costs of the Project and, after taking into account any proposed disbursement, (i) at least 95% of the net proceeds of the Bonds (as defined in Section 150 of the Code) will be used to provide a qualified residential rental project (as defined in Section 142(d) of the Code) and (ii) less than 25% of the net proceeds of the Bonds will have been disbursed to pay or to reimburse the Borrower for the cost of acquiring land; none of the proceeds of the Bonds (as defined for purposes of Section 147(g) of the Code) will be disbursed to provide working capital;

(g) The Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Act, the Code and the Tax Regulatory Agreement;

(h) All leases will comply with all applicable laws and the Tax Regulatory Agreement;

(i) In connection with any lease or grant by the Borrower of the use of the Project, the Borrower will require that the lessee or user of any portion of the Project not use that portion of the Project in any manner which would violate the covenants set forth in this Financing Agreement or the Tax Regulatory Agreement;

(j) No proceeds of the Bonds shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if construction/rehabilitation expenditures (as defined in Section 147(d) of the Code) with respect to such building equal or exceed 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if construction/rehabilitation expenditures with respect to such structure equal or exceed 100 percent of the portion of the cost of acquiring such structure financed with the proceeds;

(k) From the proceeds of the Bonds and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Bonds, will be used for Costs of Issuance of the Bonds, all within the meaning of Section 147(g)(1) of the Code; and

(l) No proceeds of the Bonds shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

In the event of a conflict between the terms and requirements of this Section 2.05 and the Tax Certificate, the terms and requirements of the Tax Certificate shall control.

### ARTICLE III

#### THE BOND MORTGAGE LOAN

**Section 3.01 *Conditions to Funding the Bond Mortgage Loan.*** On the Delivery Date, the Issuer shall cause the Bond proceeds to be deposited with the Trustee in accordance with Section 2.11 of the Indenture and Section 3.03 hereof. The Trustee shall use such proceeds as provided in Article II of the Indenture, provided that no such disbursements of proceeds of the Bonds shall be made until the following conditions have been met:

(a) The Borrower shall have executed and delivered to the Issuer the Bond Mortgage Note, and the Issuer shall have endorsed the Bond Mortgage Note to the Trustee;

(b) The Bond Mortgage shall have been executed and delivered by the Borrower and delivered to the title company for recording in the appropriate office for officially recording real estate documents in the jurisdiction in which the Project is located (the “**Recorder’s Office**”);

(c) The Tax Regulatory Agreement shall have been executed and delivered by the parties thereto and shall have been delivered to the title company for recording in the

Recorder's Office, and the Trustee shall have received evidence satisfactory to it of such delivery;

(d) All other Bond Financing Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Trustee and the Bondholder Representative; and

(e) The Borrower shall have delivered to the Trustee, the Issuer and the Bondholder Representative a certificate confirming, as of the Delivery Date, the matters set forth in Section 2.02 hereof and an opinion of its counsel or other counsel satisfactory to the Trustee, the Issuer and the Bondholder Representative.

### **Section 3.02 *Terms of the Bond Mortgage Loan; Servicing.***

(a) The Bond Mortgage Loan shall (i) be evidenced by the Bond Mortgage Note; (ii) be initially secured by the Bond Mortgage; (iii) be in the principal amount of \$[\_\_\_\_\_]; (iv) bear interest as provided in the Bond Mortgage Note; (v) provide for principal and interest payments in accordance with the Bond Mortgage Note; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Bond Mortgage Note.

(b) The Bondholder Representative may appoint a mortgage servicer to service the Bond Mortgage Loan for all or a portion of the term of the Bond Mortgage Loan by written notice provided to the Issuer, the Trustee and the Borrower. The Bondholder Representative may remove a Servicer or appoint a replacement Servicer, in its discretion, by written notice provided to the Issuer, the Trustee and the Borrower. During any period that a Servicer services the Bond Mortgage Loan, the Bondholder Representative may require that the Borrower make all payments in connection with the Bond Mortgage Loan to the Servicer and that the Servicer remit any such Bond Mortgage Loan Payment to the Trustee. The Issuer, the Trustee and the Borrower hereby acknowledge and agree that (i) the Bondholder Representative may appoint a Servicer to service and administer the Bond Mortgage Loan, (ii) the selection or removal of any Servicer is in the sole and absolute discretion of the Bondholder Representative; and (iii) neither the Issuer nor the Trustee shall terminate or attempt to terminate any Servicer as the servicer for the Bond Mortgage Loan or appoint or attempt to appoint a substitute servicer for the Bond Mortgage Loan. Initially, the Bondholder Representative shall be the Servicer.

**Section 3.03 *Initial Deposits.*** On the Delivery Date, proceeds of the Bonds in the amount of \$[\_\_\_\_\_] shall be deposited in the Project Account of the Bond Mortgage Loan Fund [and \$[\_\_\_\_\_] shall be transferred from the Project Account for deposit to the Cost of Issuance Fund]. The Borrower will deposit with the Trustee the sum of (i) \$[\_\_\_\_\_] for credit to the Cost of Issuance Fund; (ii) \$[\_\_\_\_\_] for credit to the Borrower Equity Account of the Bond Mortgage Loan Fund; and (iii) \$\_\_\_\_\_ for credit to the Bond Fund as the Initial Debt Service Deposit. Subject to the conditions listed in Section 3.01 hereof, amounts on deposit in the Bond Mortgage Loan Fund are to be disbursed to the Borrower or otherwise as provided in Section 2.11(d) of the Indenture.

To the extent that amounts in the Cost of Issuance Fund from the above-mentioned sources are insufficient to pay all costs of issuing the Bonds, the Borrower shall cause the payment of such additional costs of issuing the Bonds to be made on its behalf as such amounts become due.

**Section 3.04 *Assignment to Trustee.*** The parties hereto acknowledge, and the Borrower consents to, the assignment by the Issuer to the Trustee pursuant to the Indenture of all of the Issuer's right, title and interest in this Financing Agreement (excluding the Unassigned Rights), the Bond Mortgage Loan, the Bond Mortgage Note, the Bond Mortgage (which is being assigned to the Bondholder Representative as well as the Trustee, as their interests may appear) and the Revenues as security for the payment of the principal of, premium, if any, and interest on the Bonds and the payment of any other amounts due under the Bond Financing Documents.

**Section 3.05 *Investment of Funds.*** Except as otherwise provided in the Indenture, any money held as a part of any fund or account established under the Indenture shall be invested or reinvested by the Trustee in Qualified Investments in accordance with Section 4.08 of the Indenture.

**Section 3.06 *Damage; Destruction and Eminent Domain.*** If, prior to payment in full of the Bonds, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Issuer, the Borrower, the Trustee or the Servicer receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized as provided in the Bond Mortgage Loan Documents and the Indenture.

**Section 3.07 *Enforcement of Bond Financing Documents.***

(a) The Trustee or the Bondholder Representative may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Financing Agreement and the other Bond Financing Documents as and to the extent set forth herein and therein.

(b) The Issuer covenants that it will not, without the prior written consent of the Bondholder Representative, take any of the following actions:

(i) prosecute any action with respect to a lien on the Project; or

(ii) take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Bond Mortgage Loan or of causing the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or

(iii) interfere with the exercise by the Trustee, the Bondholder Representative or the Servicer of any of their rights under the Bond Financing Documents upon the



occurrence of an event of default by the Borrower under the Bond Financing Documents;  
or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Bond Mortgage Loan or the Bonds.

(c) Notwithstanding Section 3.07(b) hereof, the Issuer may:

(i) seek specific performance of the tax covenants of the Indenture, the Tax Regulatory Agreement, the Tax Certificate and this Financing Agreement, and seek injunctive relief against acts which may be in violation of any of the tax covenants, and enforce the Borrower's obligation to pay amounts for credit to the Rebate Fund; and

(ii) seek specific performance of the obligations of the Borrower or any other owner of the Project under the Tax Regulatory Agreement and injunctive relief against acts which may be in violation of the Tax Regulatory Agreement or otherwise in accordance with the provisions of the Tax Regulatory Agreement.

## ARTICLE IV

### LOAN PAYMENTS

#### ***Section 4.01 Payments Under the Bond Mortgage Note; Independent Obligation of Borrower.***

(a) **Payment Obligations.** The Borrower agrees to repay the Bond Mortgage Loan on each Bond Mortgage Loan Payment Date as provided in the Bond Mortgage Note, and in all instances at the times and in the amounts necessary to enable the Trustee, on behalf of the Issuer, to pay all amounts payable with respect to the Bonds, when due, whether at maturity or upon redemption (with premium, if applicable), acceleration or otherwise. The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent and separate obligation of the Borrower from its obligation to make payments under the Bond Mortgage Note, provided that in all events payments made by the Borrower under and pursuant to the Bond Mortgage Note shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason the Bond Mortgage Note or any provision of the Bond Mortgage Note shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, the Bond Mortgage Note or such provision of the Bond Mortgage Note shall be deemed to be the obligation of the Borrower pursuant to this Financing Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Bond Mortgage Note.

(b) **Obligations Unconditional; No Set-Off.** The obligations of the Borrower to repay the Bond Mortgage Loan, to perform all of its obligations under the Bond Mortgage Loan Documents, to provide indemnification pursuant to Section 6.01 hereof, to pay costs, expenses and charges pursuant to Section 4.02 hereof and to make any and all other payments required by

this Financing Agreement, the Indenture or any other documents contemplated by this Financing Agreement or by the Bond Mortgage Loan Documents shall, subject to the limitations set forth in Section 4.06 hereof, be absolute and unconditional, and shall be paid or performed without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Issuer's legal organization or status, or any default of the Issuer or the Trustee hereunder or under any other Bond Financing Document, and regardless of the invalidity of any action of the Issuer or the invalidity of any portion of this Financing Agreement.

(c) **Payments from Borrower to Trustee.** Each payment by the Borrower hereunder or under the Bond Mortgage Note shall be made in immediately available funds to the Trustee on each Bond Mortgage Loan Payment Date or such other date when such payment is due; provided, however, such Bond Mortgage Loan Payment shall be made to the Servicer if the Borrower is so directed in writing by the Bondholder Representative. Each such payment shall be made to the Trustee or the Servicer, as applicable, by deposit to such account as the Trustee or the Servicer may designate by written notice to the Borrower. Whenever any Bond Mortgage Loan Payment or any other payment under this Financing Agreement or under the Bond Mortgage Note shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day immediately thereafter.

***Section 4.02 Additional Payments Under the Bond Mortgage Note and this Financing Agreement.***

(a) In addition to the payments set forth in Section 4.01 hereof, payments to be made by the Borrower under the Bond Mortgage Note include certain money to be paid in respect of, among others, the Bond Fee Component, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Bond Mortgage Loan Documents, as set forth in subsection (b) of this Section 4.02. To the extent that any portion of the Bond Fee Component, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Bond Mortgage Loan Documents remain due and owing at any time, such amounts remaining due and owing shall be payable from money on deposit in the Administration Fund as provided in Section 4.06 of the Indenture or from other money of the Borrower, to the extent that money in the Administration Fund is insufficient for such purposes. All other fees and expenses shall be payable from money of the Borrower as provided in subsection (b) of this Section 4.02.

(b) In addition to the funding of the initial deposits required of the Borrower described in Section 3.03, the Borrower shall pay (or cause to be paid by the Trustee, to the extent paid from money on deposit in the Administration Fund or the Cost of Issuance Fund, as applicable), in consideration of the funding of the Bond Mortgage Loan, the following fees, expenses and other money payable in connection with the Bond Mortgage Loan:

(i) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to Bondholder Representative, all third party and out-of-pocket expenses of Bondholder Representative (including but not limited to the fees and expenses of counsel to Bondholder Representative) in connection with the Bond Mortgage Loan.

(ii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Issuer, an initial financing fee in an amount equal to \$206,250, together with all third party and out-of-pocket expenses of the Issuer (including but not limited to the fees and expenses of counsel to the Issuer) in connection with the Bond Mortgage Loan and the issuance of the Bonds.

(iii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Trustee, an acceptance fee in an amount equal to \$2,500, together with all third party and out-of-pocket expenses of the Trustee (including but not limited to the fees and expenses of counsel to the Trustee) in connection with the Bond Mortgage Loan and the issuance of the Bonds.

(iv) From money of the Borrower, to the Trustee, within two (2) Business Days of receipt from the Trustee of a notice of deficiency in the Administration Fund as provided in Section 4.06 of the Indenture, the amount of any such deficiency in the Administration Fund.

(v) From money on deposit in the Administration Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Trustee, the Ordinary Trustee's Fees and Expenses and the Extraordinary Trustee's Fees and Expenses when due from time to time.

(vi) From money on deposit in the Administration Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Issuer, the Issuer Fee when due and any extraordinary expenses not covered by the Issuer Fee the Issuer may incur in connection with the Bond Financing Documents or the Project from time to time.

(vii) From money on deposit in the Administration Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Indenture and this Financing Agreement when due from time to time.

(viii) From money of the Borrower, to the Bondholder Representative and/or the Servicer, any amount due and owing the Bondholder Representative from time to time but unpaid under the Continuing Covenant Agreement.

(ix) From money of the Borrower, to the Servicer, the amounts required to be deposited in respect of reserves and impounds required under the Continuing Covenant Agreement and the other Bond Mortgage Loan Documents.

**Section 4.03 *Payments to Rebate Fund.*** The Borrower shall pay when due to the Trustee at the Principal Office of the Trustee any amount required to be deposited in the Rebate Fund in accordance with Section 4.12 of the Indenture.

**Section 4.04 *Prepayment of Bond Mortgage Loan.***

(a) **Optional and Mandatory Prepayment of the Bond Mortgage Loan.** The Borrower shall have the option to prepay the Bond Mortgage Loan as provided in the Bond Mortgage Note in connection with an optional redemption of the Bonds. The Borrower shall be required to prepay the Bond Mortgage Loan as provided in the Bond Mortgage Note in connection with a mandatory redemption of the Bonds.

(b) **Deposit of Prepayment.** In connection with any prepayment of all or any portion of the outstanding balance of the Bond Mortgage Loan, the Borrower shall deposit funds with the Trustee at least one Business Day prior to the date of such prepayment (unless otherwise consented to by the Bondholder Representative) at a prepayment price equal to the portion of the outstanding principal balance of the Bond Mortgage Loan being prepaid, plus accrued interest thereon to the date of prepayment, plus any Prepayment Premium due under the Bond Mortgage Note, together with a sum sufficient to pay all fees, costs and expenses in connection with such redemption and, in the case of redemption in whole, to pay all other amounts payable under this Financing Agreement, the Indenture and the other Bond Financing Documents. Such amounts shall be applied to the redemption of Bonds and to the payment of fees and expenses as provided in the Indenture and the other Bond Financing Documents.

(c) **Reduction of Bond Mortgage Loan Principal.** Any prepayment, whether voluntary or involuntary, shall not be credited against the unpaid principal balance of the Bond Mortgage Loan until the date on which the resulting redemption of a like amount of Bonds is completed.

**Section 4.05 *Borrower's Obligations Upon Redemption.*** In the event of any redemption, the Borrower will timely pay, or cause to be paid to the Trustee an amount equal to the principal amount of such Bonds or portions thereof called for redemption, together with interest accrued to the redemption date and premium, if any. In addition, the Borrower will timely pay all fees, costs and expenses associated with any redemption of Bonds.

**Section 4.06 *Limits on Personal Liability.***

(a) Except as otherwise set forth in the Bond Mortgage Note and subsection 4.06(b) below, the obligations of the Borrower under this Financing Agreement and the other Bond Mortgage Loan Documents are non-recourse liabilities of the Borrower which shall be enforced only against the Project and other property of the Borrower encumbered by the Bond Mortgage Loan Documents and not personally against the Borrower or any partner or member of the Borrower or any successor or assign of the Borrower. However, nothing in this Section 4.06 shall limit the right of the Issuer, the Trustee, the Servicer or the Bondholder Representative to

proceed against the Borrower to recover any fees owing to any of them or any actual out of pocket expenses (including but not limited to actual out of pocket attorneys' fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Financing Agreement or the other Bond Mortgage Loan Documents. Nothing in this Section 4.06 shall limit any right that the Servicer or the Bondholder Representative may have to enforce the Bond Mortgage Note, the Bond Mortgage, or any other Bond Mortgage Loan Document in accordance with their terms.

(b) Notwithstanding anything contained in any other provision of this Financing Agreement to the contrary (but subject to the provisions of Section 3.07 hereof), the following obligations of the Borrower shall be and remain full recourse obligations of the Borrower, payable from and enforceable against any and all income, assets and properties of the Borrower: (i) the Borrower's obligations to the Issuer and the Trustee under subsections (b)(ii), (b)(iv), (b)(vi), and (b)(vii) of Section 4.02 hereof; (ii) the Borrower's obligations under Sections 2.05 and 6.01 of this Financing Agreement; (iii) the Borrower's obligation to pay any and all rebate amounts that may be or become owing with respect to the Bonds and fees and expenses of the Rebate Analyst as provided in Sections 2.04 and 4.03 of this Financing Agreement and the Tax Certificate; and (iv) the Borrower's obligation to pay legal fees and expenses under Section 7.04 hereof.

## ARTICLE V

### SPECIAL COVENANTS OF BORROWER

**Section 5.01 *Performance of Obligations.*** The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Bond Financing Documents, including, without limitation, its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

**Section 5.02 *Compliance With Applicable Laws.*** All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

**Section 5.03 *Indenture Provisions.*** The execution of this Financing Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower. 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 shall carry out and perform all of its obligations under the Indenture as fully as if the Borrower were a party to the Indenture.

**Section 5.04 *Reserved.***

**Section 5.05 *Borrower to Maintain Its Existence; Certification of No Default.*** The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

**Section 5.06 *Borrower to Remain Qualified in State and Appoint Agent.*** The Borrower will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Borrower.

**Section 5.07 *Sale or Other Transfer of Project.*** The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Bond Mortgage Loan Documents, and upon receipt of the prior written consent of the Bondholder Representative.

**Section 5.08 *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 Trustee, the Servicer and/or the Bondholder Representative, after giving requisite notice, if any, and subject to Section 5.05 of the Indenture, 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 Trustee, the Bondholder Representative or the Servicer shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand with interest thereon at the default rate of interest payable under the Bond Mortgage Loan Documents.

**Section 5.09 *Notice of Certain Events.*** The Borrower shall promptly advise the Issuer, the Trustee, the Bondholder Representative and the Servicer in writing of the occurrence of any 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, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

**Section 5.10 *Survival of Covenants.*** The provisions of Sections 2.04, 2.05, 4.02, 4.03, 6.01 and 7.04 hereof shall survive the expiration or earlier termination of this Financing Agreement and, with regard to the Trustee, the resignation or removal of the Trustee.

**Section 5.11 *Access to Project; Records.*** Subject to reasonable notice and the rights of tenants at the Project, the Issuer, the Trustee, the Servicer and the Bondholder Representative, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) at all reasonable times and during normal business hours: (a) to enter the Project and any other location containing the records relating to the Borrower, the Project, the Bond Mortgage Loan and the Borrower's compliance with the terms and conditions of the Bond Financing Documents; (b) to inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Bond Mortgage Loan and the Borrower's compliance with the terms and conditions of the Bond Financing Documents; and (c) to require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Issuer, the Trustee, the Servicer and the Bondholder Representative, as the Issuer, the Trustee, the Servicer or the Bondholder Representative, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Bond Financing Documents have been complied with and (ii) to make copies of any records that the Issuer, the Trustee, the Servicer or the Bondholder Representative or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Issuer, the Trustee, the Servicer and the Bondholder Representative, such information concerning the Project, the Bond Mortgage and the Bond Financing Documents as any of them may reasonably request.

**Section 5.12 Tax Regulatory Agreement.** The covenants of the Borrower in the Tax Regulatory Agreement shall be deemed to constitute covenants of the Borrower running with the land and an equitable servitude for the benefit of the owners of the Bonds and shall be binding upon any owners of the Project until such time as such restrictions expire as provided in the Tax Regulatory Agreement. The Borrower covenants to file of record the Tax Regulatory Agreement and such other documents and take such other steps as are necessary in order to assure that the restrictions contained in the Tax Regulatory Agreement will, subject to the terms of the Tax Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, the Tax Regulatory Agreement. Subject to the provisions of Section 5.05 of the Indenture, the Issuer and the Trustee shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Borrower contained in the Tax Regulatory Agreement or this Financing Agreement.

**Section 5.13 Damage, Destruction and Condemnation.** If prior to full payment of the Bonds (or provision for payment of the Bonds in accordance with the provisions of the Indenture) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Financing Agreement and in the Bond Mortgage Note to the extent the Bond Mortgage Loan is not prepaid in accordance with the terms of the Bond Mortgage Loan Documents.

**Section 5.14 Obligation of the Borrower To Acquire, Construct and Rehabilitate the Project.** The Borrower shall proceed with reasonable dispatch to complete the acquisition, construction, rehabilitation, development and equipping of the Project. If amounts on deposit in the Bond Mortgage Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of such acquisition, construction, rehabilitation, development and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Issuer, the Trustee, the Servicer, the Bondholder Representative or the Bondholders in respect of any such costs or to any diminution or abatement in the repayment of the Bond Mortgage Loan. Neither of the Trustee nor the Issuer makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Bond Mortgage Loan Fund or otherwise made available to the Borrower will be sufficient to complete the Project, and neither of the Trustee nor the Issuer shall be liable to the Borrower, the Bondholders or any other person if for any reason the Project is not completed.

**Section 5.15 Filing of Financing Statements.** The Borrower shall file or record or cause to be filed or recorded on or prior to the Delivery Date all UCC financing statements which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Bond Mortgage Loan, the Trust Estate and the Bond Mortgage, and the rights and powers of the Issuer, the Trustee and the Bondholder Representative in connection with such security interests. The Borrower shall cooperate with the

Trustee in connection with the filing of any continuation statements for the purpose of continuing without lapse the effectiveness of such financing statements.

## ARTICLE VI

### INDEMNIFICATION

#### Section 6.01 *Indemnification.*

(a) **Indemnified Losses.** To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Issuer, the Trustee, the Servicer, the Bondholder Representative and each of their respective officers, governing commissioners, members, directors, officials, employees, attorneys and agents (collectively, the “**Indemnified Parties**”), against any and all losses, damages (including, but not limited to, consequential and punitive damages), claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise (collectively, “**Losses**”), to the extent arising, directly or indirectly, out of or based upon or in any way relating to:

(i) any breach by the Borrower of its obligations under the Bond Financing Documents or the execution, amendment, restructuring or enforcement thereof, or in connection with transactions contemplated thereby, including the issuance, sale, transfer or resale of the Bonds;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Bond Mortgage Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, construction or equipping of, the Project or any part thereof;

(iii) any accident, injury to, or death of persons or loss of or damage to property occurring in, on or about the Project or any part thereof;

(iv) any lien (other than liens permitted under the Continuing Covenant Agreement) or charge upon payments by the Borrower to the Issuer, the Trustee or the Servicer hereunder, or any Taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, Impositions and other charges imposed on the Issuer or the Trustee in respect of any portion of the Project (other than income and similar taxes on fees received or earned in connection therewith);

(v) any violation of any environmental law, rule or regulation with respect to, or the release of any Hazardous Substances from, the Project or any part thereof;

(vi) [Reserved];



(vii) the enforcement of, or any action taken by the Issuer, the Trustee or the Bondholder Representative related to remedies under this Financing Agreement, the Indenture or any other Bond Financing Document;

(viii) any untrue statement of a material fact or alleged untrue statement of a material fact by the Borrower contained in any offering statement or document for the Bonds or any of the Bond Financing Documents to which the Borrower is a party, or any omission or alleged omission by the Borrower of a material fact from any offering statement or document for the Bonds necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(ix) any declaration of taxability of interest on the Bonds or allegations (or regulatory inquiry) that interest on the Bonds is includable in gross income for federal income tax purposes;

(x) any audit or inquiry by the Internal Revenue Service with respect to the Project and/or the tax-exempt status of the Bonds; or

(xi) the Trustee's acceptance or administration of the trust of the Indenture, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Bonds to which it is a party;

except (A) in the case of the foregoing indemnification of the Trustee, or any of its respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the negligence, unlawful acts or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Servicer, the Bondholder Representative or the Issuer or any of their respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the gross negligence or willful misconduct of such Indemnified Party.

(b) **Procedures.** 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 such Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected or approved by the Indemnified Party, 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 such Indemnified Party 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 to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may employ separate counsel at the expense of the Borrower only if, in such Indemnified Party's good faith judgment, a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(c) **Borrower to Remain Obligated.** Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Financing Agreement, the Bond

Mortgage and the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer unless (i) such subsequent owner assumed in writing at the time of such transfer all obligations of the Borrower under this Section 6.01 (including obligations under this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer) and (ii) any such transfer is in compliance with the requirements of the Bond Financing Documents.

(d) **Survival.** The provisions of this Section 6.01 shall survive the termination of this Financing Agreement.

**Section 6.02 *Limitation With Respect to the Bondholder Representative.***

Notwithstanding anything in this Financing Agreement to the contrary, in the event that the Bondholder Representative shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure, or comparable conversion of the Bond Mortgage Loan, the Bondholder Representative shall not be liable for any breach or default of any prior owner of the Project under this Financing Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Bondholder Representative is the owner of the Project. Accordingly, during any period that the Bondholder Representative owns the Project and that this Article VI is applicable to the Bondholder Representative, the Bondholder Representative's obligations under this Article VI shall be limited to acts and omissions of the Bondholder Representative occurring during the period of the Bondholder Representative's ownership of the Project.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.01 *Events of Default.*** The following shall be “**Events of Default**” under this Financing Agreement and the term “**Event of Default**” shall mean, whenever it is used in this Financing Agreement, one or all of the following events:

(a) Any representation or warranty made by the Borrower in the Bond Financing Documents or any certificate, statement, data or information furnished by the Borrower in connection therewith or included by the Borrower in its application to the Issuer for assistance proves at any time to have been incorrect when made in any material respect, and if such inaccuracy or inaccuracy is capable of correction, the Borrower fails to correct the inaccuracy or inaccuracy within fifteen (15) days of discovering the inaccuracy or inaccuracy;

(b) Failure by the Borrower to pay any amounts due under this Financing Agreement, the Bond Mortgage Note or the Bond Mortgage at the times and in the amounts required by this Financing Agreement, the Bond Mortgage Note and the Bond Mortgage, as applicable;

(c) The Borrower shall fail to observe or perform any other term, covenant, condition or agreement (after taking into account any applicable cure period) set forth in

this Financing Agreement, which failure continues for a period of 30 days after notice of such failure by the Issuer, the Trustee or the Bondholder Representative to the Borrower (unless such default cannot with due diligence be cured within 30 days but can be cured within a reasonable period and will not, in the Bondholder Representative's sole discretion, adversely affect the Bondholder Representative or result in impairment of this Financing Agreement or any other Bond Financing Document, in which case no Event of Default shall be deemed to exist so long as Borrower shall have commenced to cure the default or Event of Default within 30 days after receipt of notice, and thereafter diligently and continuously prosecutes such cure to completion); provided, however, no such notice or grace periods shall apply in the case of any such failure which could, in the Bondholder Representative's judgment, absent immediate exercise by the Bondholder Representative of a right or remedy under this Agreement, result in harm to the Bondholder Representative, impairment of this Financing Agreement or any other Bond Financing Document;

(d) The occurrence of a default under the Continuing Covenant Agreement, the Bond Mortgage or any other Bond Financing Document (after taking into account any applicable cure period thereunder) shall at the discretion of the Bondholder Representative constitute an Event of Default under this Financing Agreement but only if the Trustee is provided written notice thereof by the Bondholder Representative that an Event of Default has occurred under such Bond Financing Document and the Trustee is instructed by the Bondholder Representative that such default constitutes an Event of Default hereunder. The occurrence of an Event of Default hereunder shall in the discretion of the Bondholder Representative constitute a default under the other Bond Financing Documents.

Nothing contained in this Section 7.01 is intended to amend or modify any of the provisions of the Bond Financing Documents or to bind the Issuer, the Trustee, the Servicer or the Bondholder Representative to any notice and cure periods other than as expressly set forth in the Bond Financing Documents.

**Section 7.02 Remedies on Default.** Subject to Section 7.06 hereof, whenever any Event of Default hereunder shall have occurred and be continuing, the Bondholder Representative (or the Trustee at the direction of the Bondholder Representative), may take any one or more of the following remedial steps:

(a) The Bondholder Representative (or the Trustee at the direction of the Bondholder Representative) may take such action, without notice or demand, as the Bondholder Representative deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Bond Mortgage Loan to be immediately due and payable (including, without limitation, declaring the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Bond Mortgage Note to be immediately due and payable).

(b) The Bondholder Representative (or the Trustee at the direction of the Bondholder Representative) may, without being required to give any notice (other than to the Issuer or the Trustee, as applicable), except as provided herein, pursue all remedies

of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.

(c) The Bondholder Representative (or the Trustee at the direction of the Bondholder Representative) may take whatever action at law or in equity may appear necessary or desirable to collect the payments under this Financing Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Financing Agreement.

In addition, subject to Section 7.06 hereof, the Issuer and the Trustee may pursue remedies with respect to the Unassigned Rights.

Any amounts collected pursuant to Article IV hereof and any other amounts which would be applicable to payment of principal of and interest and any premium on the Bonds collected pursuant to action taken under this Section 7.02 shall be applied in accordance with the provisions of the Indenture.

**Section 7.03 *No Remedy Exclusive.*** No remedy conferred upon or reserved to the Issuer or the Trustee by this Financing Agreement 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 Financing Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any 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 expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Financing Agreement.

**Section 7.04 *Agreement to Pay Attorneys' Fees and Expenses.*** In the event the Borrower should default under any of the provisions of this Financing Agreement and the Issuer, the Trustee, the Servicer or the Bondholder Representative should employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Financing Agreement or in the Bond Mortgage Note, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

**Section 7.05 *No Additional Waiver Implied by One Waiver.*** In the event any agreement contained in this Financing Agreement should be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 7.06 *Control of Proceedings.***

(a) If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Bondholder Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Financing Agreement, or for the

appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Financing Agreement. In addition, the Bondholder Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Trustee or the Issuer. In no event shall the exercise of any of the foregoing rights result in an acceleration of the Bond Mortgage Loan without the express direction of the Bondholder Representative.

(b) The Issuer and the Trustee covenant that they will not, without the prior written consent of the Bondholder Representative, take any of the following actions:

(i) prosecute any action with respect to a lien on the Project; or

(ii) 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 of, interest on, or other amounts due under, the Bond Mortgage Loan; or

(iii) interfere with or attempt to influence the exercise by the Bondholder Representative of any of its rights under the Bond Financing Documents upon the occurrence of any event of default by the Borrower under the Bond Financing Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Bond Mortgage Loan or the Bonds.

(c) Notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Issuer or the Trustee may:

(i) specifically enforce the tax covenants of the Borrower specified in Sections 2.04 and 2.05 hereof or seek injunctive relief against acts which may be in violation thereof;

(ii) specifically enforce the Tax Regulatory Agreement or seek injunctive relief against acts which may be in violation of the Tax Regulatory Agreement or are otherwise inconsistent with the operation of the Project in accordance with applicable requirements of the Internal Revenue Code and state law (but in neither the case of subsection (c)(i) above or this subsection (c)(ii) may the Issuer or the Trustee seek any form of monetary damages from the Borrower in connection with such enforcement).

In addition, notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Issuer and the Trustee may seek specific performance of the other Unassigned Rights (provided no monetary damages are sought), and nothing herein shall be construed to limit the rights of the Issuer, the Trustee or any Indemnified Party related to the Issuer or the Trustee under Section 6.01 (each a "Related Indemnified Party") to enforce their respective rights against the Borrower under Sections 4.02, 4.03, 6.01 and 7.04 hereof, provided that no obligation of the Borrower to the Issuer, the Trustee or any Related Indemnified Party under such sections shall be secured by or in any manner constitute a lien on, or security interest in, the Project, whether in favor of the Issuer, the Trustee

or any Related Indemnified Party, and all such obligations are and shall be subordinate in priority, in right to payment and in all other respects to all other obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Financing Documents (except for the Trustee's right to receive payment of reasonable fees and expenses pursuant to Section 6.05(a) of the Indenture after an event of default with respect to the Bonds, which reasonable fees and expenses of the Trustee shall be payable as provided thereunder). Accordingly, none of the Issuer, the Trustee or any Related Indemnified Party shall have the right to enforce any monetary obligation arising under such sections other than directly against the Borrower, without recourse to the Project. In addition, any such enforcement must not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, construction, composition, reorganization, conservation or other similar law in effect now or in the future.

**Section 7.07 *Assumption of Obligations.*** In the event that the Trustee, the Bondholder Representative or the Bondholders or their respective assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Financing Agreement, the Bond Mortgage Note, the Tax Regulatory Agreement, and any other Bond Financing Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

## ARTICLE VIII

### MISCELLANEOUS

#### **Section 8.01 *Notices.***

(a) Whenever in this Financing Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Issuer, the Trustee, the Bondholder Representative, the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth in Section 11.05 of the Indenture or upon receipt of such notice or other communication delivered by facsimile transmission as required or permitted by this Financing Agreement (receipt of which shall be evidenced by confirmation of transmission). The Issuer, the Trustee, the Bondholder Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph,

designate any further or different address to which subsequent notices or other communication shall be sent.

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Bondholder Representative and a duplicate copy of each notice or other communication given hereunder by any party to the Bondholder Representative shall be given to the Servicer.

The Trustee agrees to accept and act upon facsimile transmission or Electronic Notice of written instructions and/or directions pursuant to this Financing Agreement.

(b) The Trustee shall provide to the Bondholder Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default hereunder and (ii) any written information or other communication received by the Trustee hereunder within ten (10) Business Days of receiving a written request from the Bondholder Representative for any such information or other communication.

**Section 8.02 *Concerning Successors and Assigns.*** All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Financing Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Financing Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Issuer, the Trustee, the Servicer and the Bondholder Representative.

**Section 8.03 *Governing Law.*** This Financing Agreement and the Exhibits attached hereto shall be construed in accordance with and governed by the laws of the State and, where applicable, the laws of the United States of America.

**Section 8.04 *Modifications in Writing.*** Modification or the waiver of any provisions of this Financing Agreement or consent to any departure by the parties therefrom, shall in no event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Bondholder Representative and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given and so long as the interests of any Bondholders are not adversely affected and the Trustee consents in writing thereto. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

**Section 8.05 *Further Assurances and Corrective Instruments.*** The Issuer, the Trustee and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required (including such supplements or further instruments requested by the Bondholder Representative) for correcting any inadequate or incorrect description of the performance of this Financing Agreement.

**Section 8.06 *Captions.*** The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Financing Agreement.

**Section 8.07 *Severability.*** The invalidity or unenforceability of any provision of this Financing Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

**Section 8.08 *Counterparts.*** This Financing Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

**Section 8.09 *Amounts Remaining in Bond Fund or Other Funds.*** It is agreed by the parties hereto that any amounts remaining in the Bond Fund or other funds and accounts established under the Indenture upon expiration or sooner termination of the term hereof, shall be paid in accordance with the Indenture.

**Section 8.10 *Effective Date and Term.*** This Financing Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the Indenture shall terminate.

**Section 8.11 *Cross References.*** Any reference in this Financing Agreement to an “Exhibit,” an “Article,” a “Section,” a “Subsection” or a “Paragraph” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Financing Agreement, an article of this Financing Agreement, a section of this Financing Agreement, a subsection of the section of this Financing Agreement in which the reference appears and a paragraph of the subsection within this Financing Agreement in which the reference appears. All exhibits attached to or referred to in this Financing Agreement are incorporated by reference into this Financing Agreement.

**Section 8.12 *Bondholder Representative and Servicer as Third-Party Beneficiaries.*** The parties hereto agree and acknowledge that the Bondholder Representative and the Servicer are third party beneficiaries of this Financing Agreement.

**Section 8.13 *[Reserved].***

**Section 8.14 *Non-Liability of Issuer.*** The Issuer shall not be obligated to pay the principal (or redemption price) of or interest on the Bonds, except from Revenues and other money and assets received by the Trustee on behalf of the Issuer pursuant to this Financing Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Issuer or any member is pledged to the payment of the principal (or redemption price) or interest on the Bonds. The Issuer shall not 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 Financing Agreement, the Bonds or the Indenture, except only to the extent amounts are received for the payment thereof from the Borrower under this Financing Agreement.



The Borrower hereby acknowledges that the Issuer's sole source of money to repay the Bonds will be provided by the payments made by the Borrower pursuant to this Financing Agreement, together with investment income on certain funds and accounts held by the Trustee under the Indenture, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or redemption price) and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Trustee, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or redemption price) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Borrower, the Issuer or any third party, subject to any right of reimbursement from the Trustee, the Issuer or any such third party, as the case may be, therefor.

**Section 8.15 *No Liability of Officers.*** No recourse under or upon any obligation, covenant, or agreement or in any Bonds, or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Owner of any Bonds, of any sum that may be due and unpaid by the Issuer upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Owner of any Bonds, of any sum that may remain due and unpaid upon the Bonds or any of them, is hereby expressly waived and released as a condition of and consideration for the execution of this Financing Agreement and the issuance of the Bonds.

**Section 8.16 *Capacity of the Trustee.*** The Trustee is entering into this Financing Agreement solely in its capacity as Trustee and shall be entitled to the rights, protections, limitations from liability and immunities afforded it as Trustee under the Indenture. The Trustee shall be responsible only for the duties of the Trustee expressly set forth herein and in the Indenture.

**Section 8.17 *Reliance.*** The representations, covenants, agreements and warranties set forth in this Financing Agreement may be relied upon by the Issuer, the Trustee, Bond Counsel, the Servicer and the Bondholder Representative. In performing their duties and obligations under this Financing Agreement and under the Indenture, the Issuer and the Trustee may rely upon statements and certificates of the Borrower, upon certificates of tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Issuer and the Trustee may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer or the Trustee under this Financing Agreement and under the Indenture in good faith and in conformity with the opinion of such counsel. It is expressly understood and agreed by the parties to this Financing Agreement (other than the Issuer) that:

(a) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee, any Bondholder or the Borrower as to the existence of a fact or state of affairs required under this Financing Agreement to be noticed by the Issuer;

(b) the Issuer shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Trustee, the Bondholder Representative, the Servicer or the Borrower, as applicable; and

(c) none of the provisions of this Financing Agreement shall require the Issuer or the Trustee to expend or risk its own funds (apart from the proceeds of Bonds issued under the Indenture) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Financing Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Financing Agreement, all as of the date first set forth above.

**NORTH DAKOTA HOUSING FINANCE  
AGENCY**

By \_\_\_\_\_  
David A. Flohr, Executive Director

[ISSUER'S SIGNATURE PAGE TO **LASHKOWITZ RIVERFRONT 4** FINANCING AGREEMENT]

**WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Trustee**

By: \_\_\_\_\_  
Lisa M. Lewis, Vice President

[TRUSTEE'S SIGNATURE PAGE *LASHKOWITZ RIVERFRONT 4* FINANCING AGREEMENT]

**LASHKOWITZ RIVERFRONT FOUR, LLLP,**  
a North Dakota limited liability limited partnership

By: Lashkowitz BL Four GP, LLC,  
a North Dakota limited liability company  
Its: Managing General Partner

By: BlueLine, LLC,  
a Montana limited liability company  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Nathan Richmond  
Its Member

[BORROWER'S SIGNATURE PAGE TO *LASHKOWITZ RIVERFRONT 4* FINANCING AGREEMENT]

TO BE RECORDED AND, UPON  
RECORDATION, RETURNED TO:

KUTAK ROCK LLP  
THE OMAHA BUILDING  
1650 FARNAM STREET  
OMAHA, NEBRASKA 68102  
ATTENTION: MICKI JUSTICE, PARALEGAL

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**REGULATORY AGREEMENT  
AND DECLARATION OF RESTRICTIVE COVENANTS**

by and among

**NORTH DAKOTA HOUSING FINANCE AGENCY,**  
as Issuer

and

**WILMINGTON TRUST, NATIONAL ASSOCIATION,**  
as Trustee

and

**LASHKOWITZ RIVERFRONT FOUR, LLLP,**  
as Borrower

Dated as of July 1, 2024

relating to

<p>\$[ ]</p> <p><b>STATE OF NORTH DAKOTA NORTH DAKOTA HOUSING FINANCE AGENCY MULTIFAMILY REVENUE BONDS (LASHKOWITZ RIVERFRONT 4) SERIES 2024A</b></p>	<p>\$[ ]</p> <p><b>STATE OF NORTH DAKOTA NORTH DAKOTA HOUSING FINANCE AGENCY MULTIFAMILY REVENUE BONDS (LASHKOWITZ RIVERFRONT 4) SERIES 2024B</b></p>
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**REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

**THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS** (this “Regulatory Agreement”) is made and entered into as of July 1, 2024, by and among the **INDUSTRIAL COMMISSION OF NORTH DAKOTA** (the “Commission”), acting as the **NORTH DAKOTA HOUSING FINANCE AGENCY**, a instrumentality of the State of North Dakota (the “Issuer”), **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association duly organized and existing under the laws of the United States of America and authorized to accept and execute trusts of the type contemplated by the Indenture (as herein defined), with its principal corporate trust offices in Minneapolis, Minnesota (the “Trustee”), and **LASHKOWITZ RIVERFRONT FOUR, LLLP**, a North Dakota limited liability limited partnership (the “Borrower”).

W I T N E S S E T H :

WHEREAS, the Issuer, acting pursuant to Chapter 54-17 of the North Dakota Century Code, as amended and supplemented (the “Act”), has entered into a Trust Indenture, dated as of July 1, 2024 (the “Indenture”), with the Trustee; and

WHEREAS, pursuant to the Act and the Indenture, the Issuer has issued \$16,500,000 aggregate principal amount of its revenue bonds designated State of North Dakota, North Dakota Housing Finance Agency Multifamily Revenue Bonds (Lashkowitz Riverfront 4), Series 2024A and Series 2024B (the “Bonds”), and has entered into a Financing Agreement dated as of July 1, 2024, with the Borrower; and

WHEREAS, the Issuer has agreed to advance proceeds of the sale of the Bonds to finance a loan (the “Loan”) to the Borrower to assist in financing the acquisition of the leasehold interest in the land (the “Leasehold”), and the construction, equipping, and development of a multifamily housing development consisting of 83 units, located at 101 2nd St S in Fargo, North Dakota, on a real property site more particularly described in Exhibit A hereto (the “Project”); and

WHEREAS, the Borrower will rent or lease or will hold available for rent or occupancy not less than 40% of the dwelling units in the Project to Lower Income Tenants, as herein defined, all for the public purpose of assisting such individuals and families to afford the costs of decent, safe and sanitary housing; and

WHEREAS, in order to assure the Issuer and the owners of the Bonds that interest on the Bonds will be exempt from federal income taxes under Section 103 of the Internal Revenue Code of 1986 (the “Code”), and to satisfy the public purposes for which the Bonds are authorized to be issued under the Act, and to satisfy the purposes of the Issuer in determining to issue the Bonds, certain limits on the occupancy of units in the Project need to be established and certain other requirements need to be met;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Issuer, the Trustee and the Borrower hereby agree as follows:



**Section 1. DEFINITIONS AND INTERPRETATION.** Capitalized terms used herein shall have the following meanings unless the context in which they are used clearly requires otherwise. All capitalized, undefined terms used herein shall have the same meanings ascribed thereto in the Indenture.

“*Act*” means Chapter 54-17 of the North Dakota Century Code, as supplemented and amended.

“*Adjusted Income*” means the adjusted income of a person (together with the adjusted income of all persons who intend to reside with such person in one residential unit) as calculated in the manner prescribed in Treasury Regulation Section 1.167(k)-3(b)(3), as it shall be in effect on the Closing Date.

“*Affiliated Party*” means a general or limited partnership in which the Borrower is a partner, or a person whose relationship with the Borrower would result in a disallowance of losses under Section 267 or 707(b) of the Code or who together with the Borrower are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that “more than 50%” shall be substituted for “at least 80%” each place it appears therein).

“*Annual Owner Certification*” means the Certificate to be filed annually by the Borrower with the Issuer and the Trustee substantially in the form of Exhibit E hereto.

“*Area Median Gross Income*” means the median gross income of the area in which the Project is located as determined by the U.S. Secretary of Housing and Urban Development in a manner consistent with the determination of median gross income under Section 8 of the Housing Act, with adjustments for family size.

“*Bond Counsel*” means an attorney or firm of attorneys selected by the Issuer and of nationally recognized standing with respect to the issuance by states and their political subdivisions of obligations the interest on which is exempt from federal income taxes.

“*Bondholder*” or “*holder*” or “*owner of the Bonds*” means the registered owner of any Bond at any time as shown on the registration books maintained by the Trustee pursuant to the Indenture.

“*Bonds*” means the State of North Dakota, North Dakota Housing Finance Agency Multifamily Revenue Bonds (Lashkowitz Riverfront 4), Series 2024A and Series 2024B, issued in the aggregate principal amount of \$16,500,000.

“*Borrower*” means Lashkowitz Riverfront Four, LLLP and its successors and assigns, and any surviving, resulting or transferee entity.

“*Borrower Representative*” means the person or persons (who may be employees of the Borrower) designated from time to time to act hereunder on behalf of the Borrower in a written certificate furnished to the Issuer and Trustee containing a specimen signature of such person or persons and signed on behalf of the Borrower by a duly authorized representative of the Borrower.

“*Closing Date*” means the date upon which the Bonds are initially issued and delivered in exchange for the proceeds representing the purchase price of the Bonds paid by the respective purchaser thereof.

“*Code*” means the Internal Revenue Code of 1986, as now in effect. Each citation to a section of the Code herein shall be deemed to include applicable regulations promulgated under such section and in effect as of the date hereof.

“*Completion Certificate*” means the certificate of completion of the acquisition, rehabilitation and equipping of the Project required to be delivered to the Issuer and the Trustee by the Borrower pursuant to Section 3(j) hereof.

“*Completion Date*” means the date of completion of the rehabilitation and equipping of the Project as certified by the Borrower to the Issuer.

“*Gross Rent*” means all rental payments made by a Lower Income Tenant, including the amount paid by the tenant to the Borrower for utilities and any other mandatory fees, but excluding any payment under Section 8 of the Housing Act or any comparable federal rental assistance program or other rental assistance program allowed to be excluded under Section 42(g)(2) of the Code. If the tenant pays his or her utilities directly, Gross Rent shall include any utility allowance prescribed by the Secretary.

“*Housing Act*” means the United States Housing Act of 1937, as amended, and any regulations pertaining thereto.

“*Indenture*” means the Trust Indenture, dated as of July 1, 2024, between the Issuer and the Trustee, pursuant to which the Bonds have been issued, as originally executed or as it may from time to time be supplemented, modified or amended by one or more supplemental indentures.

“*Inducement Date*” means May 25, 2023, the date of first official action by the Issuer expressing its intent to issue revenue obligations to assist the Borrower in financing the Project.

“*Investor Limited Partner*” means, collectively, WNC Holding, LLC, a California limited liability company, WNC Housing, L.P., a California limited partnership, and their permitted successors and assigns.

“*Issuer Representative*” means the Administrator of the Issuer or any person (who may be an employee of the Issuer) designated from time to time to act hereunder on behalf of the Issuer.

“*LIHTC Application*” means the Borrower’s application for an allocation of low income housing tax credits with respect to the Project.

“*Loan*” means the loan made by the Issuer to the Borrower pursuant to the Financing Agreement for the purpose of providing financing for the acquisition, rehabilitation and construction of the Project.

“*Financing Agreement*” means the Financing Agreement, dated as of July 1, 2024, between the Issuer and the Borrower.

“*Lower Income Tenant*” means a tenant whose Adjusted Income does not exceed 60% of Area Median Gross Income. If all the occupants of a unit are students (as defined under Section 151(c) of the Code, no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants shall not qualify as Lower Income Tenants. The determination of a tenant’s status as a Lower Income Tenant shall be made by the Borrower upon initial occupancy of a unit in the Project by such tenant and annually thereafter, on the basis of a Tenant Income Certification executed by the tenant.

“*Lower-Income Units*” means the dwelling units in the Project designated for occupancy by Lower Income Tenants pursuant to Section 4(a) hereof.

“*Manager*” means the property management company managing the Project.

“*Mortgage*” means any mortgage, executed by the Borrower and granting a mortgage lender a security interest in and lien upon the Project to secure the Borrower’s obligations under a mortgage note.

“*Noteholder*” or “*holder*” or “*owner of the Note*” means the registered owner of the Bond Mortgage Note.

“*Project*” means the Project Facilities and the Project Site.

“*Project Costs*” means, to the extent authorized by the Code, the Regulations and the Act, any and all costs incurred by the Issuer or the Borrower with respect to the acquisition of the Leasehold, or construction, rehabilitation and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date of this Regulatory Agreement, including, without limitation, costs for site preparation, the planning of housing and improvements, the acquisition of the Leasehold and buildings thereon, the removal or demolition of existing structures, the construction of housing and related facilities and improvements, and all other work in connection therewith, and all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractors’ overhead and supervisors’ fees and costs directly allocable to the Project, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, county or other entity for expenditures made, with the approval of the Issuer, for the Project), interest accrued during rehabilitation and prior to the Completion Date; provided, however, that Project Costs do not include costs of issuance of the Bonds.

“*Project Facilities*” means, with respect to the Project, the buildings, structures and other improvements to be constructed or rehabilitated on the Project Site, and all equipment, fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements and all functionally related and subordinate facilities.

“*Project Site*” means the parcel of real property described in Exhibit A, which is attached hereto, and incorporated by reference herein, and all rights and appurtenances thereunto appertaining.

“*Qualified Project Costs*” means the Project Costs incurred no earlier than the date that is 60 days prior to the Inducement Date which are chargeable to a capital account with respect to the Project for federal income tax and financial accounting purposes, or would be so chargeable either with a proper election by the Borrower or but for the proper election by the Borrower to deduct those amounts, within the meaning of Treasury Regulations Section 1.103-8(a)(1); provided, however, that if any portion of the Project is being constructed by the Borrower or an Affiliated Party (whether as a general contractor or a subcontractor), “Qualified Project Costs” shall include only (a) the actual out-of-pocket costs incurred by the Borrower or such Affiliated Party in constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Borrower or such Affiliated Party (but excluding any profit component), and (c) any overhead expenses incurred by the Borrower or such Affiliated Party which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the construction of the Project or payments received by such Affiliated Party due to early completion of the Project (or any portion thereof). Qualified Project Costs do not include costs of issuance of the Bonds. Notwithstanding anything herein to the contrary, no Project Costs relating to the acquisition of the Project or any assets relating thereto (including, without limitation, rights and interests with respect to development of the Project) shall constitute “Qualified Project Costs” unless, at the time Bond proceeds are expended to pay such costs, the Borrower and the seller of such assets are not “related parties” as such term is defined in Section 1.150-1(b) of the Regulations.

“*Qualified Project Period*” means the period beginning on the later of the Closing Date or first day on which 10% of the dwelling units in the Project are first occupied and ending on the latest of, and ending on the latest of the following:

(A) the date that is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied;

(B) the first date on which no Bonds the proceeds of which were used to finance or refinance the Project are Outstanding; or

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

“*Regulations*” means the Income Tax Regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time.

“*Regulatory Agreement*” means this Regulatory Agreement and Declaration of Restrictive Covenants, dated as of July 1, 2024, among the Issuer, the Trustee and the Borrower, as it may be amended from time to time.

“*State*” means the State of North Dakota.

“*Tax-Exempt*” means, with respect to interest on any obligations of a state or local government, including the Bonds, that such interest is excluded from gross income for federal income tax purposes (other than interest on any Bond for any period during which such Bond is held by a “substantial user” of any facility financed with the proceeds of the Bonds or a “related

parties” as such term is defined in Section 1.150-1(b) of the Regulations); provided, however, that such interest may be includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating other tax liabilities, including any alternative minimum tax or environmental tax, under the Code.

“*Tenant Income Certification*” means an Application for Housing and Tenant Income Certification for the first year of any tenant’s occupancy of a unit and an Annual Household Tenant Certification Update for each year thereafter, each of which substantially in the form of Exhibit C hereto.

“*Trustee*” means the trustee serving as such under the Indenture.

Such capitalized terms as are not defined herein shall have the meanings ascribed to them in the Indenture.

Unless the context clearly requires otherwise, 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. All the terms and provisions hereof shall be construed to effectuate the purposes set forth in this Regulatory Agreement and to sustain the validity hereof.

The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only, are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provision hereof or in ascertaining intent, if any question of intent shall arise.

**Section 2. Compliance with the Indenture, the Financing Agreement, the Regulatory Agreement, the Act and the Code.** The Borrower hereby represents as of the date hereof, and covenants and agrees as follows:

(a) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee are true and correct.

(b) The Borrower (and any person related to it within the meaning of Section 144(a)(3) of the Code) will not take or omit to take, as is applicable, any action if such action or omission would in any way cause the proceeds from the sale of the Bonds to be applied in a manner contrary to the requirements of the Indenture, the Financing Agreement, this Regulatory Agreement, the Act or the Code.

(c) The Borrower will not enter into any agreements which would result in the payment of principal or interest on the Bonds being “federally guaranteed” within the meaning of Section 149(b) of the Code.

(d) The Borrower’s reasonable expectations respecting the total cost of the acquisition and construction of the Project are accurately set forth in the Tax Certificate submitted to the Issuer on the Closing Date.

(e) The Borrower has incurred, or will incur within six months after the Closing Date, a substantial binding obligation to commence the acquisition and construction of the Project, pursuant to which the Borrower is or will be obligated to expend at least 5% of the proceeds of the Loan financed from proceeds of the Bonds.

**Section 3. Residential Rental Property.** The Borrower hereby acknowledges and agrees that the Project is to be owned, managed and operated as a “qualified residential rental project” (within the meaning of Section 142(d) of the Code) for a term equal to the Qualified Project Period. To that end, and for the term of this Regulatory Agreement, the Borrower hereby represents, warrants and covenants as follows:

(a) The Borrower will not knowingly and voluntarily take or omit to take, as is applicable, any action if such action or omission would in any way cause the use and operation of the Project to be in a manner contrary to the requirements of this Regulatory Agreement.

(b) The Borrower shall own, manage and operate (or cause the management and operation of) the Project as a project to provide multifamily rental housing comprised of a building or structure or several interrelated buildings or structures, each consisting of more than one dwelling unit and facilities functionally related and subordinate thereto, and no other facilities. As used herein facilities functionally related and subordinate to the Project shall include facilities for use by the tenants, including, for example, swimming pools, other recreational facilities, parking areas, and other facilities which are reasonably required for the Project, for example, heating and cooling equipment, trash disposal equipment or units for resident managers or maintenance personnel.

(c) All of the dwelling units in the Project will be similarly constructed, and each dwelling unit in the Project will contain facilities for living, sleeping, eating, cooking and sanitation for a single person or a family which are complete, separate and distinct from other dwelling units in the Project and does and will include a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink.

(d) None of the dwelling units in the Project will at any time be utilized on a transient basis (i.e., less than 30 days), or will ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home or trailer court or park; provided, however, that the Project may comprise the dwelling units, and facilities functionally related and subordinate to the dwelling units. Notwithstanding the foregoing, single-room occupancy units provided under Section 42(i)(3)(B)(iv) of the Code shall not be considered to be utilized on a transient basis.

(e) No part of the Project will at any time be owned by a cooperative housing corporation, nor shall the Borrower take any steps in connection with a conversion to such ownership or uses. The Borrower shall not take any steps in connection with a conversion of the Project to a condominium ownership except with the prior written approval of the Issuer and delivery of an Opinion of Bond Counsel that such action will not adversely

affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

(f) All of the dwelling units in the Project (except as permitted by Section 3(g) below) will be available for rental on a continuous basis to members of the general public in accordance with law and the Borrower will not give preference to any particular class or group in renting the dwelling units in the Project, except to the extent that dwelling units are required to be leased or rented to Lower Income Tenants.

(g) No dwelling unit in the Project shall be occupied by the Borrower; provided, however, that if the Project contains five or more dwelling units, this subsection shall not be construed to prohibit occupancy of not more than one dwelling units by one or more resident managers or maintenance personnel any of whom may be the Borrower.

(h) The Project Site does and will consist of a parcel or parcels that are contiguous (parcels are contiguous if their boundaries meet at one or more points) except for the interposition of a road, street or stream, and all of the Project Facilities and the Project do and will comprise a single geographically and functionally integrated project for multifamily rental housing, as evidenced by the common ownership, management, accounting and operation of the Project.

(i) The Borrower will prepare and submit to the Issuer quarterly progress reports describing the Borrower's actual progress with respect to the Project in comparison to the property schedule contained in the Borrower's LIHTC Application. Project Costs that increase above the contingency provided in the Borrower's LIHTC Application during the construction/rehabilitation of the Project must be disclosed in such quarterly reports along with an explanation of how the gap has been or will be filled.

(j) The Borrower will prepare and submit to the Issuer and the Trustee a Completion Certificate for the Project, substantially in the form attached hereto as Exhibit B (as such form may be modified from time to time by the Issuer), within 25 months of the Closing Date.

**Section 4. Lower Income Tenants.** The Borrower hereby represents, warrants and covenants as follows:

(a) Borrower agrees that for the Qualified Project Period not less than 40% of the total number of units of the Project shall at all times be rented to and occupied by, or held vacant and available for occupancy by, Lower Income Tenants. For the purposes of this paragraph (a), a vacant unit which was most recently occupied by a Lower Income Tenant is treated as rented and occupied by a Lower Income Tenant until reoccupied, other than for a temporary period of not more than 31 days, at which time the character of such unit shall be redetermined.

(b) No tenant qualifying as a Lower Income Tenant shall be denied continued occupancy of a unit in the Project because, after admission, such tenant's Adjusted Income increases to exceed the qualifying limit for Lower Income Tenants; provided, however, that should a Lower Income Tenant's Adjusted Income, as of the most recent determination

thereof, exceed 140% of the then applicable income limit for a Lower Income Tenant of the same family size, the next available unit of comparable or smaller size must be rented to (or held vacant and available for immediate occupancy by) a Lower Income Tenant; and provided further that, until such next available unit is rented to a tenant who is not a Lower Income Tenant, the former Lower Income Tenant who has ceased to qualify as such shall be deemed to continue to be a Lower Income Tenant for purposes of the 40% requirement of paragraph (a) of this Section 4 (if applicable). If a credit is allowed under Section 42 of the Code and the Project consists of more than one building (within the meaning of Section 42), this requirement shall apply on a building-by-building basis.

(c) The Borrower will obtain, complete, and maintain on file Tenant Income Certifications from all Lower Income Tenants (as such form may be modified from time to time by the Issuer), including a Tenant Income Certification or other certification delivered in connection with a governmental housing subsidy program dated no later than the day prior to the initial occupancy in the Project of such Lower Income Tenant and, in the case of tenants residing in the Project as of the date of acquisition thereof (if applicable), dated no later than the day prior to the first day of the Qualified Project Period and (ii) thereafter, unless not required pursuant to Section 142(d)(3)(A) of the Code or its successor provision, annual Tenant Income Certifications dated as of the anniversary date of each initial Tenant Income Certification or other certification delivered in connection with a governmental housing subsidy program. The Borrower will provide such additional information as may be required in the future by the Issuer and 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, Regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(d) of the Code. The Borrower shall make a good faith effort to verify that the income information provided by an applicant in a Tenant Income Certification is accurate by taking one or more of the following steps as a part of the verification process: (A) obtain third party verification of all regular sources of income, (B) in the case of self-employed applicants, obtain an income tax return for the most recent tax year together with a current profit and loss statement, (C) obtain copies of current pay stubs provided such pay stubs contain enough information to calculate accurately the applicant's anticipated income, (D) use such verification enumerated in Chapter 3 of the most current, amended edition of HUD Handbook 4350.3, or such instructions by HUD that may supersede this handbook, and (E) any additional documentation that the Issuer shall deem relevant.

(d) The Borrower will maintain, in North Dakota, complete and accurate records pertaining to the units, and will permit any duly authorized representative of the Issuer, the Trustee, the Department of the Treasury or the Internal Revenue Service to inspect upon reasonable notice the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the units.

(e) The Borrower will prepare and submit to the Issuer and the Trustee by January 31 of each year following the commencement of the Qualified Project Period an Annual Owner Certification in the form attached as Exhibit E (as such form may be modified from time to time by the Issuer).



(f) The Borrower covenants and agrees that during the term of this Regulatory Agreement, on or before January 31 of each calendar year the Borrower shall prepare and submit to the Trustee and the Issuer, a certificate of continuing compliance as to compliance with this Regulatory Agreement, executed by the Borrower in substantially the form attached hereto as Exhibit F. The Trustee may rely solely on the certificate as evidence of the Borrower's compliance with the terms and restrictions of this Regulatory Agreement.

(g) The Borrower will accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the Housing Act, or its successor. The Borrower shall not apply selection criteria to Section 8 certificate holders that are more burdensome than criteria applied to all other prospective tenants.

(h) Each lease or rental agreement pertaining to a Lower Income Unit shall contain a provision to the effect that the Borrower has relied on the income certification and supporting information supplied by the Lower Income Tenant in determining qualification for occupancy of the Lower Income Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease or rental agreement. Each such lease or rental agreement shall also provide that the tenant's income is subject to annual certification in accordance with subsection (c) hereof.

(i) The Borrower acknowledges that it is required to file an annual certificate regarding operation of the Project with the Internal Revenue Service pursuant to Section 142(d)(7) of the Code.

**Section 5. Agreement To Record.** The Borrower hereby represents, warrants and covenants that it will cause this Regulatory Agreement to be recorded in the real property records of Cass County, North Dakota, and in such other places as the Issuer may reasonably request, on or before the Closing Date. The Borrower shall pay all fees and charges incurred in connection with any such recording.

**Section 6. Reserved.**

**Section 7. Modification of Covenants.** The Borrower, the Trustee and the Issuer hereby agree as follows:

(a) To the extent any future amendments to the Act, the Regulations or the Code shall, in the written opinion of Bond Counsel filed with the Issuer and with the Trustee, who shall deliver a copy thereof to the Borrower, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Regulatory Agreement, and such requirement shall be necessary, in the opinion of Bond Counsel, to maintain the federal tax exemption of interest on the Bonds, this Regulatory Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements.

(b) The Borrower, the Issuer and, if applicable, the Trustee, shall execute, deliver and, if applicable, the Borrower shall file of record any and all documents and instruments, necessary to effectuate the intent of this Section 7.

### **Section 8. Indemnification.**

(a) The Borrower releases the Issuer and Trustee from, and covenants and agrees that the Issuer and Trustee shall not be liable for, and covenants and agrees to indemnify and hold harmless the Issuer and Trustee and their respective directors, officers, employees and agents from and against, any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from or in any way connected with (i) the operation of the Project, or the conditions, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation or construction of the Project or any part thereof, (ii) the carrying out by the Borrower of any of the transactions contemplated by this Regulatory Agreement and the Financing Agreement, or (iii) the Trustee's acceptance or administration of the trusts under the Indenture, or the exercise or performance of any of its powers or duties under the Indenture; provided that such indemnity shall not be required for damages that result from the gross negligence or willful misconduct or breach of conduct on the part of the party seeking such indemnity. The indemnity required by this Section shall be only to the extent that any loss sustained by the Issuer or the Trustee exceeds the net proceeds the Issuer or the Trustee receives from any insurance carried with respect to the loss sustained. The Borrower further covenants and agrees to pay or to reimburse the Issuer and the Trustee and their respective directors, officers, employees and agents for any and all of its costs, reasonable attorneys' fees, liabilities or expenses incurred in connection with investigating, defending against or otherwise in connection with any such losses, claims, damages, liabilities, expenses or actions, except to the extent that the same arise out of: in the case of the Trustee, the gross negligence or willful misconduct of such party; and in the case of the Issuer, the willful misconduct of such party. Any indemnification obligations of the Borrower shall be limited to Surplus Cash. The provisions of this Section shall survive the retirement of the Bonds.

(b) The Borrower also shall pay and discharge and shall indemnify and hold harmless the Issuer and the Trustee from (i) any lien or charge upon payments by the Borrower to the Issuer and the Trustee hereunder and (ii) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges in respect of any portion of the Project. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the Issuer or the Trustee shall give prompt notice to the Borrower and the Borrower shall assume the defense thereof, with full power to litigate, compromise or settle the same in its sole discretion, provided that the Issuer and the Trustee shall have the right, but not the obligation, to review and approve or disapprove any such compromise or settlement. Any attorney who represents the Issuer, or the interest of the Issuer, must first qualify and be appointed a Special Assistant Attorney General by the North Dakota Attorney General, as required by North Dakota Century Code Section 54-12-08. In addition thereto, the Borrower will pay upon demand all of the fees and expenses paid or

incurred by the Trustee and/or the Issuer in enforcing the provisions hereof. Any indemnification obligations of the Borrower shall be limited to Surplus Cash. The provisions of this Section shall survive the retirement of the Bonds.

The provisions of this Section shall survive the term of the Bonds and this Regulatory Agreement; provided, however, the provisions of this Section shall, in the case of the Trustee, survive the term of this Regulatory Agreement or the resignation or removal of such Trustee, but only as to claims arising from events occurring during the term of this Regulatory Agreement or the Trustee's tenure as Trustee under the Indenture, and shall, in the case of the Issuer, survive the term of this Regulatory Agreement, but only as to claims arising from events occurring during the term of this Regulatory Agreement.

**Section 9. Consideration.** The Issuer has issued the Bonds to obtain moneys to finance the Project, all for the purpose, among others, of inducing the Borrower to acquire, rehabilitate, equip and operate the Project. In consideration of the issuance of the Bonds by the Issuer, the Borrower has entered into this Regulatory Agreement and has agreed to restrict the uses to which this Project can be put for the term hereof.

**Section 10. Reliance.** The Issuer, the Trustee and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by the Trustee, the Issuer, the Borrower and the Bondholders. In performing their duties and obligations hereunder, the Issuer and the Trustee may rely upon statements and certificates of the Borrower and Lower Income Tenants, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In performing its duties hereunder, the Borrower may rely on the Tenant Income Certification unless the Borrower has reasonable knowledge that such certificates are inaccurate. In addition, the Issuer, the Trustee and the Borrower may consult with Bond Counsel, and the 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 Borrower hereunder in good faith and in conformity with such opinion.

**Section 11. Project Within the Boundaries of the State.** The Borrower hereby represents and warrants that the Project will be located entirely within the territorial boundaries of the State of North Dakota.

**Section 12. Sale or Transfer of the Project.**

(a) Except for any transfer of the Project, or interests in the Borrower to the Housing and Redevelopment Authority of the City of Fargo, or its affiliate, pursuant to the Borrower's Amended and Restated Agreement of Limited Partnership of the Borrower (the "**Partnership Agreement**"), the Borrower hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project or any portion thereof (other than for individual tenant use as contemplated hereunder), without obtaining the prior written consent of the Issuer, which consent shall be conditioned solely upon (i) receipt by the Issuer of an assumption fee in the amount of 1% of the unpaid principal of the Bonds plus payment of all out-of-pocket or third party costs and expenses of the Issuer in connection with such sale or transfer, and (ii) receipt by the Issuer and the Trustee of (A) reasonable evidence satisfactory to the Issuer and, on the basis of a written opinion of counsel, the Trustee, that

the Borrower's purchaser or transferee has assumed in writing and in full, and is reasonably capable of performing and complying with, the Borrower's duties and obligations under this Regulatory Agreement, (B) an opinion of counsel to the transferee that the transferee has duly assumed the obligations of the Borrower under this Regulatory Agreement and that such obligations and this Regulatory Agreement are legal, valid and binding obligations of the transferee, and (C) an opinion of Bond Counsel that the exemption of interest on the Bonds from gross income for federal income tax purposes will not be adversely affected thereby. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this section shall be ineffective to relieve the Borrower of its obligations under this Regulatory Agreement. Nothing contained in this section shall affect any document or instrument between the Borrower and the Issuer or the Trustee which requires the Borrower to obtain the consent of the Issuer or the Trustee as a precondition to sale, transfer or other disposition of any direct or indirect interest in the Project or of any direct or indirect interest in the Borrower.

Upon written request of the Borrower to the Issuer, the Issuer may waive the foregoing fee in its sole and absolute discretion.

(b) Notwithstanding the foregoing, the restrictions relating to the sale or transfer of the Project contained in Section 12(a) shall not apply in the case of a transfer or other disposition of the Project by foreclosure under a Mortgage or deed in lieu of foreclosure or comparable conversion of the loan secured thereby and payment in full and retirement of the Bonds within a reasonable period of time thereafter.

(c) Notwithstanding the foregoing, the restrictions relating to the sale or transfer of the Project contained in Section 12(a) shall not apply in the case of:

(i) the grant of a leasehold interest in a part of the Project of three years or less (or such longer lease term as the Issuer may permit by prior written approval) not containing an option to purchase;

(ii) Reserved; or

(iii) transfers by devise or descent or by operation of law upon the death of a joint tenant or a partner of the Borrower; provided however, that the delivery of evidence and opinions pursuant to Section 12(a) above shall be required in connection with transfers under this subsection (c)(iii).

(d) The Borrower hereby covenants and agrees the restrictions and fee relating to the sale or transfer of the Project contained in Section 12(a) hereof shall apply if, within five years of issuance of the Bonds, there is a change in a general partner or investor limited partner of the Borrower other than as provided below in Section 12(e).

(e) Notwithstanding anything to the contrary contained herein, the partnership interests in the Borrower shall be freely transferable to (i) any entity that controls, is controlled by or is under common control with the Investor Limited Partner, and (ii) in accordance with the provisions of the operating agreement of each respective partner comprising the Borrower, without the consent of the Issuer. The partnership interests of

the Borrower shall also be transferable with the prior written consent of the Issuer (which consent shall not be unreasonably withheld) to any corporation whose long-term debt obligations are rated “A-” or higher by Standard and Poor’s or “A3” or higher by Moody’s Investors Service (a “Corporate Investor”). Except as otherwise set forth herein, transfer of partnership interests of the Borrower to any other person or entity shall be subject to the prior written consent of the Issuer in its sole and absolute discretion. The Borrower may execute amendments to the Partnership Agreement in connection with such transfers without the approval of the Issuer, provided that such amendment does not contravene any provisions set forth herein.

Notwithstanding anything to the contrary contained hereby, the Borrower’s Investor Limited Partner shall be permitted to remove a general partner thereof for cause in accordance with the Partnership Agreement without the consent of the Issuer so long as, concurrently therewith, the replacement general partner is approved by the Issuer or is not subject to the approval of the Issuer pursuant to this paragraph. If the Investor Limited Partner of the Borrower exercises its right to remove a general partner thereof, the Issuer shall not unreasonably withhold its consent if the substitute general partner is a Corporate Investor, and the Issuer’s consent shall not be required if the Investor Limited Partner or an entity that controls, is controlled by or is under common control with the Investor Limited Partner is the substitute general partner. The prior written consent of the Issuer in its sole and absolute discretion shall be required if any other person or entity is the substitute general partner. Notwithstanding the foregoing, notice of any removal and substitution of the general partner of the Borrower shall be promptly given to the Issuer and a copy of any amendment to the Partnership Agreement shall be promptly submitted to the Issuer. Furthermore, the pledge of the interest of the general partner to the Note Purchaser shall not be treated as a transfer under this Section and any enforcement action by the Note Purchaser to enforce its rights connected to the interest of the general partner will not require consent of the Issuer or any other party.

Upon written request of the Borrower to the Issuer, the Issuer may waive the foregoing restrictions in its sole and absolute discretion.

(f) The Borrower will pay upon demand all of the fees and expenses paid or incurred by the Trustee or the Issuer in enforcing the provisions hereof, as more fully set forth herein.

**Section 13. Term.** This Regulatory Agreement shall become effective upon its execution and delivery. This Regulatory Agreement 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 Bonds and the expiration of the Indenture and the Loan and the satisfaction of the obligations of the Borrower under the Mortgage. Notwithstanding the foregoing, the Trustee shall have no rights, duties or obligations under this Regulatory Agreement (and shall no longer be considered a party hereto) from and after the retirement of the Bonds and the discharge of the Indenture. The terms of this Regulatory Agreement to the contrary notwithstanding, this Regulatory Agreement and all and several of the terms hereof, shall terminate and be of no further force and effect in the event of (a)(i) involuntary noncompliance with the provisions

of this Regulatory Agreement caused by a foreclosure by the Trustee of the lien of a Mortgage or delivery of a deed in lieu of foreclosure or comparable conversion of the Loan secured thereby, pursuant to which the Trustee or a purchaser or transferee pursuant to such foreclosure shall take possession of the Project or (ii) involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire, seizure, or requisition, or change in a federal law or an action of a federal agency after the date hereof which prevents the Issuer and the Trustee from enforcing the provisions hereof, or condemnation or similar event, and (b) the payment in full and retirement of the Bonds within a reasonable period thereafter; 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 of the lien of a Mortgage or the delivery of a deed in lieu of foreclosure or comparable conversion of the Loan secured thereby, the Borrower or any related party (within the meaning of Section 1.150-1(b) of the Regulations) obtains an ownership interest in the Project for federal income tax purposes. The Borrower hereby agrees that, following any foreclosure, transfer of title by deed in lieu of foreclosure or similar event, neither the Borrower nor any related party as described above will obtain an ownership interest in the Project for federal tax purposes. Upon the termination of all and several 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 14. 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 Project Site in that the Borrower's legal interest in the Project is rendered less valuable thereby.

The Issuer and the Borrower hereby declare their understanding and intent that the covenants, reservations and restrictions set forth herein directly benefit the land (a) by enhancing and increasing the enjoyment and use of the Project by certain Lower Income Tenants, (b) by making possible the obtaining of advantageous financing for the Project, and (c) by furthering the public purposes for which the Bonds were issued.

**Section 15. Uniformity; Common Plan.** The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use, development and improvement of the Project Site.

**Section 16. 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 such default remains uncured for a period of 30 days after written notice thereof is given by the Issuer or the Trustee to the Borrower (or for such longer period, subject to such limitations as may be required to assure compliance with the Code, as the Issuer may consent to in writing, it being understood that if the default cannot be corrected within such 30-day period, the Issuer will not unreasonably withhold its consent to an extension of such time if corrective action is instituted within such period and diligently and continuously pursued until the default is corrected), then the Trustee at the direction of the Issuer or the

holders of not less than 25% in aggregate principal amount of the Bonds outstanding, or the Issuer on its own behalf, 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 under this Regulatory Agreement, or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee hereunder.

(b) Have access to, and inspect, examine and make copies of, all of 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 specifically enforce the obligations, covenants and agreements of the Borrower under this Regulatory Agreement.

The Borrower hereby agrees, upon the expiration of 30 days after the giving of the notice to the Borrower referred to in the first paragraph of this Section 16 of the Borrower's default under this Regulatory Agreement, to replace any manager of the Project with or, to the extent no manager of the Project is then in place to appoint, any entity identified by the Issuer as the manager of the Project. The Trustee shall have the right, but not the obligation, in accordance with this Section 16 and the provisions of the Indenture to exercise any or all of the rights or remedies of the Issuer hereunder; provided that prior to taking any such action the Trustee shall give the Issuer written notice of its intended action. All reasonable fees, costs and expenses of the Issuer and the Trustee incurred in taking any action pursuant to this Section 16 shall be the sole responsibility of the Borrower.

After the Indenture has 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.

The obligations of the Borrower hereunder are not secured by a lien on the Project and the Loan shall not be accelerated as a result of any default hereunder. Borrower hereby agrees that specific enforcement of the Borrower's agreements contained herein or injunctive relief are the only means by which the Issuer may obtain the benefits of such agreements made by the Borrower herein and the Borrower therefore agrees to the imposition of the remedies of specific performance and injunctive relief against it in the case of any default by the Borrower hereunder.

No monetary obligation of the Borrower under this Regulatory Agreement shall be secured by, or in any manner constitute a lien on, the Project and no person shall have the right to enforce any such obligation against the Project.

Issuer will give Investor Limited Partner a copy of any written notice given to Borrower under this Regulatory Agreement at the address set forth in Section 20 below. Investor Limited Partner and/or its designee shall have the right to cure any Borrower default to the same extent, and with the same cure periods, afforded to the Borrower.

**Section 17. Governing Law.** This Regulatory Agreement shall be governed by the laws of the State of North Dakota. The parties hereto submit to the jurisdiction of the State

in any action or proceeding arising out of, or as a result of, this Regulatory Agreement or the alleged or anticipated breach of any of the provisions, representations or warranties contained herein.

**Section 18. Amendments.** This Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of Cass County, North Dakota and only upon receipt by the Issuer and Trustee of an Opinion of Bond Counsel that such action will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

**Section 19. Severability.** If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

**Section 20. Notice.** Any notice required to be given hereunder shall be given by certified or registered mail, postage prepaid, return receipt requested, at the addresses specified in the Indenture, or at such other addresses as may be specified in writing by the parties hereto.

A copy of any notice, certificate or other communication required to be given hereunder by any party to any of the other parties hereof shall in addition to such delivery, also be given to all the other parties; provided, however, that any failure to give such duplicate notice, certificate or communication, or any defect therein, shall not affect the validity or effectiveness of any action taken or omitted pursuant to the required notice, certificate or communication.

**Section 21. Multiple Counterparts.** This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

**Section 22. Limited Liability.** All obligations of the Issuer incurred hereunder shall be limited obligations of the Issuer, payable solely and only from Bond proceeds and pledged Revenues. No recourse shall be had for any claim based upon any obligation, covenant or agreement in this Regulatory Agreement contained, against the Issuer, its officers, agents or staff, or the officers, agents or staff of any successor public entity, as such, either directly or through the Issuer or any successor public entity, under any rule of law or penalty or otherwise, and all such liability of the Issuer, any of its officers, agents and staff is hereby expressly waived and released as a condition of, and in consideration for, the execution of this Regulatory Agreement and the issuance of any of the Bonds.

**Section 23. The Trustee.** The Trustee shall act as specifically provided herein and in the Indenture. Neither the Trustee nor any of its officers, directors or employees shall be liable for any action taken or omitted to be taken by it hereunder or in connection herewith except for its or their own gross negligence or willful misconduct. The Trustee shall have no duty to take any enforcement action with respect to any default hereunder, as described in Section 16 hereof, unless the Trustee has actual knowledge of any such default. The Trustee may consult with legal counsel selected by it and any action taken or suffered by it in accordance with the opinion of such counsel shall be full justification and protection to it.



The Trustee is entering into this Regulatory Agreement in its capacity as the Trustee under the terms of the Indenture. The Trustee may rely on the accuracy of any certificates, instruments, opinions, or reports delivered to it by the Borrower. It is expected that the Bonds will be discharged and the Indenture will terminate prior to the expiration of the Qualified Project Period. Following the payment in full and the discharge of the Bonds and the termination of the Indenture: (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 a custodian to be engaged by the Borrower (the “Custodian”); (iii) all notices to be delivered to the Trustee will instead be delivered to the Custodian and all notices to be delivered by the Trustee will instead be delivered by the Custodian; and (iv) the Trustee shall no longer be a party to this Regulatory Agreement and shall be considered released from all obligations hereunder; provided, however that if the Borrower fails to engage a Custodian at such time, the Trustee will continue as Custodian hereunder, and the Borrower agrees to pay the Trustee’s customary fees as Custodian.

**Section 24. Attorney’s Fees.** In case any action at law or in equity, including an action for declaratory relief, is brought against the Borrower to enforce the provisions of this Regulatory Agreement, the Borrower agrees to pay reasonable attorney’s fees and costs actually expended and other reasonable expenses incurred by the Issuer or the Trustee in connection with such action, including all costs of settlement entered into in good faith.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Issuer, the Trustee and the Borrower have executed this Regulatory Agreement by duly authorized representatives, all as of the date first above written.

**NORTH DAKOTA HOUSING FINANCE  
AGENCY**

By \_\_\_\_\_  
David A. Flohr, Executive Director

(Issuer Signature Page to *Lashkowitz Riverfront 4* Regulatory Agreement)

**WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Fiscal Agent**

By \_\_\_\_\_  
Lisa M. Lewis, Vice President

(Trustee Signature Page to *Lashkowitz Riverfront 4* Regulatory Agreement)

**LASHKOWITZ RIVERFRONT FOUR, LLLP,**  
a North Dakota limited liability limited partnership

By: Lashkowitz BL Four GP, LLC,  
a North Dakota limited liability company  
Its: Managing General Partner

By: BlueLine, LLC,  
a Montana limited liability company  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Nathan Richmond  
Its Member

(Borrower Signature Page to *Lashkowitz Riverfront 4* Regulatory Agreement)

**NOTARY ACKNOWLEDGMENT STATEMENT**

STATE OF NORTH DAKOTA      )  
  )SS  
COUNTY OF BURLEIGH        )

On \_\_\_\_\_, before me, \_\_\_\_\_ (here insert name and title of the officer), personally appeared David A. Flohr, Executive Director of the North Dakota Housing Finance Agency, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_                                    [SEAL]

(Issuer Notary Page to *Lashkowitz Riverfront 4* Regulatory Agreement)

**NOTARY ACKNOWLEDGMENT STATEMENT**

STATE OF MINNESOTA         )  
  )SS  
COUNTY OF HENNEPIN         )

On \_\_\_\_\_, before me, \_\_\_\_\_ (here  
insert name and title of the officer), personally appeared Lisa M. Lewis, Vice President of  
Wilmington Trust, National Association, personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the person whose name is subscribed to the within instrument and  
acknowledged to me that he executed the same in his authorized capacity, and that by his signature  
on the instrument the person, or the entity upon behalf of which the person acted, executed the  
instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ [SEAL]

(Trustee Notary Page to *Lashkowitz Riverfront 4* Regulatory Agreement)



**EXHIBIT A**  
**[LEGAL DESCRIPTION]**



## EXHIBIT B

### COMPLETION CERTIFICATE

This Certificate is given in connection with the completion of Lashkowitz Riverfront 4 (the “Project”), financed with the assistance of the State of North Dakota, North Dakota Housing Finance Agency Multifamily Revenue Bonds (Lashkowitz Riverfront 4), Series 2024A and Series 2024B (the “Bonds”). Capitalized terms used herein shall have the meanings assigned to them in the Regulatory Agreement and Declaration of Restrictive Covenants executed in connection with the issuance of the Bonds.

The undersigned hereby certifies that:

1. All portions of the Project were substantially completed and available either for occupancy or use by tenants in the Project as of \_\_\_\_\_;
2. All amounts disbursed on the Loan have been applied to pay or reimburse the undersigned for the payment of Project Costs and none of the amounts disbursed on the Loan have been applied to pay or reimburse any party for the payment of costs or expenses other than Project Costs;
3. Reserved;
4. At least 95% of all amounts disbursed on the Loan, including the amounts applied pursuant to the Indenture to pay for the costs of issuing the Bonds, whether derived from proceeds of sale of the Bonds or from investment earnings thereon, have been applied to pay or reimburse the Borrower for the payment of Qualified Project Costs; not more than 2% of the proceeds of the Bonds have been used to pay for costs of issuing the Bonds; and less than 25% of the net proceeds of the Bonds have been applied to pay or reimburse the Borrower for the cost of acquiring land or any interest in land;
5. The total cost of the Project is \$[\_\_\_\_\_] of which \$ [\_\_\_\_\_] was acquisition costs consisting of: (i) land acquisition of \$[\_\_\_\_\_] and (ii) building acquisition of \$[\_\_\_\_\_] total Qualified Project Costs are \$[\_\_\_\_\_] and
6. This certificate is given without prejudice to any rights of the Borrower against third parties for the payment of any amount not yet due and payable which exist at the date of this certificate or which may subsequently exist.

The representations set forth herein are true and correct to the best of the undersigned's knowledge and belief.

**LASHKOWITZ RIVERFRONT FOUR, LLLP,**  
a North Dakota limited liability limited partnership

By: Lashkowitz BL Four GP, LLC,  
a North Dakota limited liability company  
Its: Managing General Partner

By: BlueLine, LLC,  
a Montana limited liability company  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Nathan Richmond  
Its Member

**EXHIBIT C**  
**TENANT INCOME CERTIFICATION**

[SEE ATTACHED]

# TENANT INCOME CERTIFICATION

Initial Certification     Recertification  
 Other \_\_\_\_\_

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

Move-in Date: \_\_\_\_\_  
(YYYY-MM-DD)

PART I - DEVELOPMENT DATA			
Property Name:	County:	BIN #:	PISD:
BIN Address:	City:		Zip:
Unit Number:	# Bedrooms:	Square Footage:	

PART II. HOUSEHOLD COMPOSITION (DEMOGRAPHIC INFORMATION IS FOR LIHTC ONLY)										
HH Mbr#	Last Name	First Name	Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YY)	F/T Student?	SS# Last 4 Digits	Race	Ethnic	Disabled?
1				HEAD						
2										
3										
4										
5										
6										
7										

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)				
HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
<b>TOTALS</b>	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Add totals from (A) through (D), above			<b>TOTAL INCOME (E):</b>	\$ 0.00

PART IV. INCOME FROM ASSETS				
Hshld Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
<b>TOTALS:</b>			\$ 0.00	\$ 0.00
Enter Column (H) Total If over \$5,000		\$ 0.00	Passbook Rate X 0.06% % = (J) Imputed Income	\$ 0.00
Enter the greater of the total of column I, or J: imputed income			<b>TOTAL INCOME FROM ASSETS (K)</b>	\$
<b>(L) Total Annual Household Income from all Sources [Add (E) + (K)]</b>				<b>\$ 0.00</b>

## 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.

Signature	(Date)	Signature	(Date)
Signature	(Date)	Signature	(Date)

PART V. DETERMINATION OF INCOME ELIGIBILITY		
<b>TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES:</b> \$ <span style="border: 2px solid black; padding: 2px;">                    </span> From item (L) on page 1 <b>Income Limit per Family Size:</b> \$ _____ <b>Household Income at Move-in:</b> \$ _____ <b>Household Size at Move-in:</b> _____	<b>Household Meets Income Restriction at:</b> <input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> ____%	<b>RECERTIFICATION ONLY:</b> Current Income Limit x 140% <b>\$ 0.00</b> Household Income exceeds 140% at recertification: <input type="checkbox"/> Yes <input type="checkbox"/> No

PART VI. RENT	
<b>Tenant Paid Rent:</b> \$ _____ <b>Utility Allowance:</b> \$ _____ <b>Other non-optional charges:</b> \$ _____ <b>GROSS RENT FOR UNIT:</b> \$ <span style="border: 2px solid black; padding: 2px;">                    </span> (Tenant paid rent plus Utility Allowance & other non-optional charges) <b>Maximum Rent Limit for this unit:</b> \$ _____ <b>Unit Meets Rent Restriction at:</b> <input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> ____%	<b>Federal Rent Assistance Amount:</b> \$ _____ *Source: _____ <b>Non-Federal Rent Assistance Amount:</b> \$ _____ (*1-8) <b>TOTAL RENT ASSISTANCE:</b> \$ _____ <b>* Source of Federal Assistance</b> 1 **HUD Multi-Family Project-Based Rental Assistance (PBRA) 2 Section 8 Moderate Rehabilitation 3 Public Housing Operating Subsidy 4 HOME Rental Assistance 5 HUD Housing Choice Voucher (HCV), tenant-based 6 HUD Project-Based Voucher (PBV) 7 USDA Section 521 Rental Assistance Program 8 Other Federal Rental Assistance <b>** (PBRA) Includes:</b> Section 8 New Construction/Substantial Rehabilitation; Section 8 Loan Management; Section 8 Property Disposition; Section 202 Project Rental Assistance Contracts (PRAC)

PART VII. STUDENT STATUS		
<b>ARE ALL OCCUPANTS FULL TIME STUDENTS?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>If yes, Enter student explanation* (also attach documentation)</b> *Enter 1-6: _____	<b>*Student Explanation:</b> 1 TANF assistance 2 Job Training Program 3 Single parent/dependent child 4 Married/joint return 5 Formerly in foster care 6 Veteran, honorably discharged

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.				
<b>a. Tax Credit</b> <input type="checkbox"/>  See Part V above.	<b>b. HOME</b> <input type="checkbox"/>  <b>Income Status</b> <input type="checkbox"/> ≤ 50% AMGI <input type="checkbox"/> ≤ 60% AMGI <input type="checkbox"/> ≤ 80% AMGI <input type="checkbox"/> OI**	<b>c. Tax Exempt</b> <input type="checkbox"/>  <b>Income Status</b> <input type="checkbox"/> 50% AMGI <input type="checkbox"/> 60% AMGI <input type="checkbox"/> 80% AMGI <input type="checkbox"/> OI**	<b>d. AHDP</b> <input type="checkbox"/>  <b>Income Status</b> <input type="checkbox"/> 50% AMGI <input type="checkbox"/> 80% AMGI <input type="checkbox"/> OI**	<b>e.</b> <input type="checkbox"/> _____ <i>(Name of Program)</i>  <b>Income Status</b> <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> OI**
<b>**Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.</b>				

**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 Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE \_\_\_\_\_ DATE \_\_\_\_\_



**ANNUAL HOUSEHOLD TENANT CERTIFICATION UPDATE**  
 PLANNING AND HOUSING DEVELOPMENT DIVISION  
 SFN 59066 (06/18)

This form is used to report continued compliance activities with regard to the Restrictive Use Covenants for all properties, Years 1-30, and to document tenant household data required as part of the Housing and Recovery Act enacted on July 30, 2008. **After the initial move in, LIHTC properties shall use this form for all subsequent years.** This form shall be initiated no earlier than 120 days preceding the anniversary date of move-in and no later than the anniversary date of move-in for each tax credit qualified household.

**TENANT INFORMATION**

Property Name		Unit Number or Address	
Date this Form is Completed		Effective Date of this Form	
Current Rent Charged for this Unit \$		Tenant Paid Rent \$	
Subsidy <input type="checkbox"/> Yes <input type="checkbox"/> No	Type	Current Utility Allowance for this Unit \$	
Identify each member by name residing in the household (for unborn children, identify as "unborn child")		Date of Birth	Full-Time Student (Yes/No)
1.			
2.			
3.			
4.			
5.			
6.			
7.			
Has this Household transferred during the past year from another unit within the building or complex <input type="checkbox"/> Yes <input type="checkbox"/> No		If Household transferred from another unit, identify the unit they transferred from	
Household's Self-Certified Income for the next 12 Months \$		Does the income constitute an increase or a decrease from the prior year <input type="checkbox"/> Increase <input type="checkbox"/> Decrease	
Income Source(s) -- check all that are applicable <input type="checkbox"/> Any Wage <input type="checkbox"/> Pension <input type="checkbox"/> Social Security <input type="checkbox"/> SSI <input type="checkbox"/> Welfare <input type="checkbox"/> Other _____			

**RACIAL CATEGORIES (OPTIONAL)**

Providing one's race and ethnicity is an optional disclosure for applicants/tenants. Declining to do so will not affect your eligibility for this program. This is being tracked for informational purposes only.

Race (Mark corresponding box(es) and indicate number in household)		Ethnicity (Mark box(es) and indicate number in household)	
<input type="checkbox"/> White _____	<input type="checkbox"/> American Indian/Alaskan Native _____	<input type="checkbox"/> Hispanic or Latino _____	<input type="checkbox"/> Not Hispanic or Latino _____
<input type="checkbox"/> Black/African American _____	<input type="checkbox"/> Asian/Pacific Islander _____		
<input type="checkbox"/> Native Hawaiian _____	<input type="checkbox"/> Other multiple race combinations _____		
<input type="checkbox"/> Those electing to not disclose _____			

Tenant's Signature	Tenant's Signature
Manager's Signature	Date

If this household satisfied a requirement of the Restrictive Use Covenant (RUC), please indicate so below:		
<input type="checkbox"/> 30% AMGI Household	<input type="checkbox"/> 40% AMGI Household	<input type="checkbox"/> 50% AMGI Household
<input type="checkbox"/> 60% AMGI Household	<input type="checkbox"/> 140% AMGI Household	<input type="checkbox"/> Homeless Unit
<input type="checkbox"/> Disabled	<input type="checkbox"/> Elderly	

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**EXHIBIT D**  
**RESERVED**

**EXHIBIT E**  
**ANNUAL OWNER CERTIFICATION**

[SEE ATTACHED]





**LOW INCOME HOUSING TAX CREDIT  
ANNUAL OWNER CERTIFICATION**  
PLANNING AND HOUSING DEVELOPMENT DIVISION  
SFN 52744 (12/22)

Certification Dates From	To		
Project Name	Project Number	Tax ID Number of Ownership Entity	
Project Street Address	City	State	ZIP Code
<input type="checkbox"/> No buildings have been Placed-in-Service. <input type="checkbox"/> At least one building has been Placed-in-Service but owner elects to begin credit period in the following year. If either of the above applies, please check the appropriate box, and proceed to page 2 to sign and date this form			

The undersigned, an authorized agent on behalf of the Owner and Project listed above hereby certifies that:

1. The project meets the minimum requirements of: (check one) <input type="checkbox"/> 20 – 50 test under Section 42(g)(1)(A) of the Code <input type="checkbox"/> 40 – 60 test under Section 42(g)(1)(B) of the Code <input type="checkbox"/> Average income test under Section 42(g)(1)(C) of the Code <input type="checkbox"/> 15 – 40 test for "deep rent-skewed" projects under Section 42(g)(4) and 142(d)(4)(B) of the Code		
2. There has been <b>no change in the applicable fraction</b> as defined in Section 42(c)(1)(B) of the Code) for any building in the project. If "Change", list the applicable fraction to be reported to the IRS for <b>each building</b> in the project for the certification year on page 3.	<input type="checkbox"/> No Change	<input type="checkbox"/> Change
3. The owner has received an annual Tenant Income Certification from each low-income resident and documentation to support that certification, or the owner has a re-certification waiver letter from the IRS in good standing, has received an annual Tenant Income Certification from each low-income resident, and documentation to support the certification at their initial occupancy.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4. Each low-income unit in the project has been rent-restricted under Section 42(g)(2) of the Code	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5. No tenants in low-income units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Section 42.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6. No claim of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for this project. A claim of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616a(a)(1), or an adverse judgment from a federal court. Submit all claims that have been filed.	<input type="checkbox"/> No Finding	<input type="checkbox"/> Finding
7. Each building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the project. If "No", state nature of violation on page 3 and attach a copy of the violation report as required by 26 CFR 1.42-5 and any documentation of correction.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8. No request for protection under the Violence Against Women Act (VAWA) has been made by any tenant of this project.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9. There has been <b>no change in the eligible basis</b> (as defined in Section 42(d) of the Code) of any building in the project since last certification submission. If "Change", state nature of change (e.g., a common area has become commercial space, a fee is now charged for a tenant facility formerly provided without charge, or the project owner has received federal subsidies with respect to the project which had not been disclosed to the allocating authority in writing) on page 3.	<input type="checkbox"/> No Change	<input type="checkbox"/> Change
10. All tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
11. If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
12. If the income of tenants of a low-income unit in any building increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size in that building was or will be rented to residents having a qualifying income.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
13. There has been no change in the ownership or management of the project. If "Change", complete page 3 detailing the changes in ownership or management of the project.	<input type="checkbox"/> No Change	<input type="checkbox"/> Change
14. Pursuant to IRS Revenue Ruling 2004-82, has the owner evicted any residents, or refused to renew any leases except for good cause?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

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15. All low-income units in the project are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42 (j)(3)(B)(iii) of the Code).	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Homeless
16. An extended low-income housing commitment as described in section 42(h)(6) was in effect, including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment (not applicable to buildings with tax credits from years 1987-1989).	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
17. The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organizations" under Section 42(h)(5) of the code and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A

Note: Failure to complete this form in its entirety will result in noncompliance with program requirements. In addition, any individual other than an owner or general partner of the project is not permitted to sign this form, unless permitted by the state agency and a signed and notarized authorized form must be on file. See [Designation of Authorized Representative](#).

The project is otherwise in compliance with the Code, including any Treasury Regulations, the applicable State Allocation Plan, and all other applicable laws, rules and regulations. This Certification and any attachments are made UNDER PENALTY OF PERJURY.

Ownership Entity	Date
By	Title

**PLEASE EXPLAIN ANY ITEMS THAT WERE ANSWERED “NO”, “CHANGE” OR “FINDING” ON QUESTIONS 1-14**

Question Number	Explanation

**CHANGES IN OWNERSHIP OR MANAGEMENT** (Complete **ONLY** IF “CHANGE” is marked in question 13 above)

**TRANSFER OF OWNERSHIP**

Date of Change	Taxpayer ID Number	
Legal Owner Number	General Partnership	Status of Partnership (LLC, etc.)

**CHANGE IN OWNER CONTACT**

Date of Change	Owner Contact	
Owner Contact Telephone Number	Owner Contact Fax Number	Owner Contact Email Address

**CHANGE IN MANAGEMENT CONTACT**

Date of Change	Management Company Name	
Management Company Address		
City	State	ZIP Code
Management Contact		Management Contact Telephone Number
Management Contact Fax Number		Management Contact Email Address

**EXHIBIT F**

**CERTIFICATION OF CONTINUING COMPLIANCE**

Wilmington Trust, National Association  
50 South Sixth Street, Suite 1290  
Minneapolis, Minnesota 55402  
Attention: Corporate Trust Services

Witnesseth that on this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the undersigned (“Borrower”), having received proceeds of the Multifamily Revenue Bonds (Lashkowitz Riverfront 4), Series 2024 and Series 2024B (the “Bonds”) issued by the North Dakota Housing Finance Agency (the “Issuer”) for the purpose of financing a multifamily housing development located in the City of Fargo, North Dakota (the “Project”) does hereby certify that the Project is in continuing compliance with the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of July 1, 2024 (the “Regulatory Agreement”), executed by the Borrower, with respect thereto and filed in the official public records of Cass County, North Dakota (including the requirement that all units be and remain rental units) and that a copy of the annual certification required to be filed pursuant to Section 4(e) of the Regulatory Agreement is attached hereto. The Borrower certifies that as of the date hereof at least 40% of the residential dwelling units in the Project are occupied or held open for occupancy by Lower Income Tenants, as defined and provided in the Regulatory Agreement.

**LASHKOWITZ RIVERFRONT FOUR, LLLP,**  
a North Dakota limited liability limited partnership

By: Lashkowitz BL Four GP, LLC,  
a North Dakota limited liability company  
Its: Managing General Partner

By: BlueLine, LLC,  
a Montana limited liability company  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Nathan Richmond  
Its Member

**EXHIBIT G**  
**RESERVED**



June 26, 2024

TO: Industrial Commission

FR: David Flohr, Executive Director

RE: **Issuance of Multifamily Revenue Bonds- Lashkowitz Riverfront 9**

The North Dakota Housing Finance Agency requests **that the Industrial Commission approve the issuance of multifamily revenue bonds Lashkowitz Riverfront 9 Series 2024A and 2024 B, in an aggregate amount not to exceed \$5,000,000.**

Fargo Housing and Redevelopment Authority, a North Dakota Housing Authority, demolished the existing 248-unit public housing complex known as the Lashkowitz Highrise and will replace it with the new construction of 110 units to be developed as a twin 4 percent/9 percent transaction. The 9 percent transaction includes 27 units financed using the 9 percent competitive credits and a taxable bond issuance. The 4 percent transaction, for which tax-exempt bonds will be issued, will consist of 83 units and comprise floors 2-4. This transaction will remove units from public housing and replace with traditional affordable housing as part of a repositioning strategy.

Total development costs for the entire deal is nearly \$38.5 million with about a 25/75 percent split between the 9% and 4% cost allocations. The total tax credit equity investment is projected to be over \$16 million. Co Developers BlueLine Development and Fargo Housing And Redevelopment Authority, lender is LUMENT/ORIX Real Estate Capital, LLC, and Equity Investor WNC.

The 9% issuance will have two series, a short term and long term. The total aggregate amount not to exceed a total principal amount of \$5,000,000 Series 2024A (18-yr maturity) and Series 2024B (paid off at conversion - earlier of 90% occupancy or 36 months)

The transaction is structured as a taxable privately placed bond issuance, proceeds from which will be used for construction financing. The Agency has conditionally committed \$724,000 in 9% Low-Income Housing Tax Credits which will bring in around \$6.1 million credit equity.

The operative documents for the taxable bond transaction are:

- (a) A resolution authorizing the issuance of tax-exempt multifamily revenue bonds Series 2024 A and Series 2024B, in an aggregate principal amount not to exceed \$5,000,000
- (b) Trust Indenture
- (c) Financing Agreement

The Commission, by executing the authorizing resolution, is approving the operative documents in their respective current forms and authorizing the Executive Director and Chief Financial Officer (Authorized Officers) to execute the documents in their respective current forms with such changes as are consistent with the parameters set forth in the authorizing resolution and approved by the Authorized Officers, such approval being evidenced by an Authorized Officer's execution of the documents.

STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 9)  
SERIES 2024A

STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 9)  
SERIES 2024B

**A RESOLUTION AUTHORIZING THE ABOVE CAPTIONED INDEBTEDNESS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$5,000,000; APPROVING THE FORM OF CERTAIN FINANCING DOCUMENTS AND OTHER RELATED DOCUMENTS; AUTHORIZING THE EXECUTION OF SUCH DOCUMENTS; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.**

WHEREAS, the Industrial Commission of North Dakota (the “Commission”) acting in its capacity as the North Dakota Housing Finance Agency (the “Agency”), is empowered by the provisions of the North Dakota Century Code Chapter 54-17 (the “Act”) to provide financing, directly or indirectly, of construction, permanent and combined construction and permanent loans for the acquisition, construction, refurbishing, reconstruction, construction or improvement of multifamily residential housing in which at least twenty percent of the units are held for occupancy by persons or families of low and moderate income; and

WHEREAS, the Agency intends to issue its Multifamily Revenue Bonds (Lashkowitz Riverfront 9), Series 2024A, and its Multifamily Revenue Bonds (Lashkowitz Riverfront 9), Series 2024B (the “Bonds”), in an aggregate principal amount not to exceed \$5,000,000, the proceeds of which will be used to finance a loan for the acquisition, construction and equipping of Lashkowitz Riverfront 9, a 27-unit multifamily residential rental project (the “Project”); and

WHEREAS, the Bonds will be issued pursuant to a Trust Indenture (the “Indenture”), between the Agency and Wilmington Trust, National Association, in its capacity as trustee (the “Trustee”), which will be in substantially the form attached hereto as Attachment A, whereby the Agency would be authorized to issue the Bonds subject to the terms, conditions and limitations established herein and in the Indenture; and

WHEREAS, the Bonds will be sold and delivered to ORIX Public Finance, LLC (the “Purchaser”) in the manner, at the purchase price and on the terms and conditions set forth in the Indenture; and

WHEREAS, the proceeds of the Bonds will be used to finance a loan (the “Bond Loan”) to Lashkowitz Riverfront Nine, LLLP, a North Dakota limited liability limited partnership, or another affiliate thereof (the “Borrower”), pursuant to a Financing Agreement, by and among the



Agency, the Trustee, and the Borrower (the “Financing Agreement”), which will be in substantially the form attached hereto as Attachment B.

NOW, THEREFORE, BE IT RESOLVED:

**Section 1. Findings.** The Commission hereby finds and determines that:

- (a) the Project financed through the issuance of the Bonds constitutes a “multifamily housing facility” within the meaning of Sections 54-17-07.2 and 54-17-07.3(3) of the Act; and
- (b) the Bond Loan will provide the Borrower with financing for the acquisition, construction, refurbishing, reconstruction, construction or improvement of the Project; and
- (c) that the Project will be of public use and will provide a public benefit.

**Section 2. Approval of Indenture.** The Indenture is hereby approved in the form hereinabove described, and the Executive Director, the Director of Planning and Housing Development or the Chief Financial Officer of the Agency (each, including any individual authorized to act on his or her behalf, an “Authorized Officer”) is hereby authorized and directed to execute and deliver the Indenture, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Indenture, and any other Authorized Officer is hereby authorized and directed to attest thereto.

**Section 3. Authorization and Sale of Bonds.** The issuance, sale and delivery of the Bonds to ORIX Public Finance, LLC (the “Purchaser”) are hereby authorized and approved. The final principal amount and terms of the Bonds shall be determined by any Authorized Officer, subject to the following conditions:

- (a) The Bonds shall not be general obligations of the Commission or the Agency but shall be limited obligations payable solely and only from moneys pledged under the Indenture as required by the Financing Agreement.
- (b) The Bonds shall mature no later than July 1, 2054, bear interest at a fixed rate or rates not to exceed 12% per annum, be in an aggregate principal amount not to exceed \$5,000,000, be sold to the Purchaser at not less than 100% of the principal amount thereof and have the other terms and provisions (including provisions with respect to the redemption of the Bonds prior to maturity, if any) as described to the Commission and definitively set forth in the Indenture upon execution and delivery as aforesaid in Section 2 hereof.
- (c) The Bonds shall be executed and delivered substantially in the forms set forth in the Indenture, with such additions, omissions and changes as are required or permitted by the Indenture.
- (d) The Bonds shall be executed in the name of the Commission by the manual or facsimile signature of each of the members of the Commission, with the official seal of the Commission (or a facsimile thereof) impressed, imprinted or otherwise reproduced

thereon, and attested by the manual or facsimile signature of any Authorized Officer, and their execution shall evidence their approval of the final terms thereof. Such Bonds shall not be valid or obligatory for any purpose until authenticated by the manual signature of an authorized officer of the Trustee.

**Section 4. Approval of Financing Agreement.** The Financing Agreement is hereby approved in the form hereinabove described, and any Authorized Officer is hereby authorized to execute and deliver the Financing Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Financing Agreement.

**Section 5. Approval of Regulatory Agreement.** The Regulatory Agreement is hereby approved in the form hereinabove described, and any Authorized Officer is hereby authorized to execute and deliver the Regulatory Agreement, with such changes, insertions or omissions therein as may be approved by such person, such approval to be evidenced conclusively by such execution of the Regulatory Agreement.

**Section 6. Ratification of Prior Actions.** All action previously taken by the officers, members or staff of the Agency within the authority granted herein, with respect to the Indenture, the Financing Agreement, and the Bonds is approved.

**Section 7. Additional Actions Authorized.** Any Authorized Officer and any other officer, employee, agent, members or staff of the Agency, acting alone or acting with others, are each hereby authorized and directed to execute and deliver any or all other documents which may be required under the terms of the Indenture, the Financing Agreement, or the Regulatory Agreement, and to take such other action as may be required or appropriate for the performance of the duties imposed thereby or to carry out the purposes thereof.

**Section 8. Authorization of Authorized Officers.** Any Authorized Officer is hereby authorized to deliver an Agency Certificate, or such other document as may be necessary or appropriate, at the time of issuance of the Bonds which cures ambiguities, defects or omissions herein, corrects or supplements any provision herein, lessens the obligations of the Agency hereunder, or adds to the rights or options of the Agency, all in furtherance of the purposes and programs of the Agency.

**Section 9. Effective Date.** This Resolution shall become effective immediately.

IN WITNESS WHEREOF, this Resolution has been signed on June \_\_, 2024.

INDUSTRIAL COMMISSION OF NORTH DAKOTA ACTING AS THE  
NORTH DAKOTA HOUSING FINANCE AGENCY

---

Doug Burgum, Governor

---

Drew Wrigley, Attorney General

---

Doug Goehring, Agriculture Commissioner

Attest:

---

Karen Tyler  
Interim Executive Director and Secretary

**ATTACHMENT A**  
**FORM OF TRUST INDENTURE**

**ATTACHMENT B**  
**FORM OF FINANCING AGREEMENT**

**TRUST INDENTURE**

**between**

**STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY,  
as Issuer**

**and**

**WILMINGTON TRUST, NATIONAL ASSOCIATION,  
as Trustee**

**Relating to**

**[\$2,200,000]  
STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 9)  
SERIES 2024A**

**[\$2,800,000]  
STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 9)  
SERIES 2024B**

**Dated as of July 1, 2024**

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EXHIBIT E	BOND MORTGAGE LOAN FUND REQUISITION	

## TRUST INDENTURE

**THIS TRUST INDENTURE** (this “**Indenture**”), is made and entered into as of July 1, 2024, by and between the **INDUSTRIAL COMMISSION OF NORTH DAKOTA** (the “**Commission**”) acting in its capacity as the **NORTH DAKOTA HOUSING FINANCE AGENCY** (the “**Issuer**”), a public instrumentality and agency of the State of North Dakota organized and existing under the laws of the State of North Dakota (the “**State**”), and **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association, organized and operating under the laws of the United States of America and authorized to accept and execute trusts of the character herein set out, having a corporate trust office in Minneapolis, Minnesota, as trustee (the “**Trustee**”). Capitalized terms are defined in Section 1.01 of this Indenture.

### RECITALS

**A.** Pursuant to Chapter 54-17 of the North Dakota Century Code, as amended (the “**Act**”) and this Indenture, the Issuer has determined to issue its Multifamily Revenue Bonds (Lashkowitz Riverfront 9), Series 2024A (the “**Series 2024A Bonds**”) in the maximum aggregate principal amount of \$[2,200,000] and its Multifamily Revenue Bonds (Lashkowitz Riverfront 9), Series 2024B (the “**Series 2024B Bonds**,” and together with the Series 2024A Bonds, the “**Bonds**”) in the maximum aggregate principal amount of \$[2,800,000], to provide for the financing of a multifamily rental housing development located at 101 2nd St S in Fargo, North Dakota known as Lashkowitz Riverfront 9 (the “**Project**”).

**B.** Pursuant to a Financing Agreement dated as of the date hereof (the “**Financing Agreement**”) among the Issuer, Lashkowitz Riverfront Nine, LLLP, a limited liability limited partnership duly organized and existing under the laws of the State of North Dakota (the “**Borrower**”), and the Trustee, the Issuer has agreed to use the proceeds derived from the sale of Bonds to make a mortgage loan in the principal amount of \$[5,000,000] (the “**Bond Mortgage Loan**”) to the Borrower in connection with the Project.

**C.** The Borrower has agreed to use the proceeds of the Bond Mortgage Loan to finance the acquisition, rehabilitation and/or construction of the Project and to pay certain costs of issuance of the Bonds.

**D.** The Borrower’s repayment obligations in respect of the Bond Mortgage Loan will be evidenced by two Bond Mortgage Notes, each dated the Delivery Date (together with all riders and addenda thereto, the “**Bond Mortgage Note**”) and delivered to the Issuer, which Bond Mortgage Note will be endorsed by the Issuer to the Trustee for the benefit of the holders of the Bonds from time to time.

**E.** ORIX Public Finance, LLC (“**ORIX**”) has agreed to facilitate the financing of the Project by purchasing all of the Bonds on the Delivery Date.

**F.** ORIX will act as initial Bondholder Representative with respect to the Bonds (in such capacity and any successor in such capacity, the “**Bondholder Representative**”).

**G.** To secure the Borrower’s obligations under the Bond Mortgage Note, the Borrower will execute and deliver to the Issuer a Multifamily Mortgage, Security Agreement,

Assignment of Leases and Rents and Fixture Filing dated as of the Delivery Date (the “**Bond Mortgage**”) with respect to the Project. Pursuant to the Assignment, the Bond Mortgage will be assigned by the Issuer to the Trustee.

**H.** The Borrower and the Bondholder Representative are entering into (i) a Continuing Covenant Agreement dated as of the date hereof (the “**Continuing Covenant Agreement**”), which sets forth various covenants with respect to the Borrower and Project, and (ii) a Construction Funding Agreement dated as of the date hereof (the “**Construction Funding Agreement**”), which sets forth conditions to disbursement of the proceeds of the Bond Mortgage Loan to the Borrower.

**I.** The Issuer has determined that all things necessary to make the Bonds, when executed by the Issuer and authenticated by the Trustee and issued in accordance with this Indenture, the valid, binding and legal obligations of the Issuer and to constitute this Indenture a valid lien on the properties, interests, revenues and payments herein pledged to the payment of the principal of, premium, if any, and interest on, the Bonds, have been duly taken, and the creation, execution and delivery of this Indenture and the execution and delivery of the Bonds, subject to the terms of this Indenture, have been duly authorized by the Issuer.

**J.** The Trustee has trust powers and the power and authority to enter into this Indenture, to accept trusts generally and to accept and execute the trust created by this Indenture; the Trustee has accepted the trust so created and, to evidence such acceptance, has joined in the execution of this Indenture.

**NOW, THEREFORE**, the Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the holders and owners thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect, and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, and the payment and performance of all amounts and obligations under the Continuing Covenant Agreement and the other Bond Mortgage Loan Documents, does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Trustee, and its successors in trust and its and their assigns in and to the following (said property being herein referred to as the “**Trust Estate**”), to wit:

#### **GRANTING CLAUSE FIRST**

All right, title and interest of the Issuer in and to all Revenues.

#### **GRANTING CLAUSE SECOND**

All right, title and interest of the Issuer in and to the Financing Agreement, the Bond Mortgage Note, the Bond Mortgage and the other Bond Mortgage Loan Documents (other than the Unassigned Rights), including all extensions and renewals of the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance benefits or condemnation awards), whether payable under the above-referenced documents or otherwise, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all

things which the Issuer or any other Person is or may become entitled to do under said documents.

### **GRANTING CLAUSE THIRD**

Except for funds, money or securities in the Cost of Issuance Fund and the Administration Fund, all funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Bonds by the Issuer or by anyone on its behalf or with its written consent to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in said trust and to them and their assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all Holders of the Bonds issued under and secured by this Indenture without privilege, priority or distinction as to lien or otherwise of any of the Bonds over any of the other Bonds, except as set forth in this Indenture;

PROVIDED, HOWEVER, that if the Issuer or its successors or assigns shall pay or cause to be paid to the Holders of the Bonds the principal, interest and premium, if any, to become due thereon at the times and in the manner provided in Article IX hereof, and if the Issuer shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then these presents and the estate and rights hereby granted shall, at the option of the Issuer, cease, terminate and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.09, 4.11 and 4.12 hereof and Article IX hereof, reconvey to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer any property at the time subject to the lien of this Indenture which may then be in its possession, except for cash held by the Trustee for the payment of interest on and principal of the Bonds; otherwise this Indenture to be and remain in full force and effect and upon the trusts and subject to the covenants and conditions hereinafter set forth.

AND IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto, that the terms and provisions upon which the Bonds are to be issued, executed, authenticated, delivered and secured, and the trusts and conditions upon which the Trust Estate is to be held and disposed of, which said trusts and conditions the Trustee hereby accepts and agrees to discharge, are as follows (except that in the performance of the agreements of the Issuer herein contained, any obligation it may thereby incur for the payment of money shall not be a general obligation of the Issuer nor a debt or pledge of the faith and credit of the Issuer or the State, but shall be payable solely from the revenues and funds pledged for its payment in accordance with this Indenture):

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** The terms used in this Indenture (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified below. Terms used herein not otherwise defined shall have the respective meanings set forth in the Financing Agreement and the Continuing Covenant Agreement.

“*Act*” means Chapter 54-17 of the North Dakota Century Code, as amended.

“*Administration Fund*” means the Administration Fund established by the Trustee pursuant to Section 4.01 hereof.

“*Advance Termination Date*” means the earliest to occur of (i) the date when the sum of the aggregate advances of the Bonds made by the Bondholder Representative equals the Authorized Amount, (ii) the date that is [three] years after the Delivery Date, (iii) the Outside Conversion Date, (iv) the Conversion Date, (v) or (v) the occurrence of an Event of Default hereunder.

“*Assignment*” means the Assignment of Security Instrument dated as of the date hereof by the Issuer assigning its interest in the Bond Mortgage to the Trustee and the Bondholder Representative, as their interests may appear.

“*Authorized Amount*” shall mean \$[\_\_\_\_\_], the maximum principal amount of the Bonds authorized under this Indenture.

“*Authorized Denomination*” means \$25,000 principal amount and any integral multiple of \$5,000 in excess thereof.

“*Authorized Officer*” means (a) when used with respect to the Issuer, the Chairman or any member of the Commission, the Executive Director or Chief Financial Officer of the Issuer and such additional Person or Persons, if any, duly designated by the Issuer in writing to act on its behalf, (b) when used with respect to the Borrower, any [\_\_\_\_\_] of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, (c) when used with respect to the Trustee, any authorized signatory of the Trustee, or any Person who is authorized in writing to take the action in question on behalf of the Trustee, (d) when used with respect to the Servicer, any Person or Persons duly designated by the Servicer in writing to act on its behalf, and (e) when used with respect to the Bondholder Representative, any Person who is authorized in writing to take the action in question on behalf of the Bondholder Representative.

“*Bankruptcy Code*” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor federal statute.

“*Bond Fee Component*” means the regular, ongoing fees due from time to time to the Issuer and the Trustee, expressed as a flat, fixed amount or in terms of a percentage of the principal amount of Outstanding Bonds on an annual basis.

“*Bond Financing Documents*” means, collectively, this Indenture, the Bonds, the Bond Mortgage Loan Documents and all other documents or instruments evidencing, securing or relating to the Bonds.

“*Bond Fund*” means the Bond Fund established by the Trustee pursuant to Section 4.01 hereof.

“*Bond Interest Rate*” means the interest rate of [\_\_\_\_\_] % per annum with respect to the Series 2024A Bonds and [\_\_\_\_\_] % per annum with respect to the Series 2024B Bonds; provided during the continuance of any Event of Default hereunder, the Bond Interest Rate shall be the Default Rate.

“*Bond Mortgage*” means the Multifamily Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of the Delivery Date, together with all riders and addenda thereto, granting a first priority mortgage and security interest in the Project to the Issuer to secure the repayment of the Bond Mortgage Loan and related obligations, which Bond Mortgage has been assigned by the Issuer to the Trustee, as the same may be amended, supplemented or restated.

“*Bond Mortgage Loan*” means the loan made by the Issuer to the Borrower in the original principal amount of \$[5,000,000] pursuant to the Financing Agreement.

“*Bond Mortgage Loan Documents*” means the Bond Mortgage, the Bond Mortgage Note, the Financing Agreement, the Assignment, the Continuing Covenant Agreement, the Construction Funding Agreement and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Bond Mortgage Loan or any portion thereof, including the other Financing Documents.

“*Bond Mortgage Loan Fund*” means the Bond Mortgage Loan Fund established by the Trustee pursuant to Section 2.11 hereof.

“*Bond Mortgage Note*” means the Series 2024A Bond Mortgage Note and the Series 2024B Bond Mortgage Note, each dated the Delivery Date from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the Bond Mortgage Loan, as the same may be amended, supplemented or restated from time to time, which Bond Mortgage Note will be delivered to the Issuer and endorsed by the Issuer to the Trustee.

“*Bond Register*” means the books or other records maintained by the Bond Registrar setting forth the registered Holders from time to time of the Bonds.

“*Bond Registrar*” means the Trustee acting as such, and any other bond registrar appointed pursuant to this Indenture.

“*Bond Resolution*” means the resolution(s) adopted by the Issuer authorizing the issuance of the Bonds.

“*Bondholder*” or “*Holder*” or “*Owner*” means any Person who shall be the registered owner of any Outstanding Bond or Bonds.

“*Bonds*” means, collectively, the Series 2024A Bonds and the Series 2024B Bonds, issued pursuant to the provisions of this Indenture.

“*Bondholder Representative*” means the Person or Persons designated by the Majority Bondholder to act on behalf of all of the Bondholders as provided in Section 11.06, or an assignee of such Person or Persons as provided in Section 11.06. The initial Bondholder Representative shall be ORIX Public Finance, LLC.

“*Borrower*” means Lashkowitz Riverfront Nine, LLLP, a limited liability limited partnership duly organized and existing under the laws of the State of North Dakota, or any of its permitted successors or assigns, as owner of the Project.

“*Borrower Equity Account*” means the Borrower Equity Account of the Bond Mortgage Loan Fund established by the Trustee pursuant to Section 2.11 hereof.

“*Borrower Equity Deposit*” means \$[\_\_\_\_\_], which shall be comprised of sources other than the proceeds of the Bonds.

“*Business Day*” means any day other than (a) a Saturday or a Sunday, or (b) a day on which (i) trust companies or banking institutions in the City of New York, Wilmington, Delaware, or in the city in which the Principal Office of the Trustee is located are authorized or obligated by law, regulation, or executive order to be closed or (ii) the New York Stock Exchange is closed.

“*Certificate of the Issuer*” and “*Request of the Issuer*” mean, respectively, a written certificate or request signed in the name of the Issuer by an Authorized Officer of the Issuer or such other Person as may be designated and authorized to sign for the Issuer. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

“*Code*” means the Internal Revenue Code of 1986 and the regulations promulgated thereunder.

“*Continuing Covenant Agreement*” means the Continuing Covenant Agreement dated as of the date hereof by and between the Borrower and the Bondholder Representative, as the same may be amended, modified or supplemented from time to time.

“*Cost of Issuance Fund*” means the Cost of Issuance Fund established by the Trustee pursuant to Section 4.01 hereof.

“*Costs of Issuance*” means, as applicable, (i) the fees (excluding ongoing fees), costs and expenses of (a) the Issuer, the Issuer’s counsel and the Issuer’s financial advisor, (b) Reserved, (c) the Trustee and the Trustee’s counsel, (d) the Bondholder Representative and the Bondholder Representative’s counsel, and (e) Borrower’s counsel attributable to the issuance of the Bonds and the Borrower’s financial advisor, if any, and (ii) all other fees, costs and expenses directly associated with the authorization, issuance, sale and delivery of the Bonds, including, without limitation, printing costs, costs of reproducing documents, filing and recording fees.



“*Costs of Issuance Deposit*” means the deposit to be made by the Borrower with the Trustee on the Delivery Date, which deposit shall equal \$[ ] and shall be comprised of sources other than the proceeds of the Bonds.

“*Default Rate*” means the lower of (i) the Bond Interest Rate otherwise in effect notwithstanding the default plus five percent (5%) per annum or (ii) the maximum rate allowed by law.

“*Delivery Date*” means [ ], the date of initial issuance and delivery of the Bonds.

“*DTC*” means The Depository Trust Company, New York, New York, as initial Securities Depository for the Bonds pursuant to Section 2.12 hereof or its successors.

“*Electronic Notice*” means delivery of notice in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.05 hereof; provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 11.05 hereof.

“*Event of Default*” or “*event of default*” means any of those events specified in and defined by the applicable provisions of Article VI hereof to constitute an event of default.

“*Extraordinary Services*” means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by the Trustee, including in its capacity as Paying Agent and Bond Registrar, in respect of or to prevent default under this Indenture or the Bond Mortgage Loan Documents, including any reasonable attorneys’ or agents’ fees and expenses and other litigation costs that are entitled to reimbursement under the terms of the Financing Agreement, and other actions taken and carried out by the Trustee which are not expressly set forth in this Indenture or the Bond Mortgage Loan Documents.

“*Extraordinary Trustee’s Fees and Expenses*” means all those fees, expenses and disbursements earned or incurred by the Trustee as described under Section 7.06 hereof for Extraordinary Services, as set forth in a detailed invoice to the Borrower, the Servicer and the Bondholder Representative.

“*Fair Market Value*” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (c) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (d) any commingled investment fund in which the Issuer and related parties do not own more

than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

“*Financing Agreement*” means the Financing Agreement dated as of the date hereof among the Borrower, the Issuer and the Trustee, as such Financing Agreement may from time to time be amended or supplemented.

“*Financing Documents*” has the meaning set forth in the Continuing Covenant Agreement.

“*Government Obligations*” means investments meeting the requirements of clause (a) or (b) of the definition of “Qualified Investments” herein.

“*Impositions*” has the meaning set forth in the Continuing Covenant Agreement.

“*Indenture*” means this Trust Indenture, as the same may have been from time to time amended or modified, together with any other indentures supplemental hereto.

“*Information Service*” means in accordance with then-current guidelines of the Securities and Exchange Commission, the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934, or any successor entity or entities designated by the Securities and Exchange Commission.

“*Initial Debt Service Deposit*” means an amount equal to the interest payable on the Bonds for the period commencing on the Delivery Date to but not including the first day of the calendar month immediately succeeding the Delivery Date.

“*Interest Payment Date*” means (i) the first day of each calendar month, commencing [September 1, 2024], (ii) for Bonds subject to redemption but only with respect to such Bonds, the date of redemption (or purchase in lieu of redemption), and (iii) the Maturity Date.

“*Investment Income*” means the earnings and profits derived from the investment of money pursuant to Section 4.08 hereof.

“*Issuer*” means the Industrial Commission of North Dakota acting in its capacity as the North Dakota Housing Finance Agency, a public instrumentality and agency of the State of North Dakota.

“*Issuer Fee*” means the closing fee of the Issuer of \$62,500, payable by the Borrower on the Delivery Date.

“*Loan Equalization Payment*” means a mandatory prepayment of the Bond Mortgage Loan in the amount determined by the Bondholder Representative pursuant to the Construction Funding Agreement.

“*Mandatory Sinking Fund Schedule*” means the Mandatory Sinking Fund Schedule attached hereto as Schedule 1.

“*Majority Bondholder*” means the Bondholder or Bondholders holding, in the aggregate, more than fifty percent (50%) in aggregate principal amount of a series of Bonds Outstanding, as of any date of determination.

“*Maturity Date*” means [\_\_\_\_\_] with respect to the Series 2024A Bonds and [\_\_\_\_\_] with respect to the Series 2024B Bonds.

“*Moody’s*” means Moody’s Investors Service, Inc., its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“*Net Proceeds*” when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of such insurance proceeds or condemnation award, including reasonable attorneys’ fees.

“*Ordinary Trustee’s Fees and Expenses*” means the annual administration fee for the Trustee’s ordinary fees and expenses in rendering its services under this Indenture during each twelve-month period, which fee is equal to (and shall not exceed) \$2,500 and shall be payable annually in advance on the Delivery Date and each anniversary thereof thereafter.

“*Outstanding*” when used with respect to the Bonds or “Bonds Outstanding” means, as of any date, all Bonds that have been duly authenticated and delivered by the Trustee under this Indenture, except:

(i) Bonds surrendered and replaced upon exchange or transfer, or cancelled because of payment or redemption, at or prior to such date;

(ii) Bonds for the payment, redemption or purchase for cancellation of which sufficient money has been deposited prior to such date with the Trustee (whether upon or prior to the maturity, amortization or redemption date of any such Bonds), or which are deemed to have been paid and discharged pursuant to the provisions of Section 9.01 hereof; provided that if such Bonds are to be redeemed prior to the maturity thereof, other than by scheduled amortization, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee shall have been filed with the Trustee; and

(iii) Bonds in lieu of which others have been authenticated (or payment, when due, of which is made without replacement) under Section 2.07 hereof; and also except that

(iv) For the purpose of determining whether the holders of the requisite amount of Bonds Outstanding have made or concurred in any notice, request, demand, direction, consent, approval, order, waiver, acceptance, appointment or other instrument or communication under or pursuant to this Indenture, Bonds known to the Trustee to be owned by or for the account of the Borrower or any Person owned, controlled by, under common control with or controlling the Borrower shall be disregarded and deemed to be not Outstanding, unless all Bonds shall be so owned, and provided that the Trustee has knowledge of the foregoing. The term “control” (including the terms “controlling”, “controlled by” and “under common control with”) means the possession, directly or

indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. Beneficial ownership of 5% or more of a class of securities having general voting power to elect a majority of the board of directors of a corporation shall be conclusive evidence of control of such corporation.

“*Paying Agent*” means the Trustee acting as such, or any other paying agent appointed pursuant to this Indenture.

“*Person*” means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated association, a limited liability company or a government or any agency or political subdivision thereof, or any other organization or entity (whether governmental or private).

“*Prepayment Premium*” shall mean any premium payable by the Borrower under the Bond Mortgage Note in connection with a prepayment of the Bond Mortgage Loan.

“*Principal Office of the Trustee*” means the office of the Trustee referenced in Section 11.05(a) hereof, or such other office or offices as the Trustee may designate in writing from time to time, or the office of any successor Trustee where it principally conducts its business of serving as trustee under indentures pursuant to which municipal or governmental obligations are issued.

“*Project*” means, collectively, the leasehold and residential rental apartment units, and related fixtures, equipment, furnishings and site improvements known as Lashkowitz Riverfront 9 located at 101 2nd Street South in Fargo, North Dakota, including the leasehold interest described in the Bond Mortgage.

“*Project Account*” means the Project Account of the Bond Mortgage Loan Fund established by the Trustee pursuant to Section 2.11 hereof.

“*Qualified Investments*” means any of the following if and to the extent permitted by law: (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of Fannie Mae; (e) demand deposits or time deposits with, or certificates of deposit issued by, the Trustee or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Trustee or such other institution has been rated at least “VMIG-1”/“A-1+” by Moody’s or S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency; (f) investment agreements with a bank or any insurance company or other financial institution which has a rating assigned by Moody’s or S&P to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by Moody’s or S&P, and which are approved by the Bondholder Representative; (g) shares or units in any money market mutual fund rated “Aaa”/“AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating

category given by the Rating Agency for that general category of security) (including mutual funds of the Trustee or its affiliates or for which the Trustee or an affiliate thereof serves as investment advisor or provides other services to such mutual fund receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax exempt obligations; (h)(i) tax-exempt obligations rated in the highest short term rating category by Moody's or S&P, or (ii) shares of a tax-exempt municipal money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating of "Aaa"/"AAA" by Moody's or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security), for which at least 95% of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Trustee or its affiliates receive a fee for investment advisory or other services to the fund; or (i) any other investments approved in writing by the Bondholder Representative. For purposes of this definition, the "highest rating" shall mean a rating of at least "VMIG-1"/"A-1+" for obligations with less than one year maturity; at least "Aaa"/"VMIG-1"/"AAA"/"A-1+" for obligations with a maturity of one year or greater but less than three years; and at least "Aaa"/"AAA" for obligations with a maturity of three years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index.

"*Rating Agency*" means Moody's or S&P, as applicable, or any successor rating service thereof.

"*Record Date*" means the 15th day of the month preceding the month in which any Interest Payment Date falls.

"*Redemption Fund*" means the Redemption Fund established by the Trustee pursuant to Section 4.01 hereof.

"*Replacement Reserve Fund*" means the fund of that name created pursuant to Section 4.01(g) hereof.

"*Requisition*" means, with respect to the Bond Mortgage Loan Fund, the requisition in the form of *Exhibit E* to this Indenture required to be submitted in connection with disbursements from the Project Account and/or the Borrower Equity Account of the Bond Mortgage Loan Fund, and with respect to the Cost of Issuance Fund, the requisition in the form of *Exhibit D* to this Indenture required to be submitted in connection with disbursements from the Cost of Issuance Fund.

"*Responsible Officer*" means any officer of the Trustee employed within or otherwise having regular responsibility in connection with the corporate trust department of the Trustee and the trusts created hereunder.

“*Revenue Fund*” means the Revenue Fund established by the Trustee pursuant to Section 4.01 hereof.

“*Revenues*” means (a) all payments made with respect to the Bond Mortgage Loan pursuant to the Financing Agreement, the Bond Mortgage Note or the Bond Mortgage, including but not limited to all casualty or other insurance benefits and condemnation awards paid in connection therewith and all payments obtained through the exercise of remedies under the Bond Financing Documents, and (b) all money and securities held by the Trustee in the funds and accounts established pursuant to this Indenture (excluding money or securities designated for deposit into and held in the Cost of Issuance Fund and the Administration Fund), together with all investment earnings thereon.

“*S&P*” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“*Securities Depository*” means (a) The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, facsimile: (516) 227-4039 or (516) 227-4190; or (b) any replacement registered securities depository which has been designated in a certificate of the Issuer delivered to the Trustee and the Bondholder Representative pursuant to Section 2.12 hereof.

“*Series 2024A Bond Mortgage Note*” means that promissory note dated the Delivery Date in the original principal amount of \$[2,200,000] by the Borrower in favor of the Issuer, as it may be amended or supplemented from time to time.

“*Series 2024A Bonds*” means the Issuer’s Multifamily Revenue Bonds (Lashkowitz Riverfront 9), Series 2024A.

“*Series 2024B Bond Mortgage Note*” means that promissory note dated the Delivery Date in the original principal amount of \$[2,800,000] by the Borrower in favor of the Issuer, as it may be amended or supplemented from time to time.

“*Series 2024B Bonds*” means the Issuer’s Multifamily Revenue Bonds (Lashkowitz Riverfront 9), Series 2024B.

“*Servicer*” means any entity appointed by the Bondholder Representative to service the Bond Mortgage Loan and any successor in such capacity as appointed by the Bondholder Representative pursuant to Section 3.02 of the Financing Agreement. Initially, the Bondholder Representative shall be the Servicer.

“*State*” means the State of North Dakota.

“*Tax and Insurance Escrow Fund*” means the fund of that name created pursuant to Section 4.01(h) hereof.

“*Trustee*” means Wilmington Trust, National Association and its successors in trust hereunder.

“*Trust Estate*” shall have the meaning given to that term in the granting clauses of this Indenture.

“*Unassigned Rights*” means all of the rights of the Issuer and its directors, officers, commissioners, elected officials, attorneys, accountants, employees, agents and consultants to be held harmless and indemnified, to be paid its fees and expenses, to give or withhold consent to amendments, changes, modifications and alterations, to receive notices and the right to enforce such rights.

**Section 1.02 Interpretation.** The words “hereof,” “herein,” “hereunder,” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. 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. References to Articles, Sections, and other subdivisions of this Indenture are to the designated Articles, Sections and other subdivisions of this Indenture as originally executed. The headings of this Indenture are for convenience only and shall not define or limit the provisions hereof.

## ARTICLE II

### THE BONDS

#### **Section 2.01 The Bonds.**

(a) The Bonds are authorized to be issued hereunder as revenue bonds of the Issuer in accordance with the Bond Resolution. The Bonds shall initially be designated “North Dakota Housing Finance Agency Multifamily Revenue Bonds (Lashkowitz Riverfront 9), Series 2024A” and “North Dakota Housing Finance Agency Multifamily Revenue Bonds (Lashkowitz Riverfront 9), Series 2024B,” respectively. The Bonds shall be fully registered as to principal and interest, without coupons, and shall be numbered by series, if any, in the manner and with any additional designation as the Trustee, as Bond Registrar, deems necessary for the purpose of identification. All of the Bonds are equally and ratably secured. Bonds issued on the Delivery Date shall be dated such date; Bonds issued after the Delivery Date shall be dated the date they are authenticated by the Trustee. The Bonds shall be due and payable in full on the Maturity Date.

(b) The Bonds shall be purchased by the Bondholder Representative, as initial Bondholder, on a draw-down basis in Authorized Denominations up to the Authorized Amount. The proceeds of the Bonds shall be advanced by the Bondholder Representative in installments directly to the Trustee for deposit to the Project Account upon satisfaction of the conditions to such advance set forth in the Construction Funding Agreement and the form of requisition attached as Exhibit E hereto. The Bondholder Representative by its acceptance of the Bonds agrees to fund the Bonds when required by the Construction Funding Agreement. Upon the advancement of the proceeds of the Bonds in accordance with the terms hereof, the principal amount of the Bonds in a principal amount equal to the amount so advanced shall be deemed to be increased automatically and without further acts on the part of the Issuer or the Trustee. The

initial installment of the Bonds shall be in the amount of \$[\_\_\_\_\_] which amount shall be advanced by the Bondholder Representative and deposited in the Project Account on the Delivery Date for application as provided in Section 2.11. Notwithstanding anything in this Indenture to the contrary, no additional amounts of the Bonds may be drawn down and funded hereunder after the Advance Termination Date. Any extension of the Advance Termination Date shall be subject to the prior written consent of the Bondholder Representative.

(c) The Trustee shall maintain in its books a log which shall reflect the principal amount of the Bonds advanced by the Bondholder Representative from time to time in accordance with the provisions of Section 2.01(b) above (the “**Record of Advances**”). The principal amount due on the Bonds shall be only such amount as has been advanced by the Bondholder Representative as reflected in the Record of Advances and not otherwise prepaid pursuant to the terms of this Indenture. The records maintained by the Trustee in such regard will be conclusive evidence of the principal amount of the Bonds (absent manifest error). The Trustee shall notify the Issuer and the Borrower if any advance of the proceeds of the Bonds is not made by the Bondholder Representative when due hereunder.

(d) Interest on the Bonds shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Interest on the Bonds shall be payable on each Interest Payment Date, in each case from the Interest Payment Date next preceding the date of authentication thereof to which interest has been paid or duly provided for, unless the date of authentication is an Interest Payment Date to which interest has been paid or duly provided for, in which case from the date of authentication of the Bond, or unless no interest has been paid or duly provided for on the Bonds, in which case from the Delivery Date, until payment of the principal of the Bond has been made or duly provided for. Notwithstanding the foregoing, if a Bond is authenticated after a Record Date and before the following Interest Payment Date, such Bond shall bear interest from such Interest Payment Date; provided, however, that if there shall be a default in the payment of interest due on such Interest Payment Date, then the Bonds shall bear interest from the next preceding Interest Payment Date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for on the Bonds, from the Delivery Date.

(e) The Bonds shall be issued in Authorized Denominations and shall bear interest payable on each Interest Payment Date at the Bond Interest Rate and shall mature on the Maturity Date, subject to redemption prior to maturity as provided in Article III hereof.

(f) The Person in whose name any Bond is registered on the Record Date with respect to an Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date (unless such Bond has been called for redemption on a redemption date which is prior to such Interest Payment Date) notwithstanding the cancellation of such Bond upon any registration of transfer or exchange thereof subsequent to such Record Date and prior to such Interest Payment Date; provided, however, that if and to the extent the Issuer shall default in the payment of the interest due on any Interest Payment Date, such defaulted interest shall be paid as provided in the next paragraph.

(g) In the event that principal of or interest payable on the Bonds is not paid when due, there shall be payable on the amount not timely paid, on each Interest Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Bonds shall accrue at



the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

(h) Subject to Section 2.12, payment of principal of, premium, if any, and interest on the Bonds shall be payable in lawful currency of the United States by check mailed on each Interest Payment Date to the registered Owner thereof at such registered Owner's address as it appears on the Bond Register on the Record Date; provided, however, upon written request of a registered Owner of at least \$1,000,000 in principal amount of Bonds Outstanding (or an Owner of any principal thereof if the sole Owner of the Bonds) received by the Trustee at least five (5) Business Days prior to a Record Date, all payments of principal, premium, if any, and interest on the Bonds shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by such registered Owner, without any necessity of presentation and surrender of Bonds upon any redemption thereof. In all events, the records of the Trustee shall be determinative of the aggregate principal amount of Bonds held by any Owner at any time, and such records shall be binding on the Issuer and all Owners absent manifest error.

(i) On or before the date fixed for redemption, money shall be deposited with the Trustee to pay, and the Trustee is hereby authorized and directed to apply such money to the payment of, the Bonds or portions thereof called for redemption, together with accrued interest thereon to the redemption date. CUSIP number identification with appropriate dollar amounts for each CUSIP number must accompany all payments of principal, redemption price, premium, if any, and interest, whether by check or by wire transfer.

(j) No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total principal amount of Bonds that may be issued hereunder, or in substitution for other Bonds pursuant to Section 2.07 hereof, is expressly limited to \$[2,200,000] with respect to the Series 2024A Bonds and \$[2,800,000] with respect to the Series 2024B Bonds.

**Section 2.02 *Intentionally Omitted.***

**Section 2.03 *Limited Obligations.*** The Bonds shall be special limited obligations of the Issuer and the principal of and the interest thereon shall be payable equally and ratably solely from and secured solely by the Trust Estate and not from other revenues, funds, or assets of the Issuer. Notwithstanding anything to the contrary in the Bond Resolution, the Bonds or this Indenture, the Bonds do not and shall not represent or constitute a debt or pledge of the faith and credit or the taxing power of the Issuer, the City of Fargo, North Dakota, the State or any other political subdivision, municipality or other agency of the State.

**Section 2.04 *Indenture Constitutes Contract.*** In consideration of the purchase and acceptance of the Bonds issued hereunder by those who shall hold them from time to time, the provisions of this Indenture shall be part of the contract of the Issuer with the Holders of the Bonds and shall be deemed to be a contract between the Issuer and the Holders of the Bonds from time to time.

**Section 2.05 *Form and Execution.*** The Series 2024A Bonds shall be in substantially the form attached as *Exhibit A-1*, and the Series 2024B Bonds shall be in substantially the form

attached as *Exhibit A-2*, with necessary and appropriate variations, omissions and insertions as are customary, permitted or required by this Indenture. The Bonds shall be executed in the name of the Commission by the manual or facsimile signature of each of the members of the Commission, with the official seal of the Commission (or a facsimile thereof) impressed, imprinted or otherwise reproduced thereon, and attested by the manual or facsimile signature of any Authorized Officer, and their execution shall evidence their approval of the final terms thereof. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Bonds. Any reproduction of the official seal of the Issuer on the Bonds shall have the same force and effect as if the official seal of the Issuer had been impressed on the Bonds.

In case any officer of the Issuer whose manual or facsimile signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery, and also any Bond may bear the facsimile signatures of, or may be signed by, such Persons as at the actual time of the execution of such Bond shall be the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

**Section 2.06 *Authentication.*** No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless a certificate of authentication on such Bond, substantially in the form set forth in *Exhibit A-1* with respect to the Series 2024A Bonds and *Exhibit A-2* with respect to the Series 2024B Bonds, shall have been duly executed by an Authorized Officer of the Trustee; and such executed certificate of authentication upon any such Bond shall be conclusive evidence that such Bond has been duly executed, registered, authenticated and delivered under this Indenture. It shall not be necessary that the same Person sign the certificate of authentication on all of the Bonds.

**Section 2.07 *Mutilated, Lost, Stolen or Destroyed Bonds.*** In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer shall execute and the Trustee shall authenticate a new Bond of like denomination, interest rate, series, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated Bond or in lieu of and in substitution for such lost, stolen or destroyed Bond, upon payment by the Owner thereof of any applicable tax or governmental charge and the reasonable expenses and charges of the Issuer and the Trustee in connection therewith, and in the case of a Bond lost, stolen or destroyed, the filing with the Trustee of evidence satisfactory to it that such Bond was lost, stolen or destroyed, and of the ownership thereof, and furnishing the Issuer and the Trustee with indemnity satisfactory to each of them. In the event any such Bond shall have matured, instead of issuing a duplicate Bond or Bonds the Issuer may pay the same without surrender thereof.

**Section 2.08 *Transfer and Exchange of Bonds; Persons Treated as Owners.***

(a) The Trustee as Bond Registrar shall cause a Bond Register to be kept for the registration of transfers of Bonds. Any Bond may be transferred only upon an assignment duly executed by the registered Owner or such registered Owner's duly authorized representative in such form as shall be satisfactory to the Bond Registrar and upon surrender of such Bond to the Trustee for cancellation. Whenever any Bond or Bonds shall be surrendered for transfer, the Issuer shall execute and the Trustee shall authenticate and deliver to the transferee a replacement fully registered Bond or Bonds, of Authorized Denomination or Denominations and for the amount of such Bond or Bonds so surrendered.

(b) Unless the Bonds are rated "A" (without regard to a modifier) or better by a Rating Agency, the Bonds may be transferred only to (i) an "accredited investor" as that term is defined in Rule 501 of Regulation D under the Securities Act or a "qualified institutional buyer" as that term is defined under Rule 144A of the Securities Act (such "accredited investor" or "qualified institutional buyer" a "Qualified Transferee") or (ii) a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Bonds or securitized interests therein are not expected to be sold except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least "A" or better. No investor letter shall be required for transfers of the Bonds after the Delivery Date.

(c) Any Bond may, in accordance with its terms, be exchanged, at the office of the Trustee, for a new fully registered Bond or Bonds, of the same maturity, of any Authorized Denomination or Denominations and for the aggregate amount of such Bond then Outstanding.

(d) In all cases in which Bonds shall be transferred or exchanged hereunder, the Trustee may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange. The cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer or exchange shall be paid by the Borrower.

(e) The Person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of and premium, if any, and interest on any such Bond shall be made only to or upon the order of the registered Owner thereof, or such registered Owner's legal representative, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums to be paid.

(f) Neither the Issuer nor the Trustee shall be required to make any such exchange, registration or transfer of Bonds in the case of any proposed redemption of Bonds, during the period of fifteen (15) days immediately preceding the selection of Bonds for such redemption and after the giving of notice of redemption, the Trustee is not required to transfer or exchange any Bond or portion thereof which has been called for redemption.

**Section 2.09 *Reserved.***

**Section 2.10 *Delivery of Bonds.*** Upon 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 or upon the order of the Issuer upon receipt by the Trustee of the following:

- (a) executed counterparts of this Indenture and the Financing Agreement;
- (b) an opinion of counsel to the Issuer to the effect that the Issuer is duly organized and existing under the laws of the State and has duly authorized, executed and delivered this Indenture, other loan documents to which it is a party and the Bonds and that the Bonds are entitled to the benefits of this Indenture and are valid and binding special, limited obligations of the Issuer enforceable in accordance with their terms subject to customary exceptions;
- (c) sale proceeds of the Bonds;
- (d) the Bond Mortgage Note;
- (e) a copy of the Bond Mortgage, the Assignment, the Continuing Covenant Agreement and the Construction Funding Agreement;
- (f) an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the agreements described herein to which it is a party, that its execution and delivery of and performance of its covenants in such agreements do not contravene law or any provision of any other agreement to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower, and are legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their respective terms;
- (g) an opinion of counsel to the Issuer to the effect that the Issuer validly exists under the law of the State of North Dakota with the power to execute and deliver the Bond Resolution, this Indenture, and the Financing Agreement (the “Issuer Documents”), perform the agreements on its part contained therein, and issue the Bonds; that the Issuer Documents have been duly authorized, executed and delivered by the Issuer and constitute valid and legally binding agreements of the Issuer; and that the Bonds have been duly authorized, executed, issued and delivered by the Issuer in accordance with the Act and the Indenture and constitute valid and binding revenue obligations of the Issuer;
- (h) a certified copy of the Bond Resolution;
- (i) the written request and authorization to the Trustee by the Issuer to authenticate and deliver the Bonds upon payment to the Trustee, for the account of the Issuer, of the sum specified as the initial advance therefor in such request and authorization;

(j) receipt by the Trustee of the amounts specified in Section 2.11 of this Indenture and Section 3.3 of the Financing Agreement; and

(k) receipt by the Trustee of an investor letter substantially in the form attached hereto as **Exhibit C**.

**Section 2.11 *Establishment of Bond Mortgage Loan Fund; Application of Bond Proceeds and Other Money; Assignment of Bond Mortgage Loan to Trustee.***

(a) The Trustee shall establish, maintain and hold in trust and there is hereby established with the Trustee a Bond Mortgage Loan Fund and therein a Project Account and a Borrower Equity Account. No amount shall be charged against the Bond Mortgage Loan Fund except as expressly provided in this Section 2.11 and Section 4.02 hereof.

(b) The initial proceeds of the sale of the Bonds shall be delivered to the Trustee on the Delivery Date. The Trustee shall deposit such initial proceeds, together with additional proceeds received, to the credit of the Project Account of the Bond Mortgage Loan Fund. Amounts in the Bond Mortgage Loan Fund shall be disbursed as provided in subparagraph (d) below, subject to the conditions set forth in Section 3.1 of the Financing Agreement. Upon the disbursement of all amounts in the Bond Mortgage Loan Fund, the Trustee shall close the Bond Mortgage Loan Fund.

(c) The Issuer shall cause the Borrower to deliver to the Trustee, on or prior to the Delivery Date, the Initial Debt Service Deposit for deposit to the credit of the Bond Fund, the Costs of Issuance Deposit for deposit to the credit of the Cost of Issuance Fund and the Borrower Equity Deposit for deposit to the credit of the Borrower Equity Account. The Trustee shall also deposit in the Borrower Equity Account any additional amounts delivered from time to time to the Trustee and directed by the Borrower or Servicer to be deposited therein, excluding any proceeds of the Bonds.

(d) Upon the making of the initial deposits described above in this Section 2.11, the Issuer shall originate the Bond Mortgage Loan pursuant to the Financing Agreement and the Trustee shall make disbursements of amounts in the Bond Mortgage Loan Fund to the Borrower or otherwise as provided in Section 4.02 hereof[; provided that, prior to making any such disbursements, \$[ ] of proceeds of the Bonds shall be transferred by the Trustee to the Cost of Issuance Fund without need of a Requisition therefor].

**Section 2.12 *Book-Entry Only System of Registration.***

(a) Notwithstanding the foregoing provisions of this Article II, each of the Bonds shall initially be issued in the form of one fully-registered bond for the aggregate principal amount of the Bonds of each maturity, which Bonds shall be registered in the name of Cede & Co., as nominee of DTC. Except as provided in paragraph (f) below, all of the Bonds shall be registered in the Bond Register in the name of Cede & Co., as nominee of DTC; provided that if DTC shall request that the Bonds be registered in the name of a different nominee, the Trustee shall exchange all or any portion of the Bonds for an equal aggregate principal amount of Bonds registered in the name of such nominee or nominees of DTC. No Person other than DTC or its nominee or any "FAST" agent for DTC shall be entitled to receive from the Issuer or the Trustee either a Bond or any other evidence of ownership of the Bonds, or any right to receive any

payment in respect thereof unless DTC or its nominee shall transfer record ownership of all or any portion of the Bonds on the Bond Register in connection with discontinuing the book entry system as provided in paragraph (f) below or otherwise.

(b) So long as the Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all payments of the principal or redemption price of or interest on such Bonds shall be made to DTC or its nominee in same day funds on the dates provided for such payments under this Indenture. Each such payment to DTC or its nominee shall be valid and effective to fully discharge all liability of the Issuer and the Trustee with respect to the principal or redemption price of or interest on the Bonds to the extent of the sum or sums so paid. In the event of the redemption of less than all of the Bonds Outstanding of any series or maturity, the Trustee shall not require surrender by DTC or its nominee of the Bonds so redeemed, but DTC (or its nominee) may retain such Bonds and make an appropriate notation on the Bond certificate as to the amount of such partial redemption; provided that DTC shall deliver to the Trustee, upon request, a written confirmation of such partial redemption and thereafter the records maintained by the Trustee shall be conclusive as to the amount of the Bonds of such maturity which have been redeemed.

(c) The Issuer and the Trustee may treat DTC or its nominee as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal or redemption price of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Bondholders under this Indenture, registering the transfer of Bonds, obtaining any consent or other action to be taken by Holders and for all other purposes whatsoever; and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. Neither the Issuer nor the Trustee shall have any responsibility or obligation to any participant in DTC, any Person claiming a beneficial ownership interest in the Bonds under or through DTC or any such participant, or any other Person which is not shown on the Bond Register as being a Bondholder, with respect to: (1) the accuracy of any records maintained by DTC or any such participant; (2) the payment by DTC or any such participant of any amount in respect of the principal or redemption price of or interest on the Bonds; (3) the delivery to any participant or to any other Person, other than the Holders as shown on the Bond Register, of any notice which is permitted or required to be given to Holders under this Indenture; (4) the selection by DTC or any such participant of any Person to receive payment in the event of a partial redemption of the Bonds; or (5) any consent given or other action taken by DTC as Holder. Notwithstanding the foregoing or anything to the contrary herein, the Bondholder Representative shall be entitled to all rights and privileges of the Bondholder Representative hereunder and under any of the other Bond Financing Documents, including, but not limited to, the giving of directions and the providing of consents on behalf of itself or the Bondholders, in each case as more fully set forth herein and in the other Bond Financing Documents.

(d) So long as the Bonds or any portion thereof are registered in the name of DTC or any nominee thereof, all notices required or permitted to be given to the Holders under this Indenture shall be given to DTC as provided in DTC's procedures, as the same may be amended from time to time.

(e) In connection with any notice or other communication to be provided to Holders pursuant to this Indenture by the Issuer or the Trustee with respect to any consent or other action

to be taken by Holders, DTC shall consider the date of receipt of notice requesting such consent or other action as the record date for such consent or other action, provided that the Issuer or the Trustee may establish a special record date for such consent or other action. The Issuer or the Trustee shall give DTC notice of such special record date not less than 15 calendar days in advance of such special record date to the extent possible.

(f) The book-entry system for registration of the ownership of the Bonds may be discontinued at any time if either: (1) DTC determines to resign as securities depository for the Bonds; or (2) the Bondholder Representative determines to discontinue the system of book-entry transfers through DTC (or through a successor securities depository) subject to the rules and regulations of DTC regarding the discontinuation of the system of book-entry transfers in effect at such time. In either of such events (unless, in the case described in clause (2) above, a successor securities depository is appointed), the Bonds shall be delivered in registered certificate form to such Persons, and in such series, maturities and principal amounts, as may be designated by DTC, but without any liability on the part of the Issuer or the Trustee for the accuracy of such designation. If a successor securities depository is appointed, the Issuer and the Trustee shall cooperate with DTC in taking appropriate action after reasonable notice to arrange for such successor securities depository to obtain custody of certificates evidencing the Bonds.

### ARTICLE III

#### REDEMPTION OF BONDS PRIOR TO MATURITY

##### Section 3.01 *Redemption of Bonds Prior to Maturity.*

(a) **Optional Redemption.** The Bonds are not subject to optional redemption prior to [ ] 1, 20[ ]. On and after [ ] 1, 20[ ], the Bonds are subject to optional redemption (in whole on any date, or in part on the first day of any calendar month), upon optional prepayment of the Bond Mortgage Loan in accordance with the notice and other prepayment provisions set forth in the Bond Mortgage Note and Section 4.04 of the Financing Agreement, at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the redemption date, plus any Prepayment Premium applicable upon prepayment of the Bond Mortgage Loan under the Bond Mortgage Note. Any optional redemption shall be conditioned on the receipt by the Trustee of funds in an amount sufficient to pay the foregoing redemption price of the Bonds at least one Business Day prior to the date the Bonds are to be redeemed (unless otherwise consented to by the Bondholder Representative).

(b) **Mandatory Redemption.** The Bonds are subject to mandatory redemption on any Business Day, in whole or in part as indicated below, at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the redemption date, plus any Prepayment Premium applicable upon prepayment of the Bond Mortgage Loan under the Bond Mortgage Note, at the earliest practicable date from funds deposited with the Trustee upon the occurrence of any of the following:

(i) in whole or in part, upon receipt by the Trustee of (1) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Bond Mortgage Loan as a result of casualty or condemnation of the Project and

(2) a written direction by the Bondholder Representative to redeem such Bonds using such Net Proceeds; or

(ii) in whole or in part, upon the occurrence of an event of default under any Bond Financing Document and receipt by the Trustee of a written direction by the Bondholder Representative to redeem the Bonds; or

(iii) Reserved; or

(iv) in part, as provided in subsection (c) of this Section 3.01; or

(v) in part, on the Interest Payment Date next following the completion of the Project, to the extent amounts remaining in the Project Account of the Bond Mortgage Loan Fund are transferred to the Redemption Fund pursuant to Section 4.02(e) hereof; or

(vi) in part, at the written direction of the Bondholder Representative, in the event the Borrower is required to make a Loan Equalization Payment; or

(vii) in whole or in part in connection with a mandatory prepayment of the Bond Mortgage Loan pursuant to the Bond Mortgage Note.

(c) **Mandatory Sinking Fund Redemption.** The Bonds are subject to mandatory sinking fund redemption on the dates and in the amounts set forth on the Mandatory Sinking Fund Schedule attached as Schedule 1 to this Indenture; provided that if less than all the Bonds shall have been redeemed pursuant to Section 3.01(a) or 3.01(b), the amount of Bonds to be redeemed in each year from sinking fund installments as provided in this Section 3.01(c) shall be decreased by an amount, in proportion, as nearly as practicable, to the decrease in the payments on the Bond Mortgage Loan in such year as determined by the Trustee (in consultation with and as verified by the Servicer).

### **Section 3.02 *Selection of Bonds for Redemption.***

(a) The Trustee shall select Bonds subject to mandatory sinking fund redemption pursuant to Section 3.01(c) hereof by lot within the appropriate maturity. If less than all the Bonds then Outstanding shall be called for redemption other than as a result of mandatory sinking fund redemption pursuant to Section 3.01(c) hereof, the Trustee shall redeem an amount of Bonds so that the resulting decrease in debt service on the Bonds in each semiannual period ending on an Interest Payment Date is proportional, as nearly as practicable, to the decrease in the payments on the Bond Mortgage Note in each such semiannual period, as verified by the Servicer, and the Bonds shall be selected by lot within each maturity, the cost of such selection being at the Borrower's expense.

(b) Except with respect to mandatory sinking fund redemptions pursuant to Section 3.01(c) hereof, in the event that a Bond subject to redemption is in a denomination larger than an Authorized Denomination, all or a portion of such Bond may be redeemed, but only in a principal amount such that the remaining principal amount of the Bond not so redeemed shall be an Authorized Denomination (provided at any time the aggregate principal amount of Bonds Outstanding is \$25,000 or less, any Bonds to be redeemed pursuant to this Article may be redeemed in increments of \$5,000 or more).



**Section 3.03 *Notice of Redemption.*** Notice of the intended redemption of each Bond shall be given by the Trustee by first class mail, postage prepaid, or by facsimile transmission, to the registered Owner at the address of such Owner shown on the Bond Register. All such redemption notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional or mandatory sinking fund redemptions) nor more than sixty (60) days prior to the date fixed for redemption.

Notices of redemption shall state the redemption date and the redemption price, the place or places where amounts due upon such redemption will be payable, and, if less than all of the then Outstanding Bonds are called for redemption, shall state (i) the numbers of the Bonds to be redeemed by giving the individual certificate number of each Bond to be redeemed or shall state that all Bonds between two stated certificate numbers, both inclusive, are to be redeemed or that all of the Bonds of one or more maturities have been called for redemption only if bonds cease to be book entry bonds; (ii) the CUSIP numbers of all Bonds being redeemed if available; (iii) the amount of each Bond being redeemed (in the case of a partial redemption); (iv) the date of issue of the Bond as originally issued; (v) the rate of interest borne by each Bond redeemed; (vi) the maturity date of each Bond being redeemed; (vii) the possibility of a purchase of Bonds in lieu of redemption, if applicable; (viii) solely with respect to optional redemptions, that the redemption is conditional upon receipt by the Trustee at least one Business Day prior to the redemption date of funds sufficient to pay the principal of and accrued interest on the Bonds to the redemption date, together with any Prepayment Premium due under Section 10 of the Bond Mortgage Note; and (ix) any other descriptive information needed to identify accurately the Bonds being redeemed.

Notice of such redemption shall also be sent by first class mail, overnight delivery service, facsimile transmission or other secure means, postage prepaid, to the Bondholder Representative and the Servicer, to all of the Securities Depositories and to the Information Service that disseminates securities redemption notices, when possible, not later than the time of mailing of notices required by the first paragraph above, and in any event no later than simultaneously with the mailing of notices required by the first paragraph above; provided, that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of such Bonds.

**Section 3.04 *Cancellation.*** All Bonds that have been redeemed shall be marked cancelled by the Trustee, and shall not be reissued. A counterpart of the certificate of cancellation evidencing such cancellation shall, upon request, be furnished by the Trustee to the Issuer.

## ARTICLE IV

### REVENUES AND FUNDS

**Section 4.01 *Pledge of Revenues and Assets; Establishment of Funds.*** The pledge and assignment of and the security interest granted in the Trust Estate pursuant to the Granting Clauses hereof 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.

In addition to the Bond Mortgage Loan Fund established pursuant to Section 2.11 hereof, the Trustee shall establish, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- (a) Revenue Fund;
- (b) Bond Fund;
- (c) Redemption Fund;
- (d) Administration Fund;
- (e) Cost of Issuance Fund;
- (f) Replacement Reserve Fund; and
- (g) Tax and Insurance Escrow Fund.

The funds and accounts established pursuant to Section 2.11 and this Section 4.01 shall be maintained in the corporate trust department of the Trustee as segregated trust accounts, separate and identifiable from all other funds held by the Trustee. The Trustee shall, at the written direction of an Authorized Officer of the Issuer, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Issuer or the Trustee may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Indenture with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

#### **Section 4.02 *Bond Mortgage Loan Fund.***

(a) Deposit. The Trustee shall deposit the proceeds of each advance of the proceeds of the Bonds into the Project Account of the Bond Mortgage Loan Fund as provided in Section 2.11(b) hereof. The Trustee shall deposit the Borrower Equity Deposit into the Borrower Equity Account of the Bond Mortgage Loan Fund, as well as any additional amounts delivered from time to time to the Trustee and directed by the Borrower or Servicer to be deposited therein (excluding any proceeds of the Bonds), as provided in Section 2.11(c) hereof.

(b) Disbursements. Amounts on deposit in the Bond Mortgage Loan Fund shall be disbursed from time to time by the Trustee for the purpose of paying costs of the Project allowable under the Act. In addition, amounts in the Bond Mortgage Loan Fund shall be transferred to the Redemption Fund and the Borrower at the times and in the manner provided in subsection (e) of this Section 4.02.

(c) Transfers and Requisitions. The Trustee shall make disbursements from the respective accounts of the Bond Mortgage Loan Fund for purposes described in subsection (b) of this Section 4.02 only upon the receipt of Requisitions signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer (signifying the consent to the Requisition by the Servicer). The Trustee shall have no right or duty to determine whether any requested disbursement from the Bond Mortgage Loan Fund complies with the terms, conditions and provisions of the Construction Funding Agreement. The countersignature of the Authorized Officer of the Servicer on a Requisition shall be deemed a certification and, insofar as the Trustee and the Issuer are concerned, constitute conclusive evidence, that all of the terms, conditions and requirements of the Construction Agreement applicable to such disbursement have been fully satisfied or waived. The Trustee shall, immediately upon each receipt of a completed Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer, initiate procedures with the provider of a Qualified Investment to make withdrawals as necessary to fund the Requisition.

Notwithstanding anything to the contrary contained herein, no signature of an Authorized Officer of the Borrower shall be required during any period in which a default has occurred and is then continuing under the Bond Mortgage Loan or any Bond Financing Document (notice of which default has been given in writing by the Bondholder Representative or the Servicer to the Trustee and the Issuer, and the Trustee shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such a default).

(d) If a Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer or (as permitted hereunder) solely by an Authorized Officer of the Servicer, is received by the Trustee, the requested disbursement shall be paid by the Trustee as soon as practicable, but in no event later than three (3) Business Days following receipt thereof by the Trustee. Upon final disbursement of all amounts on deposit in the Bond Mortgage Loan Fund, including all interest accrued therein, the Trustee shall close the Bond Mortgage Loan Fund.

(e) Immediately prior to any mandatory redemption of Bonds pursuant to Section 3.01(b)(ii) hereof, any amount then remaining in the Bond Mortgage Loan Fund shall, at the written direction of the Bondholder Representative, be transferred to the Redemption Fund to pay amounts due on the Bonds. In addition, any amount remaining in the Project Account of the Bond Mortgage Loan Fund following completion of the Project in accordance with the Construction Funding Agreement, evidenced by an instrument signed by the Bondholder Representative or the Servicer, shall be transferred to the Redemption Fund and used to redeem Bonds in accordance with Section 3.01(b)(v) hereof. In the event there are funds remaining in the Borrower Equity Account following completion of the construction and/or rehabilitation of the Project in accordance with the Construction Funding Agreement and the stabilization requirements have been satisfied under the Construction Funding Agreement, evidenced by an instrument signed by the Bondholder Representative, and provided no default by the Borrower exists under this Indenture or any Bond Mortgage Loan Document, such funds shall be paid by the Trustee to the Borrower at the written direction of the Bondholder Representative or the Servicer.

(f) Amounts on deposit in the Bond Mortgage Loan Fund shall be invested as provided in Section 4.08 hereof. All Investment Income on amounts on deposit in the Bond

Mortgage Loan Fund shall be retained in and credited to and become a part of the amounts on deposit in the Bond Mortgage Loan Fund and shall constitute part of any transfers required by subsection (b) or (e) of this Section 4.02.

**Section 4.03 *Application of Revenues.***

(a) All Revenues shall be deposited by the Trustee, promptly upon receipt thereof, to the Revenue Fund, except (i) the proceeds of the Bonds received by the Trustee on the Delivery Date, which shall be applied in accordance with the provisions of Section 2.11 hereof; (ii) the Initial Debt Service Deposit, which shall be deposited in the Bond Fund; (iii) as otherwise specifically provided in subsection (c) of this Section 4.03 with respect to certain deposits into the Redemption Fund; (iv) with respect to Investment Income to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (v) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

(b) On the last Business Day of each month for so long as Bonds are Outstanding, the Trustee, out of money in the Revenue Fund, shall credit the following amounts to the following funds and accounts, but in the order and within the limitations hereinafter indicated with respect thereto, as follows:

**FIRST:** to the Bond Fund, an amount equal to the principal of and interest due on the Bonds on such date (excluding the principal and interest due on any Bonds scheduled to be redeemed on such date); and

**SECOND:** to the Redemption Fund, an amount equal to the principal and interest due and payable on the Bonds with respect to a mandatory sinking fund redemption on such date; and

**THIRD:** to the Redemption Fund, an amount equal to the principal and interest due on the Bonds on such date with respect to a mandatory redemption of all or a portion of the Bonds pursuant to Section 3.01(b) hereof (other than a mandatory sinking fund redemption or any extraordinary mandatory redemption as described in Section 4.03(c)(i) or (iii) below).

(c) Promptly upon receipt, the Trustee shall deposit directly to the Redemption Fund (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Bond Mortgage Loan, such amount to be applied to provide for the extraordinary mandatory redemption of all or a portion of the Bonds pursuant to Section 3.01(b)(i) hereof; (ii) funds paid to the Trustee to be applied to the optional redemption of all or a portion of the Bonds pursuant to Sections 3.01(a); and (iii) amounts transferred to the Redemption Fund from the Bond Mortgage Loan Fund pursuant to Section 4.02(e) hereof.

(d) Should the amount in the Bond Fund be insufficient to pay the amount due on the Bonds on any given Interest Payment Date, the Trustee shall credit to the Bond Fund the amount of such deficiency by charging the following funds and accounts in the following order of priority: (1) the Revenue Fund; and (2) the Redemption Fund, except no such charge to the Redemption Fund shall be made from money to be used to effect a redemption for which notice

of redemption has been provided for or from money which is held for payment of Bonds which are no longer Outstanding hereunder.

**Section 4.04 Application of Bond Fund.** The Trustee shall charge the Bond Fund, on each Interest Payment Date, an amount equal to the unpaid interest and principal due on the Bonds on such Interest Payment Date as provided in Section 4.03(a) and (b), and shall cause the same to be applied to the payment of such interest and principal when due. Any money remaining in the Bond Fund on any Interest Payment Date after application as provided in the preceding sentence may, to the extent there shall exist any deficiency in the Redemption Fund to redeem Bonds called for redemption on such Interest Payment Date, be transferred to the Redemption Fund to be applied for such purpose.

Any Investment Income on amounts on deposit in the Bond Fund shall be deposited by the Trustee upon receipt thereof in the Revenue Fund.

No amount shall be charged against the Bond Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.05 Application of Redemption Fund.** Any money credited to the Redemption Fund shall be applied as set forth in Sections 4.03(b) and 4.03(c) hereof; provided, however, that to the extent any money credited to the Redemption Fund is in excess of the amount necessary to effect the redemptions described in Sections 4.03(b) and 4.03(c) hereof it shall be applied to make up any deficiency in the Bond Fund on any Interest Payment Date, to the extent money then available in accordance with Section 4.03(d) hereof in the Revenue Fund is insufficient to make up such deficiency; provided that no money to be used to effect a redemption for which a conditional notice of redemption, the conditions of which have been satisfied, or an unconditional notice of redemption has been provided or money which is held for payment of Bonds which are no longer Outstanding hereunder shall be so transferred to the Bond Fund.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Redemption Fund shall be credited by the Trustee to the Revenue Fund.

No amount shall be charged against the Redemption Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.06 Administration Fund.** The Trustee shall deposit into the Administration Fund, promptly upon receipt thereof, all amounts received from the Borrower (or the Servicer is responsible for collecting such amounts) designated for deposit into such fund. Amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Trustee and used **FIRST**, to pay to the Trustee when due the Ordinary Trustee's Fees and Expenses; **SECOND**, to pay to the Issuer when due the Issuer Fee; **THIRD**, Reserved; **FOURTH**, to pay to the Trustee any Extraordinary Trustee's Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to the Borrower and the Servicer; **FIFTH**, to pay to the Issuer any extraordinary expenses it may incur in connection with the Bonds or this Indenture from time to time, as set forth in an invoice submitted to the Trustee and the Servicer; **SIXTH**, to pay to the Bondholder Representative any unpaid amounts due under the Continuing Covenant Agreement, as certified in writing by the Bondholder Representative to the Trustee; **SEVENTH**, to make up

any deficiency in the Redemption Fund on any redemption date of Bonds, to the extent money then available in accordance with Section 4.03(d) hereof in the Redemption Fund is insufficient to redeem Bonds called for redemption on such redemption date; and **EIGHTH**, to transfer any remaining balance after application as aforesaid to the Revenue Fund.

In the event that the amounts on deposit in the Administration Fund are not equal to the amounts payable from the Administration Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Trustee shall give notice to the Borrower and the Servicer of such deficiency and of the amount of such deficiency and request payment within two (2) Business Days to the Trustee of the amount of such deficiency. Upon payment by the Borrower or the Servicer of such deficiency, the amounts for which such deficiency was requested shall be paid by the Trustee.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Administration Fund not needed to pay the foregoing amounts shall be credited by the Trustee to the Revenue Fund.

No amount shall be charged against the Administration Fund except as expressly provided in this Article IV and Section 6.05 hereof.

**Section 4.07 *Reserved.***

**Section 4.08 *Investment of Funds.*** The money held by the Trustee shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Trustee, at the written direction of the Borrower in Qualified Investments which mature or shall be subject to redemption or withdrawal at par without penalty on or prior to the earlier of (i) six months from the date of investment and (ii) the date such money is needed; provided, that if the Trustee shall have entered into any investment agreement requiring investment of money in any fund or account hereunder in accordance with such investment agreement and if such investment agreement constitutes a Qualified Investment, such money shall be invested in accordance with such requirements. In the absence of written direction from the Borrower, the Trustee shall hold all such amounts uninvested. Such investments may be made through the investment or securities department of the Trustee. The Trustee may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized. The Trustee shall be entitled to assume, absent receipt by the Trustee of written notice to the contrary, that any investment which at the time of purchase is a Qualified Investment remains a Qualified Investment thereafter.

Qualified Investments representing an investment of money attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the Revenue Fund, and any loss resulting on the sale thereof shall be charged against the Revenue Fund. Such investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary so to do in order to provide money to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Trustee shall not be liable or responsible for

any loss resulting from any investment made in accordance herewith. The parties agree that the Trustee is not providing investment supervision, recommendations, or advice.

The Issuer acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Issuer the right to receive brokerage confirmations of the security transactions as they occur, to the extent permitted by law, the Issuer specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Trustee hereunder, that no brokerage confirmations need be sent relating to the security transactions as they occur.

In computing for any purpose hereunder the amount in any fund or account on any date, obligations so purchased shall be valued at Fair Market Value.

**Section 4.09 *Money Held for Particular Bonds; Funds Held in Trust.*** The amounts held by the Trustee for the payment of the interest, principal or redemption price due on any date with respect to particular Bonds pending such payment, shall 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 redemption price, after the due date thereof, shall no longer be considered to be unpaid.

All money held by the Trustee for such purpose 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 4.10 *Accounting Records.*** The Trustee shall maintain accurate books and records for all funds and accounts established hereunder.

**Section 4.11 *Amounts Remaining in Funds.*** After full payment of the Bonds (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Issuer and the Trustee and other amounts required to be paid hereunder or under any Bond Mortgage Loan Document, including, but not limited to, the Continuing Covenant Agreement (as certified in writing to the Trustee by the Issuer with respect to amounts due to the Issuer and by the Bondholder Representative or the Servicer on its behalf with respect to amounts owed under the Continuing Covenant Agreement), any amounts remaining in any fund or account hereunder shall be paid to the Borrower.

**Section 4.12 *Reserved.***

**Section 4.13 *Cost of Issuance Fund.*** The Trustee shall use money on deposit to the credit of the Cost of Issuance Fund to pay the costs of issuance on the Delivery Date or as soon as practicable thereafter in accordance with a Requisition in the form of Exhibit D to be given to the Trustee by the Borrower on the Delivery Date, along with appropriate invoices for such expenses. Amounts in the Cost of Issuance Fund funded with proceeds of the Bonds, if any, shall be expended prior to the application of the Costs of Issuance Deposit. Investment Income on amounts on deposit in the Cost of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Cost of Issuance Fund six (6) months after the Delivery Date shall be transferred to the Borrower. Upon such final disbursement, the Trustee shall close the Cost of Issuance Fund.

**Section 4.14 *Replacement Reserve Fund.*** There shall be deposited in the Replacement Reserve Fund all moneys received for such purpose by the Trustee from the Borrower or the

Servicer pursuant to the Continuing Covenant Agreement. Moneys in the Replacement Reserve Fund shall be disbursed by the Trustee upon receipt of a written request therefor executed by the Borrower and approved in writing by the Bondholder Representative or the Servicer, in accordance with the terms of the Continuing Covenant Agreement; provided that, upon the occurrence and continuation of an Event of Default hereunder, all moneys and investments in the Replacement Reserve Fund (other than moneys held to pay costs required to be paid but not yet payable) shall be disbursed solely at the written direction of the Bondholder Representative to pay any costs and expenses of the Project, to pay costs of enforcement of the Bond Financing Documents and to pay any and all amounts owed by the Borrower under the Financing Documents, in whatever amounts and whatever order the Bondholder Representative may determine. Upon the payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 9.01 hereof, upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Continuing Covenant Agreement, any amounts remaining in the Replacement Reserve Fund shall be paid to the Borrower as soon as practicable.

**Section 4.15 *Tax and Insurance Escrow Fund.*** There shall be deposited in the Tax and Insurance Escrow Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to the Continuing Covenant Agreement. Moneys in the Tax and Insurance Escrow Fund shall be applied to payment of Impositions and insurance premiums at the written direction of the Borrower, Bondholder Representative or the Servicer; provided, however, that upon the occurrence and continuation of an Event of Default hereunder (provided that the Bondholder Representative shall have no obligation to accept a cure of any Event of Default) all money and investments held in the Tax and Insurance Escrow Fund shall be disbursed solely at the written direction of the Bondholder Representative to pay costs and expenses of the Project, to pay costs of enforcement of the Financing Documents and to pay any and all amounts owed by the Borrower under any of the Financing Documents, in whatever amounts and in whatever order the Bondholder Representative may determine. Upon the payment in full of the Bonds and the fees and expenses of the Issuer and the Trustee, or provision for the payment of the Bonds having been made pursuant to Section 9.01 hereof, and upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Continuing Covenant, any amounts remaining in the Tax and Insurance Escrow Fund shall be paid to the Borrower.

**Section 4.16 *Reports From the Trustee.*** Upon request of the Bondholder Representative or the Servicer, the Trustee shall provide a statement setting forth the following in respect of any calendar month:

- (i) the amount withdrawn or transferred by it, and the amount deposited within or on account of each fund and account held by it under the provisions of this Indenture, including the amount of investment income on each fund and account;
- (ii) the amount on deposit with it at the end of such month to the credit of each fund and account;
- (iii) a brief description of all obligations held by it as an investment of money in each such fund and account; and



(iv) any other information which the Bondholder Representative or the Issuer may reasonably request and to which the Trustee has access in the ordinary course of its operations.

Upon the written request of any Bondholder, the Trustee, at the cost of the Borrower, shall provide a copy of such statement to such Bondholder. All records and files pertaining to the Trust Estate shall be open at all reasonable times to the inspection of the Issuer and the Bondholder Representative or the Servicer and their agents and representatives upon reasonable prior notice during normal business hours.

## ARTICLE V

### GENERAL COVENANTS AND REPRESENTATIONS

**Section 5.01 *Payment of Principal and Interest.*** The Issuer covenants that it will promptly pay or cause to be paid, but only from the sources identified herein, sufficient amounts to provide for the payment of the principal of, premium, if any, and interest on the Bonds at the place, on the dates and in the manner provided herein and in the Bonds, according to the true intent and meaning thereof.

**Section 5.02 *Performance of Covenants.*** The Issuer covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings pertaining thereto.

**Section 5.03 *Instruments of Further Assurance.*** The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto, and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Trustee all and singular its interest in the property herein described and the revenues, receipts and other amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Issuer or the Trustee, become and be subject to the lien of this Indenture as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Issuer under this Section 5.03. The Issuer covenants and agrees that, except as herein otherwise expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Trust Estate or the revenues or receipts therefrom.

The Issuer will promptly notify the Trustee, the Bondholder Representative and the Servicer in writing of the occurrence of any of the following:

(i) the submission of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against the Issuer with respect to the Bonds;

(ii) any change in the location of the Issuer's principal office or any change in the location of the Issuer's books and records relating to the transactions contemplated hereby;

(iii) the occurrence of any default or Event of Default of which the Issuer has actual knowledge;

(iv) the commencement of any proceedings or any proceedings instituted by or against the Issuer in any federal, state or local court or before any governmental body or agency, or before any arbitration board, relating to the Bonds; or

(v) the commencement of any proceedings by or against the Issuer under any applicable bankruptcy, reorganization, liquidation, rehabilitation, insolvency or other similar law now or hereafter in effect or of any proceeding in which a receiver, liquidator, conservator, trustee or similar official shall have been, or may be, appointed or requested for the Issuer or any of its assets relating to the Bonds.

**Section 5.04 *Inspection of Project Books.*** The Issuer covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Trustee or the Bondholder Representative may from time to time reasonably designate.

**Section 5.05 *No Modification of Security; Additional Indebtedness.*** The Issuer covenants to and for the benefit of the Bondholders that it will not, without the prior written consent of the Bondholder Representative, take any of the following actions:

(i) alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Issuer is a party, or which has been assigned to the Issuer, and which relates to or affects the security for the Bonds or the payment of any amount owed under the Bond Financing Documents; or

(ii) create or suffer to be created any lien upon the Trust Estate or any part thereof other than the lien created hereby and by the Bond Mortgage.

**Section 5.06 *Damage, Destruction or Condemnation.*** Net Proceeds resulting from casualty to or condemnation of the Project shall be applied as provided in the Continuing Covenant Agreement and, to the extent consistent therewith, Section 3.01(b)(i) hereof.

**Section 5.07 *Reserved.***

**Section 5.08 *Representations and Warranties of the Issuer.*** *The Issuer hereby represents and warrants as follows:*

(a) The Issuer is duly organized and existing under the laws of the State.

(b) The Issuer has all necessary power and authority to issue the Bonds and to execute and deliver this Indenture, the Financing Agreement and the other Bond Financing

Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The revenues and assets pledged for the repayment of the Bonds are and will be free and clear of any pledge, lien or encumbrance prior to, or equal with, the pledge created by this Indenture, and all action on the part of the Issuer to that end has been duly and validly taken.

(d) The Bond Financing Documents to which the Issuer is a party have been validly authorized, executed and delivered by the Issuer, and assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

## ARTICLE VI

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

**Section 6.01 *Events of Default.*** Each of the following shall be an event of default with respect to the Bonds (an "Event of Default") under this Indenture:

(a) failure to pay the principal of, premium, if any, or interest on any Bond when due, whether on an Interest Payment Date, at the stated maturity thereof, by proceedings for redemption thereof, by acceleration or otherwise; or

(b) failure to observe the covenants set forth in Section 5.05 hereof; or

(c) failure to observe or perform any of the covenants, agreements or conditions on the part of the Issuer (other than those set forth in 6.01(a) and (b) above) set forth in this Indenture or in the Bonds and the continuance thereof for a period of thirty (30) days (or such longer period, if any, as is specified herein for particular defaults) after written notice thereof to the Issuer from the Trustee or the Bondholder Representative specifying such default and requiring the same to be remedied; provided that if such default cannot be cured within such thirty (30) day period through the exercise of diligence and the Issuer commences the required cure within such thirty (30) day period and continues the cure with diligence and the Issuer reasonably anticipates that the default could be cured within sixty (60) days, the Issuer shall have sixty (60) days following receipt of such notice to effect the cure; or

(d) receipt by the Trustee of written notice from the Bondholder Representative of the occurrence of an "Event of Default" under the Financing Agreement, the Continuing Covenant Agreement or the Construction Funding Agreement.

The Trustee will promptly notify the Issuer, the Servicer and the Bondholder Representative after a Responsible Officer obtains actual knowledge of the occurrence of an Event of Default or obtains actual knowledge of the occurrence of an event which would become an Event of Default with the passage of time or the giving of notice or both.

**Section 6.02 *Acceleration; Other Remedies Upon Event of Default.***

Upon the occurrence of an Event of Default, the Trustee shall, upon the written request of the Bondholder Representative, 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 interest shall continue to accrue thereon until such amounts are paid.

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 Trustee may, but only if directed in writing by the Bondholder Representative, by written notice to the Issuer and the Trustee, rescind and annul such declaration and its consequences if the Issuer or the Borrower 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) upon 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 fees and expenses of the Trustee (including its counsel) shall have been made good or cured or adequate provision shall have been made therefor, and all outstanding amounts then due and unpaid under the Bond Financing Documents (collectively, the “**Cure Amount**”) shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Bondholder Representative; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the occurrence and during the 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 with respect to which such an Event of Default has occurred, 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; provided that, the Trustee may undertake any such remedy only upon the receipt of the prior written consent of the Bondholder Representative (which consent may be given in the sole discretion of the Bondholder Representative):

- (i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, premium, if any, or interest on the Bonds then Outstanding and to require the Issuer to carry out any covenants or agreements with or for the benefit of the Bondholders and to perform its duties under the Act, this Indenture, or the Financing Agreement (as applicable) to the extent permitted under the applicable provisions thereof;
- (ii) by pursuing any available remedies under the Financing Agreement or any other Bond Financing Document;
- (iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and
- (iv) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Holders of the Bonds and 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.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or the Bondholders hereunder or under the Financing Agreement, the Continuing Covenant Agreement or any other Bond Financing Document, as applicable, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Trustee or the Bondholders, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

**Section 6.03 *Bondholder Representative Control Proceedings.*** If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Bondholder Representative shall have the right at any time, subject to the provisions of Section 6.08 hereof, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Indenture. In addition, the Bondholder Representative shall have the directly enforce all rights and remedies hereunder and under the other Bond Financing Documents with or without the involvement of the Trustee or the Issuer (and in connection therewith the Trustee shall transfer or assign to the Bondholder Representative all of its interest in the Trust Estate at the request thereof).

**Section 6.04 *Waiver by Issuer.*** Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Issuer nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Indenture; and the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisement and redemption to which it may be entitled under the laws of the State and the United States of America.

**Section 6.05 *Application of Money After Default.*** All money 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 Revenue Fund. Such money so credited to the Revenue Fund and all other money from time to time credited to the Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the money credited to the Revenue Fund, the Bond Fund and the Redemption Fund available for the payment of interest or principal then due with respect to the Bonds shall be insufficient for such payment, such money (other than money held for the

payment or redemption of particular Bonds as provided in Section 4.09 hereof) shall be applied as follows and in the following order of priority:

(a) For payment of all amounts due to the Trustee incurred in performance of its duties under this Indenture, including, without limitation, the payment of all reasonable fees and expenses of the Trustee incurred in exercising any remedies under this Indenture.

(b) To the extent directed in writing by the Bondholder Representative, to the reimbursement of any unreimbursed advances made by the Bondholder Representative pursuant to the Continuing Covenant Agreement or the Bond Mortgage.

(c) Unless the principal of all 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.

(d) 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, premium and interest, to the Persons entitled thereto without any discrimination or preference except as to any differences in the respective rates of interest specified in the Bonds.

**Section 6.06 Remedies Not Exclusive.** No right or remedy conferred upon or reserved to the Trustee or the Bondholder Representative by the terms of this Indenture is intended to be exclusive of any other right or remedy, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy given to the Trustee or the Bondholder Representative under this Indenture or existing at law or in equity or by statute (including the Act).

**Section 6.07 *Trustee May Enforce Rights Without Bonds.*** All rights of action and claims, including the right to file proof of claims, under this Indenture or under any of the Bonds may be prosecuted and enforced by the Trustee at the written direction of the Bondholder Representative without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Bondholder Representative to direct proceedings hereunder, any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Bonds, and any recovery or judgment shall be for the mutual benefit as provided herein of all of the Holders of the Outstanding Bonds.

**Section 6.08 *Reserved.***

**Section 6.09 *Termination of Proceedings.*** In case the Trustee (at the direction of the Bondholder Representative) or the Bondholder Representative shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee, the Bondholder Representative, the Borrower and the Bondholders shall be restored to their former positions and rights hereunder with respect to the Trust Estate herein conveyed, and all rights, remedies and powers of the Trustee and the Bondholder Representative shall continue as if no such proceedings had been taken.

**Section 6.10 *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 and interest on the Bonds upon the written direction of the Bondholder Representative. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee, the Borrower, the Servicer, the Bondholder Representative and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

**Section 6.11 *Interest on Unpaid Amounts and Default Rate for Nonpayment.*** In the event that principal of or interest payable on the Bonds is not paid when due, there shall be payable on the amount not timely paid, on each Interest Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Bonds shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

**Section 6.12 *Assignment of Project Loan; Remedies Under the Project Loan.***The Bondholder Representative shall have the right, with respect to the Bond Mortgage Loan, in its sole and absolute discretion, without directing the Trustee to effect an acceleration of the Bonds, to instruct the Trustee in writing to assign the Bond Mortgage Note, the Bond Mortgage and the other Bond Mortgage Loan Documents to the Bondholder Representative, in which event the Trustee shall (a) endorse and deliver the Bond Mortgage Note to the Bondholder Representative and assign (in recordable form) the Bond Mortgage, (b) execute and deliver to the Bondholder Representative all documents prepared by the Bondholder Representative necessary to assign (in recordable form if necessary) all other Bond Mortgage Loan Documents to the Bondholder Representative and (c) execute all such documents prepared by the Bondholder Representative as

are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (a) and (b). The Trustee's assignments to the Bondholder Representative pursuant to this Section 6.12 shall be without recourse or warranty except that the Trustee shall represent and warrant in connection therewith (A) that the Trustee has not previously endorsed or assigned any such documents or instruments and (B) that the Trustee has the corporate authority to endorse and assign such documents and instruments and such endorsements and assignments have been duly authorized.

(b) The Bondholder Representative shall have the right, in its own name or on behalf of the Issuer or the Trustee, to declare any default and exercise any remedies under the Financing Agreement, the Bond Mortgage Note or the Bond Mortgage, whether or not the Bonds have been accelerated or declared due and payable by reason of an Event of Default or the occurrence of a mandatory prepayment.

**Section 6.13 Substitution.** Upon receipt of written notice from the Bondholder Representative and the approval of the Issuer, the Trustee shall exchange the Bond Mortgage Note and the Security Instrument for a new Bond Mortgage Note and Bond Mortgage, evidencing and securing a new loan (the "New Bond Mortgage Loan"), which may be executed by a person other than the Borrower (the "New Borrower"), provided that if the Trustee, the Bondholder Representative or a nominee of the Trustee or the Bondholder Representative has acquired the Project through foreclosure, by accepting a deed in lieu of foreclosure or by comparable conversion of the Project, no approval from the Issuer of such exchange shall be required. Prior to accepting a New Bond Mortgage Loan, the Trustee shall have received written evidence that the Bond Mortgage Loan Documents have been modified as necessary to be applicable to the New Bond Mortgage Loan.

## CONCERNING THE TRUSTEE

**Section 7.01 Standard of Care.** The Trustee, prior to an Event of Default as defined in Section 6.01 hereof and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically and expressly set forth in this Indenture. These duties shall be deemed purely ministerial in nature, and the Trustee shall only be liable for acts and omissions related to the performance of such duties, and no implied covenants or obligations shall be read into this Indenture against the Trustee. The Trustee, during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person's own affairs. The permissive rights of the Trustee to do things enumerated in this Agreement shall not be construed as a duty and, with respect to such permissive rights, the Trustee shall not be answerable for other than its negligence or willful misconduct.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its breach of trust, own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:



(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except with regard to the performance of such duties and obligations as are specifically set forth in this Indenture; and

(ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Trustee by the Person or Persons authorized to furnish the same;

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Trustee shall not be liable for any action taken or error of judgment made in good faith by its officers, employees or agents unless it shall have been negligent in ascertaining the pertinent facts; and

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Bondholder Representative relating to 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 under this Indenture.

**Section 7.02 *Reliance Upon Documents.*** Except as otherwise provided in Section 7.01 hereof:

(a) the Trustee may request and rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, bond, judgment, decree or other paper or document of the proper party or parties, including any facsimile transmission or Electronic Notice as permitted hereunder or under the Financing Agreement, not only as to due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein;

(b) any notice, request, direction, election, order, or demand of the Issuer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Issuer by an Authorized Officer of the Issuer (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Issuer may be evidenced to the Trustee by a copy of such resolution duly certified by an Authorized Officer of the Issuer;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Trustee by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Servicer by an Authorized Officer of the Servicer (unless other evidence in respect thereof be herein specifically prescribed);

(e) any notice, request, direction, election, order or demand of the Bondholder Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Bondholder Representative by any Authorized Officer of the Bondholder Representative (unless other evidence in respect thereof be herein specifically prescribed);

(f) neither the Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Agency, Borrower, Bondholder Representative, or any of their directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Trustee shall have no enforcement obligations relating to breaches of representations or warranties of any other Person;

(g) [Intentionally Omitted];

(h) in the administration of the trusts of this Indenture, the Trustee may execute any of the trusts or powers hereby granted directly or through its agents, receivers or attorneys, and the Trustee may act through and consult with counsel (who may be counsel for the Issuer, the Servicer or the Bondholder Representative) or other professionals, and the opinion or advice of such counsel or other professionals shall be full and complete authorization and protection in respect of any action taken or permitted by it hereunder in accordance with such opinion or advice, and the Trustee shall not be responsible for the acts or omissions of such counsel or other professionals appointed with due care;

(i) whenever in the administration of the trusts of this Indenture, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may be deemed to be conclusively proved and established by an opinion of counsel and/or a certificate of an officer or authorized agent of the Issuer or the Borrower and such opinion or certificate shall be full warrant to the Trustee for any action taken or permitted by it under the provisions of this Indenture, but in its discretion the Trustee may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(j) the recitals herein and in the Bonds (except the Trustee's certificate of authentication thereon) shall be taken as the statements of the Issuer and the Borrower and shall not be considered as made by or imposing any obligation or liability upon the Trustee. The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the title of the Issuer or the Borrower to the Trust Estate, or as to the security of this Indenture, or of the Bonds issued hereunder, and the Trustee shall incur no liability or responsibility in respect of any of such matters;

(k) the Trustee shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Trust Estate except for its own willful misconduct or negligence; and every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.02(k);

(l) the Trustee shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Trustee) herein or in any contracts or securities assigned or conveyed to or pledged with the Trustee hereunder, except Events of Default that are evident under Section 6.01(a) or 6.01(b) hereof. The Trustee shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) or 6.01(b) hereof) unless a Responsible Officer of the Trustee shall receive from the Issuer or the Bondholder Representative written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Trustee may conclusively assume that there is no such default. Every provision contained in this Indenture or related instruments or in any such contract or security wherein the duty of the Trustee depends on the occurrence and continuance of such default shall be subject to the provisions of this Section 7.02(l);

(m) the Trustee shall be under no duty to confirm or verify any financial or other statements or reports or certificates furnished pursuant to any provisions hereof, except to the extent such statement or reports are furnished by or under the direction of the Trustee, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Holder of any Bond; and

(n) the Trustee shall be under no obligation to exercise those rights or powers vested in it by this Indenture, other than such rights and powers which it shall be obliged to exercise in the ordinary course of its trusteeship under the terms and provisions of this Indenture and as required by law, at the request or direction of the Bondholder Representative pursuant to Sections 6.03 and 6.08 hereof, unless the Bondholder Representative shall have offered to the Trustee security or indemnity satisfactory to the Trustee in its sole and absolute discretion against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction

(o) in no event shall the Trustee be responsible or liable for special, indirect, punitive, incidental or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(p) the Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; quarantine restrictions; riots; interruptions, loss or malfunctions of utilities,

computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Trustee is authorized and directed to execute in its capacity as Trustee the Financing Agreement and shall have no responsibility 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.

The Trustee or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

The Trustee shall be entitled to request and receive written instructions from the Issuer, Borrower and/or Bondholder Representative, and shall have no responsibility or liability for any losses or damages of any nature that may arise from any action taken or not taken by the Trustee in accordance with the written direction of any such party. The Trustee agrees to accept and act upon facsimile transmission or Electronic Notice of written instructions and/or directions pursuant to this Indenture provided, however, that: (a) subsequent to such facsimile transmission or Electronic Notice of written instructions and/or directions the Trustee shall forthwith receive the originally executed instructions and/or directions, (b) such originally executed instructions and/or directions shall be signed by such Person as may be designated and authorized to sign for the party signing such instructions and/or directions, and (c) the Trustee shall have received a current incumbency certificate containing the specimen signature of such designated Person.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Trustee pursuant to this Section 7.02 shall remain in effect until the Trustee receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

The Trustee shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.17 hereof.

**Section 7.03 *Use of Proceeds.*** The Trustee shall not be accountable for the use or application of any of the Bonds authenticated or delivered hereunder or of the proceeds of the Bonds except as provided herein.

**Section 7.04 *Trustee May Hold Bonds.*** The Trustee and its officers and directors may acquire and hold, or become pledgees of Bonds and otherwise may deal with the Issuer and the Borrower in the same manner and to the same extent and with like effect as though it were not Trustee hereunder.

**Section 7.05 *Trust Imposed.*** All money received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which it was received.

**Section 7.06 Compensation of Trustee.** The Trustee shall be entitled to its Ordinary Trustee's Fees and Expenses in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Trustee hereunder or under any Bond Financing Document to the extent money is available therefor, in accordance with Section 4.06 hereof, exclusive of Extraordinary Services. The Trustee shall be entitled to Extraordinary Trustee's Fees and Expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Bond Financing Documents; provided the Trustee shall not incur any Extraordinary Trustee's Fees and Expenses without the consent of the Bondholder Representative. If any property, other than cash, shall at any time be held by the Trustee subject to this Indenture, or any supplemental indenture, as security for the Bonds, the Trustee, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Indenture as such security for the Bonds, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Trustee for its services and reimbursement to the Trustee for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Financing Agreement and in Sections 4.06, 4.11 and 6.05 hereof. The Issuer shall have no liability for Trustee's fees, costs or expenses. Subject to the provisions of Section 7.09 hereof, the Trustee agrees that it shall continue to perform its duties hereunder (including, but not limited to, its duties as Paying Agent and Bond Registrar) and under the Bond Financing Documents even in the event that money designated for payment of its fees shall be insufficient for such purposes or in the event that the Borrower fails to pay the Ordinary Trustee's Fees and Expenses or, if applicable, the Extraordinary Trustee's Fees and Expenses as required by the Financing Agreement.

The Borrower shall indemnify and hold harmless the Trustee and its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants and servants, past, present or future, from and against (a) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with this Indenture or transactions contemplated hereby, the Project, or the issuance, offering or sale of the Bonds; (b) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project, or the issuance, offering or sale of the Bonds; and (c) all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Borrower shall not be required to indemnify any person for damages caused by the gross negligence, willful misconduct or unlawful acts of such person or which arise from events occurring after the Borrower ceases to own the Project. In the event that any action or proceeding is brought or claim made against the Trustee, or any of its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants or servants, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice thereof from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The indemnified party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section 7.06 shall survive the termination of this Indenture.

**Section 7.07 *Qualifications of Trustee.*** There shall at all times be a Trustee hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers. Any successor Trustee shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly-owned subsidiary of an association or corporation that has such combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to Section 7.09 hereof. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then for the purposes of this Section 7.07, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.07 and another association or corporation is eligible, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.09 hereof.

**Section 7.08 *Merger of Trustee.*** Any association or corporation into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Trustee hereunder and vested with all the title to the whole property or 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 instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding, and shall also be and become successor Trustee in respect of the beneficial interest of the Trustee in the Bond Mortgage Loan.

**Section 7.09 *Resignation by the Trustee.*** The Trustee may at any time resign and be discharged from the trusts hereby created and its duties and obligations hereunder by giving written notice to the Issuer, the Borrower, the Servicer and the Bondholder Representative, and by giving notice (which notice may be by Electronic Means) to each Holder of the Bonds then Outstanding. Such notice to the Issuer, the Borrower, the Servicer and the Bondholder Representative may be delivered by Electronic Means and confirmed by certified mail or overnight delivery service. The resignation of the Trustee shall not be effective until a successor Trustee has been appointed as provided herein and such successor Trustee shall have agreed in writing to be bound by the duties and obligations of the Trustee hereunder.

**Section 7.10 *Removal of the Trustee.*** The Trustee may be removed at any time, either with or without cause, with the consent of the Bondholder Representative (which consent of the Bondholder Representative shall not be unreasonably withheld), by a written instrument signed by the Issuer and delivered to the Trustee, the Servicer and the Borrower. The Trustee may also be removed by a written instrument or concurrent instruments signed by the Bondholder Representative and delivered to the Trustee, the Servicer, the Issuer and the Borrower. In each case written notice of such removal shall be given to the Servicer, the Borrower and to each registered Owner of Bonds then Outstanding as shown on the Bond Registrar. Any such removal shall take effect on the day specified in such written instrument(s), but the Trustee shall not be discharged from the trusts hereby created until a successor Trustee has been appointed and has

accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Trustee hereunder.

**Section 7.11 *Appointment of Successor Trustee.***

(a) In case at any time the Trustee shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Trustee or of its property shall be appointed, or if a public supervisory office shall take charge or control of the Trustee or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Trustee hereunder, and the Issuer, with the written consent of the Bondholder Representative, shall promptly appoint a successor Trustee. Any such appointment shall be made by a written instrument executed by an Authorized Officer of the Issuer. If the Issuer fails to appoint a successor Trustee within ten (10) days following the resignation or removal of the Trustee pursuant to Section 7.09 or Section 7.10 hereunder, as applicable, the Bondholder Representative may appoint a successor Trustee.

(b) If no appointment of a successor Trustee shall be made pursuant to subsection (a) of this Section 7.11 within sixty (60) calendar days following delivery of all required notices of resignation given pursuant to Section 7.09 hereof or of removal of the Trustee pursuant to Section 7.10 hereof, the retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee and for other related relief. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee and grant such other related relief.

**Section 7.12 *Concerning Any Successor Trustee.*** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer a written instrument accepting such appointment hereunder, accepting assignment of the beneficial interest in the Bond Mortgage, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Trust Estate and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, the Borrower or the Bondholder Representative, or of its successor, and upon payment of all amounts due such predecessor, including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Trustee all the Trust Estate and the rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and money held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by a successor Trustee for more fully and certainly vesting in such successor the Trust Estate and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Trustee in each recording office where this Indenture shall have been filed and/or recorded. Each successor Trustee shall mail notice by first class mail, postage prepaid, at least once within 30 days of such appointment, to the Owners of all Bonds Outstanding at their addresses on the Bond Register.

**Section 7.13 *Successor Trustee as Trustee, Paying Agent and Bond Registrar.*** In the event of a change in the office of Trustee, the predecessor Trustee which shall have resigned or shall have been removed shall cease to be trustee and paying agent on the Bonds and Bond Registrar, and the successor Trustee shall become such Trustee, Paying Agent and Bond Registrar.

**Section 7.14 *Appointment of Co-Trustee or Separate Trustee.*** It is the intent of the Issuer and the Trustee that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in case of litigation under or connected with this Indenture, the Financing Agreement or any of the other Bond Financing Documents, and, in particular, in case of the enforcement of any remedies on default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Trustee or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee, with the consent of the Issuer and the Bondholder Representative, appoint an additional individual or institution as a co-trustee or separate trustee.

In the event that the Trustee appoints an additional individual or institution as a co-trustee or separate trustee, in the event of the incapacity or lack of authority of the Trustee, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Trustee herein or to hold title to the Trust Estate or to take any other action that may be necessary or desirable in connection therewith, each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be imposed upon, exercised by or vested in or conveyed to the Trustee with respect thereto shall be imposed upon, exercisable by and vest in such separate trustee or co-trustee, but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.14. Such co-trustee or separate trustee shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Issuer and the Trustee.

Should any instrument in writing from the Issuer be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer, the Trustee and the Borrower. If the Issuer shall fail to deliver the same within thirty (30) days of such request, the Trustee is hereby appointed attorney-in-fact for the Issuer to execute, acknowledge and deliver such instruments in the Issuer's name and stead. In case any co-trustee or separate trustee, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such co-trustee or separate trustee.

Every co-trustee or separate trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:



(a) The Bonds shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Trustee;

(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Trustee shall be conferred or imposed upon or exercised or performed by the Trustee, or by the Trustee and such co-trustee, or separate trustee jointly, as shall be provided in the instrument appointing such co-trustee or separate trustee, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or separate trustee;

(c) any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co-trustee or separate trustee;

(d) any co-trustee or separate trustee to the extent permitted by law shall delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Trustee at any time by an instrument in writing with the concurrence of the Issuer evidenced by a certified resolution may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section 7.14 and in case an Event of Default shall have occurred and be continuing, the Trustee shall have power to accept the resignation of or remove any such co-trustee or separate trustee without the concurrence of the Issuer, and upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section 7.14;

(f) no Trustee or co-trustee hereunder shall be personally liable by reason of any act or omission of any other Trustee hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Bondholder Representative and delivered to the Trustee shall be deemed to have been delivered to each such co-trustee or separate trustee; and

(h) any money, papers, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

The total compensation of the Trustee and any co-trustee or separate trustee shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

**Section 7.15 *Reserved.***

**Section 7.16 *Reserved.***

**Section 7.17 *Filing of Financing Statements.*** The Trustee may, in its discretion and solely upon the direction and, at the expense of the Borrower, file or record or cause to be filed or recorded all UCC continuation statements for the purpose of continuing without lapse the effectiveness of those financing statements which have been filed on or approximately on the Delivery Date in connection with the security for the Bonds pursuant to the authority of the UCC. Upon the filing of any such continuation statement the Trustee shall promptly notify the Issuer, the Borrower, the Bondholder Representative and the Servicer that the same has been done. If direction is given by the Servicer or the Bondholder Representative, the Trustee shall file all continuation statements in accordance with such directions.

**Section 7.18 *USA Patriot Act Requirements of the Trustee.*** To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a Trust, or other legal entity, the Trustee may request documentation to verify such Person's formation and existence as a legal entity. The Trustee may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

**ARTICLE VIII**

**AMENDMENTS OF CERTAIN DOCUMENTS**

**Section 8.01 *Amendments to the Indenture.*** Any of the terms of this Indenture and the Bonds may be amended or waived only by an instrument signed by the Trustee and the Issuer, and with the prior written consent of the Bondholder Representative.

**Section 8.02 *Amendments to other Bond Financing Documents Require Consent of Bondholder Representative.*** Neither the Issuer nor the Trustee shall consent to any amendment, change or modification of any other Bond Financing Document without the prior written consent of the Bondholder Representative. The Trustee shall enter into such amendments to the Bond Financing Documents as shall be directed by the Bondholder Representative.

**Section 8.03 *Reserved.***

**ARTICLE IX**

**SATISFACTION AND DISCHARGE OF INDENTURE**

**Section 9.01 *Discharge of Lien.*** If the Issuer shall pay or cause to be paid to the Holders of the Bonds the principal, interest and premium, if any, to become due thereon at the times and in the manner stipulated therein and herein, in any one or more of the following ways:

- (a) by the payment of the principal of (including redemption premium, if any) and interest on all Bonds outstanding; or

(b) by the deposit to the account of the Trustee, in trust, of money or securities in the necessary amount to pay the principal, redemption price and interest to the date established for redemption whether by redemption or otherwise; or

(c) by the delivery to the Trustee, for cancellation by it, of all Bonds Outstanding;

and shall have paid all amounts due and owing under the other Bond Financing Documents, and shall have paid all fees and expenses of and any other amounts due to the Trustee, the Servicer, and the Paying Agent, and if the Issuer shall keep, perform and observe all and singular the covenants and promises in the Bonds and in this Indenture expressed as to be kept, performed and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer any interest in property at the time subject to the lien of this Indenture which may then be in its possession, except amounts held by the Trustee for the payment of principal of, interest and premium, if any, on the Bonds, the payment of any amounts owed to the United States of America pursuant to Section 4.12 hereof.

Any Outstanding Bond shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 based on a deposit of moneys or securities with the Trustee pursuant to Section 9.01(b) if the following conditions shall have been fulfilled: (a) in case such Bond is to be redeemed on any date prior to its maturity, the Trustee shall have given to the Bondholder irrevocable notice of redemption of such Bond on said date; (b) there shall be on deposit with the Trustee either money or noncallable and nonprepayable direct obligations of the United States of America (or other defeasance securities constituting Qualified Investments approved in writing by the Bondholder Representative) in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal or redemption price, if applicable, and interest due and to become due on such Bond on the redemption date or maturity date thereof, as the case may be; (c) the Trustee shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to the Trustee and the Bondholder Representative as to the adequacy of the amounts or securities so deposited to fully pay the Bonds deemed to be paid (provided such report shall not be required if the Bonds will mature or be redeemed within 60 days of a cash-only deposit that the Trustee certifies in writing will be sufficient to fully pay such Bonds); and (d) the Trustee and the Bondholder Representative shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Borrower, any general partner, member or guarantor of the Borrower, or the Issuer were to become a debtor in a proceeding under the Bankruptcy Code (x) payment of such money to holders of the Bonds would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (y) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Bonds.

The Trustee shall in no event cause the Bonds to be optionally redeemed from money deposited pursuant to this Article IX unless the requirements of Article III have been met with respect to such redemption.

**Section 9.02 *Discharge of Liability on Bonds.*** Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01 above) to pay or redeem Outstanding Bonds (whether upon or prior to their maturity or the redemption date of such Bonds) provided that, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article III provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, all liability of the Issuer in respect of such Bonds shall cease, terminate and be completely discharged, except only that thereafter the holders thereof shall be entitled to payment by the Issuer, and the Issuer shall remain liable for such payment, but only out of the money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 9.03 hereof.

**Section 9.03 *Payment of Bonds After Discharge of Indenture.*** Notwithstanding any provisions of this Indenture, and subject to applicable unclaimed property laws of the State, any money deposited with the Trustee or any paying agent in trust for the payment of the principal of, interest or premium on the Bonds remaining unclaimed for [\_\_\_\_\_] years after the payment thereof: [(a) shall be reported and disposed of by the Trustee in accordance with applicable unclaimed property laws; or (b)] to the extent permitted by applicable law, shall be paid to [the Issuer][the Borrower][other disposition], whereupon all liability of the Issuer and the Trustee with respect to such money shall cease, and the holders of the Bonds shall thereafter look solely to the Borrower for payment of any amounts then due. [All money held by the Trustee and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon.]

## ARTICLE X

### INTENTIONALLY OMITTED

## ARTICLE XI

### MISCELLANEOUS

**Section 11.01 *Consents and Other Instruments of Bondholders.*** Any consent, request, direction, approval, waiver, objection, appointment or other instrument required by this Indenture to be signed and executed by the Bondholders may be signed and executed in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such instrument, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under such instrument, namely:

(a) the fact and date of the execution by any Person of any such instrument may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the Person signing such instrument acknowledged the execution thereof. Where such execution is by an officer of a corporation or association or a member of a partnership on behalf of such corporation,

association or partnership, such affidavit or certificate shall also constitute sufficient proof of such authority;

(b) the ownership of registered Bonds shall be proved by the Bond Register; and

(c) any request, consent or vote of the Holder of any Bond shall bind every future Holder of the same Bond and the Holder of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or permitted to be done by the Trustee or the Issuer in pursuance of such request, consent or vote.

**Section 11.02 *Servicing of the Bond Mortgage Loan.*** The Bondholder Representative may appoint a Servicer (which may be the Bondholder Representative if the Bondholder Representative elects to service the Bond Mortgage Loan) to service the Bond Mortgage Loan as provided in Section 3.02 of the Financing Agreement.

**Section 11.03 *Limitation of Rights.*** With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the Parties hereto, the Bondholder Representative, the Servicer, the Borrower and the Holders of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions hereof.

**Section 11.04 *Entire Agreement; Construction of Conflicts; Severability.*** This Indenture and the exhibits hereto set forth the entire agreement and understanding of the parties related to this transaction and supersedes all prior agreements and understandings, oral or written. Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by the Borrower or any other arrangements agreed to by the Borrower in order to finance or refinance the Project with the proceeds of the Bonds, then the Bond Mortgage Loan Documents shall be controlling in all respects. If any provision of this Indenture shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Indenture contained, shall not affect the remaining portions of this Indenture, or any part thereof.

**Section 11.05 *Notices.***

(a) Any provision of this Indenture relating to the mailing of notice or other communication to Bondholders shall be deemed fully complied with if such notice or other communication is mailed, by first class mail, postage prepaid, or overnight delivery service, to each registered Owner of any Bonds then Outstanding at the address of such registered Owner as it appears on the Bond Register. Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled

to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Issuer, the Trustee, the Bondholder Representative, the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Indenture by Electronic Notice or by a facsimile transmission for which a confirmation of receipt has been delivered. The Issuer, the Trustee, the Bondholder Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Issuer: North Dakota Housing Finance Agency  
2624 Vermont Ave  
Bismarck, ND 58504  
Attention: Executive Director  
Facsimile: (701) 328-8090

With a copy to:

Jaden Grossman  
Office of Attorney General  
600 East Boulevard Avenue, Dept. 125  
Bismarck, ND 58505-0040  
Facsimile: (701) 328-2226  
E-mail: [jfox@nd.gov](mailto:jfox@nd.gov)

The Trustee: Wilmington Trust, National Association  
50 South Sixth Street, Suite 1290  
Minneapolis, MN 55402  
Attention: Corporate Trust Services  
Telephone: (612) 217-5672  
Facsimile: (612)-217-5651  
E-mail: [Llewis6@wilmingtontrust.com](mailto:Llewis6@wilmingtontrust.com)

The Borrower: Lashkowitz Riverfront Nine, LLLP  
c/o BlueLine Development, Inc.  
Attn: Maddy Mason  
1004 South Ave. W.  
Missoula, MT 48701  
Telephone: 612-741-9396  
Email: [maddy@bluelinedevelopment.com](mailto:maddy@bluelinedevelopment.com)

with a copy to: Winthrop Weinstine  
Capella Tower, Suite 3500  
225 South Sixth Street  
Minneapolis, MN 55402-4629  
Attention: Jason Harby  
Telephone: (612) 604-6788  
Email: jharby@winthrop.com

and a copy to: WNC Holding, LLC  
c/o WNC & Associates, Inc.  
17782 Sky Park Circle  
Irvine, California 92614-6404  
Attn: Melanie Wenk

and a copy to: WNC Housing, L.P.  
17782 Sky Park Circle  
Irvine, California 92614-6404  
Attn: Melanie Wenk

and a copy to: Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska 68102  
Attn: Shane Deaver, Esq.

Bondholder  
Representative  
and Servicer: ORIX Public Finance, LLC  
2001 Ross Avenue  
Dallas, Texas 75201  
Attention: Ben Forrest

The Trustee agrees to accept and act upon facsimile transmission or Electronic Notice of written instructions and/or written directions pursuant to this Indenture.

(b) The Trustee shall provide to the Bondholder Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof and (ii) any written information or other written communication received by the Trustee hereunder within ten (10) Business Days of receiving a written request from the Bondholder Representative and the Servicer for any such information or other communication.

**Section 11.06 *Bondholder Representative.***

(a) ORIX Public Finance, LLC is the initial Bondholder Representative with respect to the Bonds. The Bondholder Representative shall be entitled to all the rights and privileges of the Bondholders hereunder and under the other Bond Financing Documents.

(b) The Bondholder Representative may provide written notice to the Trustee designating particular individuals or Persons authorized to execute any consent, waiver, approval, direction or other instrument on behalf of the Bondholder Representative, and such notice may be amended or rescinded by the Bondholder Representative at any time by subsequent written notice. The Bondholder Representative may be removed and a successor appointed by a written notice in the form of Exhibit B hereto given by the Majority Bondholder to the Trustee, the Issuer, the Servicer and the Borrower. The removal and reappointment shall be effective immediately upon receipt of such notice by the Trustee. The Majority Bondholder may appoint any Person to act as Bondholder Representative, including, without limitation, the Servicer. If, for any reason, a Bondholder Representative resigns by written notice provided to the Trustee, the Majority Bondholder, the Issuer, the Servicer and the Borrower, all references to Bondholder Representative herein and in the other Bond Financing Documents shall be deemed to refer to the Majority Bondholder until a successor Bondholder Representative is appointed by the Majority Bondholder.

(c) Whenever pursuant to this Indenture or any other Bond Financing Document, the Bondholder Representative exercises any right given to it to approve or disapprove, or any arrangement or term is to be acceptable to the Bondholder Representative, the decision of the Bondholder Representative to approve or disapprove or to decide whether arrangements or terms are acceptable or not acceptable shall be in the sole discretion of the Bondholder Representative, except as otherwise specifically indicated.

(d) Each Holder of the Bonds (and any beneficial owners thereof), by their purchase or other acquisition thereof, shall be deemed to have acknowledged and agreed to the provisions of this Indenture and the other Bond Financing Documents with respect to the Bondholder Representative and the rights and privileges thereof, including but not limited to the right to control all remedies in respect of the Bonds and the Bond Mortgage Loan subject to Section 6.08 hereof.

**Section 11.07 *Trustee as Paying Agent and Bond Registrar.*** The Trustee is hereby designated and agrees to act as Paying Agent and Bond Registrar for and in respect to the Bonds. When acting in either such capacity, the Trustee will receive the same rights, protections and indemnifications afforded to the Trustee hereunder.

**Section 11.08 *Payments Due on Non-Business Days.*** In any case where a date of payment with respect to any Bonds shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date provided that payment is made on such next succeeding Business Day.

**Section 11.09 *Counterparts.*** This Indenture 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 11.10 *Laws Governing Indenture and Administration of Trust.*** The effect and meanings of this Indenture and the rights of all parties hereunder shall be governed by, and construed according to, the laws of the State without regard to conflicts of laws principles.



**Section 11.11 *No Recourse.*** No recourse under or upon any obligation, covenant or agreement contained in this Indenture or in any Bond shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Issuer, either directly or through the Issuer or its governing body or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Holder of any Bond issued hereunder, or otherwise, of any sum that may be due and unpaid by the Issuer or its governing body upon any such Bond. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Holder of any Bond issued hereunder or otherwise of any sum that may remain due and unpaid upon any Bond hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Indenture and the issuance of the Bonds.

**Section 11.12 *Successors and Assigns.*** All the covenants and representations contained in this Indenture by or on behalf of the parties hereto shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

[Signature Pages Follow]

**IN WITNESS WHEREOF**, the Issuer and the Trustee have caused this Trust Indenture to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

**NORTH DAKOTA HOUSING FINANCE  
AGENCY**

By \_\_\_\_\_  
David A. Flohr, Executive Director

[ISSUER'S SIGNATURE PAGE TO *LASHKOWITZ RIVERFRONT 9* INDENTURE]

**WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Trustee**

By: \_\_\_\_\_  
Lisa M. Lewis, Vice President

[TRUSTEE'S SIGNATURE PAGE TO *LASHKOWITZ RIVERFRONT 9* INDENTURE]

**SCHEDULE 1**

**MANDATORY SINKING FUND SCHEDULE**

**EXHIBIT A-1**

**FORM OF BOND**

**UNITED STATES OF AMERICA  
STATE OF NORTH DAKOTA  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 9)  
SERIES 2024A**

**NO. R-1**

**[\$2,200,000]**

NOTICE: Unless this bond certificate is presented by an authorized representative of The Depository Trust Company to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owners hereof, Cede & Co., has an interest herein.

INTEREST RATE: [ ]%  
MATURITY DATE: [MATURITY DATE]  
DELIVERY DATE: [CLOSING DATE]  
CUSIP NO.: [65889A ]  
REGISTERED OWNER: CEDE & CO.  
MAXIMUM PRINCIPAL AMOUNT: [TWO MILLION TWO HUNDRED THOUSAND] AND NO/100 DOLLARS

The State of North Dakota (the “**State**”) acting through the Industrial Commission of North Dakota (the “**Commission**”) in its capacity as the North Dakota Housing Finance Agency (the “**Issuer**”), a public entity created and existing under the laws of the State of North Dakota, for value received, hereby promises (but solely from the sources and in the manner provided for in the hereinafter defined Indenture) to pay to the registered owner identified above, or registered assigns, on the maturity date set forth above, unless previously called for redemption, the principal sum as set forth above (subject to the last sentence of this paragraph), together with interest thereon at the rate set forth above (subject to adjustment to the Default Rate as provided in the Indenture (as defined below)) from the Interest Payment Date (as defined below) next preceding the date of authentication of this Bond to which interest has been paid or duly provided for, unless the date of authentication is an Interest Payment Date to which interest has been paid or duly provided for, in which case from the date of authentication of this Bond, or unless no interest has been paid or duly provided for on this Bond, in which case from the

Delivery Date identified above, until the principal amount hereof shall have been fully paid, at the rate per annum identified above, payable on (a) the first day of each calendar month, commencing [\_\_\_\_\_], 20[\_\_\_], (b) the maturity date identified above, and (c) the date of redemption of this Bond (each, an “**Interest Payment Date**”), computed on the basis of a 360-day year consisting of twelve 30-day months, as provided in the Indenture. Notwithstanding the foregoing, if this Bond is authenticated after a Record Date and before the following Interest Payment Date, this Bond shall bear interest from such Interest Payment Date; provided, however, that if there shall be a default in the payment of interest due on such Interest Payment Date, then this Bond shall bear interest from the next preceding Interest Payment Date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for on this Bond, from the Delivery Date. Payment of principal, premium, if any, and interest on this Bond are payable in lawful money of the United States of America. Payment of principal of this Bond, premium, if any, and interest on this Bond will be made by check mailed on the Interest Payment Date to the registered owner of this Bond as such address shall appear on the registration books for the Bonds on the 15<sup>th</sup> day of the month preceding each Interest Payment Date (a “**Record Date**”); provided, however, upon written request of a registered owner of at least \$1,000,000 aggregate principal amount of the Bonds (or an Owner of any principal amount thereof if the sole Owner of the Bonds) received by Wilmington Trust, National Association, as trustee (together with any successor trustee appointed in accordance with the terms of the hereinafter defined Indenture, the “**Trustee**”), at least five (5) Business Days prior to a Record Date, all payments of principal, premium, if any, and interest will be paid by wire transfer of immediately available funds to an account designated by such owner without any necessity of presentation and surrender of Bonds upon any redemption or tender thereof. All capitalized terms not defined herein shall have the meaning set forth in the Trust Indenture dated as of July 1, 2024, by and between the Issuer and the Trustee (the “**Indenture**”). Notwithstanding anything to the contrary herein, the outstanding principal balance of this Bond at any time shall be an amount equal to the proceeds of the Bonds advanced by the Bondholder Representative under the Indenture and not otherwise prepaid and interest shall accrue on the principal amount of the Bonds which have been advanced under the Indenture and is outstanding as reflected on the Record of Advances.

THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OR PLEDGE OF THE GENERAL CREDIT OF THE ISSUER WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION OF INDEBTEDNESS. THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER AND DO NOT CONSTITUTE OR CREATE A DEBT OR OBLIGATION, EITHER GENERAL OR SPECIAL, OR LIABILITY OR MORAL OBLIGATION OF THE STATE OF NORTH DAKOTA (THE “STATE”) OR ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS WHATSOEVER. NEITHER THE FAITH OR CREDIT NOR THE TAXING POWER OF THE STATE OR OF ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR PREMIUM, IF ANY, OR THE INTEREST ON THE BONDS. THE BONDS ARE NOT A GENERAL OBLIGATION OF THE ISSUER (WHICH HAS NO TAXING POWER) BUT ARE LIMITED REVENUE OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE PLEDGED THEREFOR UNDER THE INDENTURE. PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS SHALL BE A VALID CLAIM ONLY AS AGAINST THE PLEDGED REVENUES, IS NOT A GENERAL

OBLIGATION OF THE STATE, OR ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE, OR ANY COUNTY, MUNICIPALITY, POLITICAL SUBDIVISION OF THE STATE OR THE ISSUER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS.

NO MEMBER, COMMISSIONER, OFFICER, AGENT, EMPLOYEE OR ATTORNEY OF THE ISSUER, INCLUDING ANY PERSON EXECUTING THE INDENTURE OR THE BONDS, SHALL BE LIABLE PERSONALLY ON THE BONDS OR FOR ANY REASON RELATING TO THE ISSUANCE OF THE BONDS. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BONDS, OR FOR ANY CLAIM BASED ON THE BONDS, OR OTHERWISE IN RESPECT OF THE BONDS, OR BASED ON OR IN RESPECT OF THE INDENTURE OR ANY SUPPLEMENTAL INDENTURE, AGAINST ANY MEMBER, COMMISSIONER, OFFICER, EMPLOYEE OR AGENT, AS SUCH, OF THE ISSUER OR ANY SUCCESSOR, 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, BY THE ACCEPTANCE OF THIS BOND AND AS PART OF THE CONSIDERATION FOR THE ISSUANCE OF THE BONDS, EXPRESSLY WAIVED AND RELEASED.

This Bond is one of a duly authorized issue of bonds of the Issuer known as its North Dakota Housing Finance Agency Multifamily Revenue Bonds (Lashkowitz Riverfront 9), Series 2024A, issued in the maximum aggregate principal amount of \$[2,200,000] (the “**Bonds**”) under and pursuant to the Constitution and the laws of the State, particularly Chapter 54-17 of the North Dakota Century Code, as amended (the “**Act**”), and a bond resolution adopted by the Issuer on [June 27, 2024]. The Bonds are special, limited obligations of the Issuer payable solely from and secured by the Trust Estate pledged therefor pursuant to the Indenture. The Bonds are issued to provide funds to finance the acquisition, construction and/or rehabilitation of a multifamily rental housing development known as Lashkowitz Riverfront 9 located in Fargo, North Dakota owned by Lashkowitz Riverfront Nine, LLLP, a North Dakota limited liability limited partnership (the “**Borrower**”).

Each series of Bonds is issuable as fully registered bonds in Authorized Denominations of \$25,000 and any amount in excess thereof.

To secure its obligation to make payments on the Bond Mortgage Note in accordance with its terms, the Borrower has caused to be delivered to the Issuer a Multifamily Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of [\_\_\_\_\_] (the “**Bond Mortgage**”), which has been assigned by the Issuer to the Trustee.

Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the Trust Estate under the Indenture, the nature and extent of the security, the terms and conditions upon which the Bonds are issued and secured and the rights of the holders thereof, to all of the provisions of which Indenture the registered Owner of this Bond, by acceptance hereof, assents and agrees. This Bond is equally and ratably secured under the Indenture with all other Bonds issued thereunder.

The Bonds are subject to optional and mandatory redemption in accordance with the provisions of the Indenture.

In the event of a redemption of less than all of the Bonds, the Bonds shall be selected by lot. Bonds shall only be redeemed in Authorized Denominations.

Unless notice of redemption is not required under this Bond and the terms of the Indenture, notice of redemption of this Bond shall be given by first class mail, postage prepaid, to the registered owner hereof at the address of such owner shown on the registration books maintained by the Trustee, as bond registrar. All such notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional or mandatory sinking fund redemptions) nor more than sixty (60) days prior to the date fixed for redemption. Failure to give notice by mailing to the registered owner of any Bond designated for redemption shall not affect the validity of the proceedings for the redemption of any other Bond if notice shall have been mailed as herein provided. Except in the event of a defeasance, the Trustee may provide a conditional notice with respect to an optional redemption upon the direction of the Borrower.

The owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond is transferable by the registered owner hereof in Person or by such owner's attorney duly authorized in writing at the principal corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer, a new registered Bond or Bonds of the same series, maturity and interest rate and of authorized denomination or denominations for the same aggregate principal amount will be issued to the transferee in exchange therefore. The Bonds are issuable only as fully registered Bonds without coupons.

The Issuer and the Trustee may deem and treat the registered holder hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until this Bond shall have been authenticated by the certificate of the Trustee endorsed hereon.

In the event of a conflict between the terms of this Bond and the Indenture, the terms of the Indenture shall control.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in the time, form



and manner as required by law; that payment in full for this Bond has been received; and that this Bond and the issue of which it forms a part does not exceed or violate any constitutional or statutory limitation.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Commission has caused this Bond to be executed in the name of the State and on its behalf by the manual or facsimile signature of the members of the Commission and the official seal of the Commission (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested to by the manual or facsimile signature of an Authorized Officer of the Commission.

INDUSTRIAL COMMISSION OF NORTH  
DAKOTA

\_\_\_\_\_  
Agriculture Commissioner

By \_\_\_\_\_  
Governor and Chairman

Attest:

\_\_\_\_\_  
Executive Director of the Agency

By \_\_\_\_\_  
Attorney General

[SEAL]

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds issued under the provisions of and described in the within-mentioned Indenture.

Date of Authentication: \_\_\_\_\_

WILMINGTON TRUST, NATIONAL  
ASSOCIATION

By: \_\_\_\_\_  
Authorized Signer

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto  
(Please insert Social Security Number or other identifying number of assignee)

(Please print or Typewrite Name and Address of Assignee)

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

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

Signature Guaranteed

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by an eligible guaranty institution.

\_\_\_\_\_  
Signature

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 whatever.

**EXHIBIT A-2**

**FORM OF BOND**

**UNITED STATES OF AMERICA  
STATE OF NORTH DAKOTA  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 9)  
SERIES 2024B**

**NO. R-1**

**[\$2,800,000]**

NOTICE: Unless this bond certificate is presented by an authorized representative of The Depository Trust Company to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owners hereof, Cede & Co., has an interest herein.

INTEREST RATE: [ ]%  
MATURITY DATE: [MATURITY DATE]  
DELIVERY DATE: [CLOSING DATE]  
CUSIP NO.: [65889A ]  
REGISTERED OWNER: CEDE & CO.  
MAXIMUM PRINCIPAL AMOUNT: [TWO MILLION EIGHT HUNDRED THOUSAND] AND NO/100 DOLLARS

The State of North Dakota (the “**State**”) acting through the Industrial Commission of North Dakota (the “**Commission**”) in its capacity as the North Dakota Housing Finance Agency (the “**Issuer**”), a public entity created and existing under the laws of the State of North Dakota, for value received, hereby promises (but solely from the sources and in the manner provided for in the hereinafter defined Indenture) to pay to the registered owner identified above, or registered assigns, on the maturity date set forth above (subject to the last sentence of this paragraph), unless previously called for redemption, the principal sum as set forth above, together with interest thereon at the rate set forth above (subject to adjustment to the Default Rate as provided in the Indenture (as defined below)) from the Interest Payment Date (as defined below) next preceding the date of authentication of this Bond to which interest has been paid or duly provided for, unless the date of authentication is an Interest Payment Date to which interest has been paid or duly provided for, in which case from the date of authentication of this Bond, or unless no interest has been paid or duly provided for on this Bond, in which case from the

Delivery Date identified above, until the principal amount hereof shall have been fully paid, at the rate per annum identified above, payable on (a) the first day of each calendar month, commencing [\_\_\_\_], 20[\_\_\_], (b) the maturity date identified above, and (c) the date of redemption of this Bond (each, an “**Interest Payment Date**”), computed on the basis of a 360-day year consisting of twelve 30-day months, as provided in the Indenture. Notwithstanding the foregoing, if this Bond is authenticated after a Record Date and before the following Interest Payment Date, this Bond shall bear interest from such Interest Payment Date; provided, however, that if there shall be a default in the payment of interest due on such Interest Payment Date, then this Bond shall bear interest from the next preceding Interest Payment Date to which interest has been paid or duly provided for, or, if no interest has been paid or duly provided for on this Bond, from the Delivery Date. Payment of principal, premium, if any, and interest on this Bond are payable in lawful money of the United States of America. Payment of principal of this Bond, premium, if any, and interest on this Bond will be made by check mailed on the Interest Payment Date to the registered owner of this Bond as such address shall appear on the registration books for the Bonds on the 15<sup>th</sup> day of the month preceding each Interest Payment Date (a “**Record Date**”); provided, however, upon written request of a registered owner of at least \$1,000,000 aggregate principal amount of the Bonds (or an Owner of any principal amount thereof if the sole Owner of the Bonds) received by Wilmington Trust, National Association, as trustee (together with any successor trustee appointed in accordance with the terms of the hereinafter defined Indenture, the “**Trustee**”), at least five (5) Business Days prior to a Record Date, all payments of principal, premium, if any, and interest will be paid by wire transfer of immediately available funds to an account designated by such owner without any necessity of presentation and surrender of Bonds upon any redemption or tender thereof. All capitalized terms not defined herein shall have the meaning set forth in the Trust Indenture dated as of July 1, 2024, by and between the Issuer and the Trustee (the “**Indenture**”). Notwithstanding anything to the contrary herein, the outstanding principal balance of this Bond at any time shall be an amount equal to the proceeds of the Bonds advanced by the Bondholder Representative under the Indenture and not otherwise prepaid and interest shall accrue on the principal amount of the Bonds which have been advanced under the Indenture and is outstanding as reflected on the Record of Advances.

THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OR PLEDGE OF THE GENERAL CREDIT OF THE ISSUER WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION OF INDEBTEDNESS. THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER AND DO NOT CONSTITUTE OR CREATE A DEBT OR OBLIGATION, EITHER GENERAL OR SPECIAL, OR LIABILITY OR MORAL OBLIGATION OF THE STATE OF NORTH DAKOTA (THE “STATE”) OR ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS WHATSOEVER. NEITHER THE FAITH OR CREDIT NOR THE TAXING POWER OF THE STATE OR OF ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR PREMIUM, IF ANY, OR THE INTEREST ON THE BONDS. THE BONDS ARE NOT A GENERAL OBLIGATION OF THE ISSUER (WHICH HAS NO TAXING POWER) BUT ARE LIMITED REVENUE OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE PLEDGED THEREFOR UNDER THE INDENTURE. PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS SHALL BE A VALID CLAIM ONLY AS AGAINST THE PLEDGED REVENUES, IS NOT A GENERAL

OBLIGATION OF THE STATE, OR ANY COUNTY, MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE, OR ANY COUNTY, MUNICIPALITY, POLITICAL SUBDIVISION OF THE STATE OR THE ISSUER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS.

NO MEMBER, COMMISSIONER, OFFICER, AGENT, EMPLOYEE OR ATTORNEY OF THE ISSUER, INCLUDING ANY PERSON EXECUTING THE INDENTURE OR THE BONDS, SHALL BE LIABLE PERSONALLY ON THE BONDS OR FOR ANY REASON RELATING TO THE ISSUANCE OF THE BONDS. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BONDS, OR FOR ANY CLAIM BASED ON THE BONDS, OR OTHERWISE IN RESPECT OF THE BONDS, OR BASED ON OR IN RESPECT OF THE INDENTURE OR ANY SUPPLEMENTAL INDENTURE, AGAINST ANY MEMBER, COMMISSIONER, OFFICER, EMPLOYEE OR AGENT, AS SUCH, OF THE ISSUER OR ANY SUCCESSOR, 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, BY THE ACCEPTANCE OF THIS BOND AND AS PART OF THE CONSIDERATION FOR THE ISSUANCE OF THE BONDS, EXPRESSLY WAIVED AND RELEASED.

This Bond is one of a duly authorized issue of bonds of the Issuer known as its North Dakota Housing Finance Agency Multifamily Revenue Bonds (Lashkowitz Riverfront 9), Series 2024B, issued in the maximum aggregate principal amount of \$[2,800,000] (the “**Bonds**”) under and pursuant to the Constitution and the laws of the State, particularly Chapter 54-17 of the North Dakota Century Code, as amended (the “**Act**”), and a bond resolution adopted by the Issuer on [June 27, 2024]. The Bonds are special, limited obligations of the Issuer payable solely from and secured by the Trust Estate pledged therefor pursuant to the Indenture. The Bonds are issued to provide funds to finance the acquisition, construction and/or rehabilitation of a multifamily rental housing development known as Lashkowitz Riverfront 9 located in Fargo, North Dakota owned by Lashkowitz Riverfront Nine, LLLP, a North Dakota limited liability limited partnership (the “**Borrower**”).

Each series of Bonds is issuable as fully registered bonds in Authorized Denominations of \$25,000 and any amount in excess thereof.

To secure its obligation to make payments on the Bond Mortgage Note in accordance with its terms, the Borrower has caused to be delivered to the Issuer a Multifamily Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of [\_\_\_\_\_] (the “**Bond Mortgage**”), which has been assigned by the Issuer to the Trustee.

Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the Trust Estate under the Indenture, the nature and extent of the security, the terms and conditions upon which the Bonds are issued and secured and the rights of the holders thereof, to all of the provisions of which Indenture the registered Owner of this Bond, by acceptance hereof, assents and agrees. This Bond is equally and ratably secured under the Indenture with all other Bonds issued thereunder.

The Bonds are subject to optional and mandatory redemption in accordance with the provisions of the Indenture.

In the event of a redemption of less than all of the Bonds, the Bonds shall be selected by lot. Bonds shall only be redeemed in Authorized Denominations.

Unless notice of redemption is not required under this Bond and the terms of the Indenture, notice of redemption of this Bond shall be given by first class mail, postage prepaid, to the registered owner hereof at the address of such owner shown on the registration books maintained by the Trustee, as bond registrar. All such notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional or mandatory sinking fund redemptions) nor more than sixty (60) days prior to the date fixed for redemption. Failure to give notice by mailing to the registered owner of any Bond designated for redemption shall not affect the validity of the proceedings for the redemption of any other Bond if notice shall have been mailed as herein provided. Except in the event of a defeasance, the Trustee may provide a conditional notice with respect to an optional redemption upon the direction of the Borrower.

The owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond is transferable by the registered owner hereof in Person or by such owner's attorney duly authorized in writing at the principal corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer, a new registered Bond or Bonds of the same series, maturity and interest rate and of authorized denomination or denominations for the same aggregate principal amount will be issued to the transferee in exchange therefore. The Bonds are issuable only as fully registered Bonds without coupons.

The Issuer and the Trustee may deem and treat the registered holder hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until this Bond shall have been authenticated by the certificate of the Trustee endorsed hereon.

In the event of a conflict between the terms of this Bond and the Indenture, the terms of the Indenture shall control.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in the time, form

and manner as required by law; that payment in full for this Bond has been received; and that this Bond and the issue of which it forms a part does not exceed or violate any constitutional or statutory limitation.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Commission has caused this Bond to be executed in the name of the State and on its behalf by the manual or facsimile signature of the members of the Commission and the official seal of the Commission (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested to by the manual or facsimile signature of an Authorized Officer of the Commission.

INDUSTRIAL COMMISSION OF NORTH  
DAKOTA

\_\_\_\_\_  
Agriculture Commissioner

By \_\_\_\_\_  
Governor and Chairman

Attest:

\_\_\_\_\_  
Executive Director of the Agency

By \_\_\_\_\_  
Attorney General

[SEAL]



**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds issued under the provisions of and described in the within-mentioned Indenture.

Date of Authentication: \_\_\_\_\_

WILMINGTON TRUST, NATIONAL  
ASSOCIATION

By: \_\_\_\_\_  
Authorized Signer

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto  
(Please insert Social Security Number or other identifying number of assignee)

(Please print or Typewrite Name and Address of Assignee)

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

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

Signature Guaranteed

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by an eligible guaranty institution.

\_\_\_\_\_  
Signature

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 whatever.

**EXHIBIT B**

**FORM OF NOTICE OF APPOINTMENT  
OF BONDHOLDER REPRESENTATIVE**

Wilmington Trust, National Association  
Minneapolis, MN

Lashkowitz Riverfront Nine, LLLP, c/o BlueLine Development, Inc.  
Missoula, MT

North Dakota Housing Finance Agency  
Bismarck, ND

ORIX Public Finance, LLC  
Dallas, Texas

STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 9)  
SERIES 2024A and SERIES 2024B

Ladies and Gentlemen:

The undersigned is the Majority Bondholder of the above-referenced Bonds (the “**Bonds**”), as such term is defined in the Industrial Commission of North Dakota acting in its capacity as the North Dakota Housing Finance Agency (the “**Issuer**”) and Wilmington Trust, National Association (the “**Trustee**”). Pursuant to Section 11.06 of the Indenture, you are hereby notified that, effective immediately upon receipt of this notice by the Trustee, the Bondholder Representative appointed under Section 11.06 of the Indenture shall be \_\_\_\_\_. [The person or entity previously appointed as Bondholder Representative shall upon the effectiveness of this notice no longer have any further rights or obligations as Bondholder Representative.]

The following individual or individuals shall have the authority to execute any consent, waiver, approval, direction or other instrument on behalf of the Bondholder Representative and the signature(s) set forth next to his/her (their) name(s) is (are) his/her (their) true and correct signature(s).

NAME	SIGNATURE
_____	_____
_____	_____
_____	_____
_____	_____

Additional individuals may be given such authority by written notice to you from the Bondholder Representative or from the Majority Bondholder.

This notice is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**[MAJORITY BONDHOLDER SIGNATURE  
BLOCK]**

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

## EXHIBIT C

### FORM OF INVESTOR LETTER

[To be prepared on letterhead of Purchaser]

[Date]

North Dakota Housing Finance Agency  
Bismarck, ND

Wilmington Trust, National Association  
Minneapolis, MN

STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 9)  
SERIES 2024A and SERIES 2024B

Ladies and Gentlemen:

The undersigned (the "Investor") hereby acknowledges receipt of \$\_\_\_\_\_ in aggregate principal amount of the above-referenced bonds (the "Bonds") issued pursuant to the terms of the Trust Indenture dated as of July 1, 2024 (the "Indenture") between the Industrial Commission of North Dakota acting in its capacity as the North Dakota Housing Finance Agency (the "Issuer") and Wilmington Trust, National Association (the "Trustee"). Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Indenture.

In connection with the purchase of the Bonds by the Investor, the Investor hereby makes the following representations upon which you may rely:

1. The Investor has authority to purchase the Bonds and to execute this letter, and any other instruments and documents required to be executed by the Investor in connection with the purchase of the Bonds.
2. The Investor is an "accredited investor" under Regulation D of the Securities Act of 1933 (the "Act") or a "qualified institutional buyer" under Rule 144(a) of said Act (such "accredited investor" or "qualified institutional buyer", a "Qualified Transferee"), and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal obligations, to be able to evaluate the risks and merits of the investment represented by the Bonds.
3. The Investor acknowledges that it is purchasing the Bonds for investment for its own account and not with a present view toward resale or the distribution thereof, in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Bonds; provided, however, that the Investor may in the future transfer or dispose of the Bonds as permitted by the Indenture.

4. The Investor understands that the Bonds are not registered under the Act and that such registration is not legally required as of the date hereof; and further understands that the Bonds (a) are not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable.

5. The Investor understands that (a) the Bonds are not secured by any pledge of any moneys received or to be received from taxation by the State of North Dakota or any political subdivision thereof and that the Issuer has no taxing power, (b) the Bonds do not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Issuer, the State of North Dakota or any political subdivision thereof; and (c) the liability of the Issuer with respect to the Bonds is limited to the Trust Estate as set forth in the Indenture.

6. The Investor has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision in connection with the purchase of the Bonds. The Investor has not relied upon the Issuer for any information in connection with its purchase of the Bonds.

7. The Investor has made its own inquiry and analysis with respect to the Bonds and the security therefor, and other material factors affecting the security and payment of the Bonds. The Investor is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Bonds.

All agreements, representations and warranties made herein shall survive the execution and delivery of this letter agreement and, notwithstanding any investigation heretofore or hereafter, shall continue in full force and effect.

**[INVESTOR SIGNATURE BLOCK]**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**EXHIBIT D**

**COSTS OF ISSUANCE REQUISITION  
(Cost of Issuance Fund)**

Wilmington Trust, National Association, as Trustee

STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 9)  
SERIES 2024A and SERIES 2024B

Trustee:

You are requested to disburse funds from the Cost of Issuance Fund pursuant to Section 4.13 of the Indenture 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 Trust Indenture (the “**Indenture**”), dated as of July 1, 2024, by and between the Industrial Commission of North Dakota acting in its capacity as the North Dakota Housing Finance Agency and Wilmington Trust, National Association, as trustee, securing the above referenced Bonds.

REQUISITION NO.:  
PAYMENT DUE TO:  
AMOUNT TO BE DISBURSED: \$

The undersigned, on behalf of Lashkowitz Riverfront Nine, LLLP, a limited liability limited partnership duly organized and existing under the laws of the State of North Dakota (the “**Borrower**”), certifies that:

(a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Cost of Issuance Fund, have not been included in any previous requisition and are set forth in the Schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and

(b) the money requisitioned is not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance.

Attached to this Requisition is a Schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

Date of Requisition: \_\_\_\_\_

**LASHKOWITZ RIVERFRONT NINE, LLLP,**  
a North Dakota limited liability limited partnership

By: Lashkowitz BL Nine GP, LLC,  
a North Dakota limited liability company  
Its: Managing General Partner

By: BlueLine, LLC,  
a Montana limited liability company  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Nathan Richmond  
Its Member



**EXHIBIT E**

**BOND MORTGAGE LOAN FUND REQUISITION  
(Bond Mortgage Loan Fund)**

Wilmington Trust, National Association, as Trustee

STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 9)  
SERIES 2024A and SERIES 2024B

You are requested to disburse funds from the Bond Mortgage Loan Fund pursuant to Section 4.02 of the Indenture 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 Trust Indenture (the “**Indenture**”), dated as of July 1, 2024, by and between the Industrial Commission of North Dakota acting in its capacity as the North Dakota Housing Finance Agency and Wilmington Trust, National Association, as trustee, securing the above referenced Bonds.

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT(S) TO BE DISBURSED: \$ \_\_\_\_\_ from the Project Account  
\$ \_\_\_\_\_ from the Borrower Equity Account

The undersigned Borrower hereby represents and warrants that the following information and certifications provided in connection with this Requisition are true and correct as of the date hereof and authorizes Servicer to submit this Requisition to Bond Trustee on behalf of Borrower:

1. Purposes for which disbursement is requested are specified in the **attached Schedule**.
2. Party or parties to whom the disbursements shall be made are specified in the **attached Schedule** (may be the undersigned in the case of reimbursement for advances and payments made or cost incurred for work done by the undersigned); provided, that no reimbursement shall be made for advances and payments made prior to \_\_\_\_\_, 20\_\_).
3. The undersigned certifies that:
  - a. the conditions precedent to disbursement set forth in the Construction Funding Agreement have been satisfied;
  - b. the disbursement requested pursuant to this Requisition will be used solely to pay a cost or costs allowable under the Indenture and the Construction Funding Agreement;

- c. none of the items for which disbursement is requested pursuant to this Requisition has formed the basis for any disbursement previously made from the Bond Mortgage Loan Fund and all such items have been properly recorded in Borrower's books and are set forth on the Schedule attached hereto, along with paid invoices attached for any sum for which reimbursement is requested and invoices or bills of sales for all other items;
- d. all labor and materials for which disbursements have been requested have been incorporated into the Project in accordance with reasonable and standard building practices, the Construction Funding Agreement and all Legal Requirements (as defined in the Construction Funding Agreement);
- e. the materials, supplies and equipment furnished or installed for the Improvements are not subject to any lien or security interest or that the funds to be disbursed pursuant to this Requisition are to be used to satisfy any such lien or security interest;
- f. with respect to amounts from the Project Account of the Bond Mortgage Loan Fund, all amounts have been or will be applied by Borrower to pay the costs allowable under the Act;
- g. Borrower is not in default under the Financing Agreement, the Construction Funding Agreement or any other Bond Mortgage Loan Document to which it is a party and nothing has occurred to the knowledge of Borrower that would prevent the performance of its obligations under such documents;
- h. no amounts being requisitioned hereby will be used to pay, or reimburse, any Costs of Issuance incurred in connection with the issuance of the Bonds or pay debt service with respect to the Bond Mortgage Loan; and
- i. Funds deposited with Borrower for further disbursement to third parties shall be paid to such third parties by check dated the date of such deposit and Borrower reasonably expects such funds will be disbursed from its account within five Business Days of such deposit.

[Following items may not required for Initial Disbursement]

- 4. Estimated costs of completing the uncompleted Improvements (as defined in the Construction Funding Agreement) as of the date of this Requisition:  
\_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned has executed this Requisition as of the day and date first above written.

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

**LASHKOWITZ RIVERFRONT NINE, LLLP,**  
a North Dakota limited liability limited partnership

By: Lashkowitz BL Nine GP, LLC,  
a North Dakota limited liability company  
Its: Managing General Partner

By: BlueLine, LLC,  
a Montana limited liability company  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Nathan Richmond  
Its Member

**APPROVED:**

**[SERVICER SIGNATURE BLOCK]**

By: \_\_\_\_\_  
Name:  
Title:

**FINANCING AGREEMENT**

**among**

**STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY,  
as Issuer**

**WILMINGTON TRUST, NATIONAL ASSOCIATION,  
as Trustee**

**and**

**LASHKOWITZ RIVERFRONT NINE, LLLP,  
as Borrower**

**Relating to**

**\$[\_\_\_\_\_]  
STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 9)  
SERIES 2024A**

**\$[\_\_\_\_\_]  
STATE OF NORTH DAKOTA  
NORTH DAKOTA HOUSING FINANCE AGENCY  
MULTIFAMILY REVENUE BONDS  
(LASHKOWITZ RIVERFRONT 9)  
SERIES 2024B**

**Dated as of July 1, 2024**

**All of the right, title and interest of the Industrial Commission of North Dakota acting in its capacity as the North Dakota Housing Finance Agency (except for its Unassigned Rights) in and to this Financing Agreement are being assigned to Wilmington Trust, National Association, as Trustee, as security for the above-referenced bonds pursuant to a certain Trust Indenture dated as of July 1, 2024**

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## FINANCING AGREEMENT

**THIS FINANCING AGREEMENT** (this “**Financing Agreement**”) is made and entered into as of [\_\_\_\_], by and among the **INDUSTRIAL COMMISSION OF NORTH DAKOTA** (the “**Commission**”) acting in its capacity as the **NORTH DAKOTA HOUSING FINANCE AGENCY** (the “**Issuer**”), a public instrumentality and agency of the State of North Dakota organized and existing under the laws of the State of North Dakota (the “**State**”), **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association, duly organized and existing under the laws of the United States (together with any successor trustees appointed under the Indenture, the “**Trustee**”), and **LASHKOWITZ RIVERFRONT NINE, LLLP**, a limited liability limited partnership duly organized and existing under the laws of the State of North Dakota (together with its successors and assigns permitted hereunder, the “**Borrower**”).

### RECITALS

**A.** Pursuant to Chapter 54-17 of the North Dakota Century Code, as amended (the “**Act**”) and the Trust Indenture dated as of July 1, 2024 (the “**Indenture**”) between the Issuer and the Trustee, the Issuer has determined to issue its Multifamily Revenue Bonds (Lashkowitz Riverfront 9), Series 2024A (the “**Series 2024A Bonds**”) in the original aggregate principal amount of \$[\_\_\_\_] and its Multifamily Revenue Bonds (Lashkowitz Riverfront 9), Series 2024B (the “**Series 2024B Bonds**,” and together with the Series 2024A Bonds, the “**Bonds**”) in the original aggregate principal amount of \$[\_\_\_\_], to provide for the financing of a multifamily rental housing development located at 101 2nd St S in Fargo, North Dakota known as Lashkowitz Riverfront 9 (the “**Project**”).

**B.** The Issuer has agreed to use the proceeds derived from the sale of Bonds to make a mortgage loan in the principal amount of \$[\_\_\_\_] (the “**Bond Mortgage Loan**”) to the Borrower in connection with the Project on the terms specified in this Financing Agreement and upon the satisfaction of various conditions contained herein and in the Indenture.

**C.** The Borrower has agreed to use the proceeds of the Bond Mortgage Loan to finance the acquisition, construction, and equipping of the Project [and to pay certain costs of issuance of the Bonds].

**D.** The Borrower’s repayment obligations in respect of the Bond Mortgage Loan will be evidenced by a Bond Mortgage Note dated [\_\_\_\_] (together with all riders and addenda thereto, the “**Bond Mortgage Note**”) delivered to the Issuer, which Bond Mortgage Note will be endorsed by the Issuer to the Trustee for the benefit of the holders of the Bonds from time to time.

**E.** ORIX Public Finance, LLC (“**ORIX**”) has agreed to facilitate the financing of the Project by purchasing all of the Bonds on the Delivery Date.

**F.** ORIX will act as initial Bondholder Representative with respect to the Bonds (in such capacity and any successor in such capacity, the “**Bondholder Representative**”).



**G.** To secure the Borrower’s obligations under the Bond Mortgage Note, the Borrower will execute and deliver to the Issuer a Multifamily Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated the Delivery Date (the “**Bond Mortgage**”) with respect to the Project. Pursuant to the Assignment, the Bond Mortgage will be assigned by the Issuer to the Trustee.

**H.** The Borrower and the Bondholder Representative are entering into (i) a Continuing Covenant Agreement dated as of the date hereof (the “**Continuing Covenant Agreement**”), which sets forth various other covenants with respect to the Borrower and Project, and (ii) a Construction Funding Agreement dated as of the date hereof (the “**Construction Funding Agreement**”), which sets forth conditions to disbursement of the proceeds of the Bond Mortgage Loan to the Borrower.

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

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01 Definitions.** All words and phrases (except for Event of Default) defined in the Indenture and the Continuing Covenant Agreement shall have the same meanings for the purposes of this Financing Agreement. In addition to the words and phrases defined in the Indenture and elsewhere herein, the following words and phrases shall have the following meanings:

“*Bond Mortgage Loan Payment*” means each payment of the Bond Mortgage Loan on each Bond Mortgage Loan Payment Date pursuant to the Note and this Financing Agreement.

“*Bond Mortgage Loan Payment Date*” means (A) the first day of each calendar month, commencing [September 1, 2024], or (B) any other date on which the Bond Mortgage Loan is prepaid or paid, whether at scheduled maturity or upon prepayment or acceleration of the maturity thereof; provided, however, that if a Bond Mortgage Loan Payment Date is not a Business Day, payment shall be made on the first Business Day following such Bond Mortgage Loan Payment Date.

“*Event of Default*” means any of those events specified in and defined by the applicable provisions of Article VII hereof to constitute an event of default.

“*Financing Agreement*” means this Financing Agreement, together with any amendments hereto.

**Section 1.02 Interpretation.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. References to Articles, Sections and

other subdivisions of this Financing Agreement are the Articles, sections and other subdivisions of this Financing Agreement as originally executed.

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Financing Agreement; the term “heretofore” means before the date of execution of this Financing Agreement; and the term “hereafter” means after the date of execution of this Financing Agreement.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 2.01** *Representations, Warranties and Covenants of the Issuer.* The Issuer makes the following representations, warranties and covenants:

(a) The Issuer is a public instrumentality and agency of the State of North Dakota organized and existing under the laws of the State of North Dakota, organized and validly existing under the laws of the State.

(b) The Issuer has all necessary power and authority to issue the Bonds and to execute and deliver this Financing Agreement, the Indenture, and the other Bond Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The Issuer has taken all action on its part for the issuance of the Bonds and for the sale, execution and delivery thereof.

(d) Each of the Bond Financing Documents to which the Issuer is a party has been duly validly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors’ rights generally and the application of equitable principles.

(e) The Issuer has complied with the provisions of the laws of the State, including, but not limited to, the Act, which are prerequisites to the consummation of the transactions on the part of the Issuer described or contemplated in the Bond Financing Documents. The execution and delivery of the Bonds and the Bond Financing Documents to which the Issuer is a party, the consummation of the transactions on the part of the Issuer contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Issuer is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Issuer under the terms of any instrument or agreement.

(f) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained, is required for the due execution and delivery by the Issuer of, and performance by the Issuer of its obligations under, the Bond Financing Documents.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Issuer, threatened against the Issuer by or before any court, governmental agency or public board or body, nor, to the Issuer's knowledge, is there any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the Issuer or the title to office of any member of the governing body of the Issuer; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Bond Financing Documents or the issuance, sale, execution or delivery of the Bonds; (iii) affects or questions the validity or enforceability of the Bonds or any Bond Financing Document; (iv) Reserved; or (v) questions the power or authority of the Issuer to perform its obligations under the Bonds or any Bond Financing Document, or to carry out the transactions contemplated by the Bonds and the Bond Financing Documents.

(h) No officer or other official of the Issuer has any personal financial interest in the Project or the Borrower or in the transactions contemplated by this Financing Agreement.

(i) Upon the discovery by the Issuer of any noncompliance by the Borrower with this Financing Agreement, the Issuer will notify the Trustee, the Servicer and the Bondholder Representative of such noncompliance and will, subject to the provisions of Article VII hereof, promptly institute action, or cause the Trustee to institute action, to correct such noncompliance, will diligently pursue such action and will attempt to correct such noncompliance within sixty (60) days after such discovery, subject to the provisions of the Indenture and this Financing Agreement.

It is expressly acknowledged that the Issuer makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the issuance, sale, execution and delivery of the Bonds, or as to the correctness, completeness or accuracy of such statements.

**Section 2.02 *Representations, Warranties and Covenants of the Borrower.***

The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Financing Agreement, are relied upon by the Issuer, the Bondholder Representative, the Servicer and the Trustee and serve as a basis for the undertakings of the Issuer, the Servicer and the Trustee contained in this Financing Agreement:

(a) The Borrower is a limited liability limited partnership duly organized, validly existing and in good standing under the laws of the state in which it has been organized and duly qualified to conduct its business under the laws of the State and in every other state in which the nature of its business requires such qualification, has full

legal right, power and authority to enter into this Financing Agreement and the other Bond Financing Documents, and to carry out and consummate all transactions contemplated hereby and by the other Bond Financing Documents, and by proper action has duly authorized the execution, delivery and performance of this Financing Agreement and the other Bond Financing Documents. All limited liability company general partners, if any, of the Borrower are duly organized and in good standing under the laws of their respective states of organization and are duly qualified to transact business in the State as either domestic or foreign corporations, as applicable. All partnership general partners, if any, are duly formed and in good standing under the laws of their respective states of formation and, to the extent required by the laws of the State, are duly qualified to transact business in the State as either domestic or foreign partnerships or limited liability companies, as applicable.

(b) The Borrower has the legal right, power and authority to (i) own its properties and assets, including, but not limited to, the Project, (ii) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project and (iii) execute and deliver, carry out its obligations under, and close the transactions provided for in, the Bond Financing Documents to which it is a party.

(c) Each of the Bond Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity.

(d) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained or those necessary to be obtained during the course of construction of the Project, is required for the due execution and delivery or approval, as the case may be, by the Borrower of, and the performance by the Borrower of its obligations under, the Bond Financing Documents.

(e) (e) To the best of the Borrower's knowledge, none of the execution and delivery of the Bond Financing Documents to which the Borrower is a party, the consummation of the transactions provided for in the Bond Financing Documents, or the Borrower's fulfillment of or compliance with the terms and conditions of the Bond Financing Documents (i) violates or will violate any law, rule or regulation of any governmental agency or body having jurisdiction over the Borrower, or any of its activities or properties, or any judgment, order, writ, injunction or decree to which the Borrower is subject, or any of the organizational or other governing documents of the Borrower, (ii) conflicts or will conflict with any agreement, instrument or license to which the Borrower is now a party or by which it or any of its properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default (with due notice or the passage of time or both) under, any such agreement, instrument or license, (iii) contravenes or will contravene any such law, rule or regulation or any such

judgment, order, writ, injunction or decree, or (iv) 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 any lien, charge or encumbrance permitted under the terms of the Bond Financing Documents.

(f) Within the six (6) month period preceding the Delivery Date, the Borrower has not acquired the Project or any interest therein, nor has the Borrower transferred or acquired any capital interest in the owner of the Project. The Borrower shall not cause or permit the Project, or any interest therein, to be sold, assigned or transferred, except as provided in the Bond Financing Documents, and shall not sell the Project or any interest therein or in its ownership structure for a period of six (6) months following the Delivery Date.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its properties (including, without limitation, the Project), which, if adversely determined, would (i) materially impair the right of the Borrower to carry on its business substantially as now conducted and as contemplated by the Bond Financing Documents, (ii) have a material adverse effect the financial condition of the Borrower, (iii) prohibit, restrain or enjoin the issuance, sale or delivery of the Bonds, or the loaning of the proceeds of the Bonds to the Borrower or the execution and delivery of the Bonds or any of the Bond Financing Documents, or (iv) adversely affect the validity or enforceability of the Bonds or any of the Bond Financing Documents.

(h) The Project and the operation of the Project (in the manner contemplated by the Bond Financing Documents) conform and, following completion of the construction of the Project, will continue to conform in all material respects with the requirements of the Act as well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

(i) The Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed or has obtained appropriate extensions therefor, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

(j) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party which default would materially adversely affect the transactions contemplated by the Bond Financing Documents or the operations of the Borrower or the enforceability of the Bond Financing Documents to which the Borrower is a party or the ability of the Borrower to perform all obligations thereunder.

(k) The Borrower agrees to pay all costs of maintenance and repair, all taxes and assessments, insurance premiums (including public liability insurance and insurance against damage to or destruction of the Project) concerning or in any way related to the Project, or any part thereof, and any expenses or renewals thereof, and any other

governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

(l) If the Borrower is a partnership, all of the partnership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests except as provided for in the Borrower [Amended and Restated Limited Liability Limited Partnership Agreement] related to the Project. If the Borrower is a limited liability company, all of the ownership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. Nothing in this Financing Agreement shall prevent the Borrower from issuing additional partnership interests or ownership interests if such units are issued in accordance with all applicable securities laws.

(m) Reserved.

(n) The information, statements or reports furnished in writing to the Issuer, the Servicer and the Bondholder Representative by the Borrower in connection with this Financing Agreement or the consummation of the transactions contemplated hereby do not contain any untrue statement of a material fact or omit 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 Delivery Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or the assumptions contained in any certificate of the Borrower delivered as of the Delivery Date are reasonable.

(o) To the knowledge of the Borrower, no commissioner, member, officer 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 Bond Financing 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 Financing Documents.

(p) 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.

(q) The Project is located wholly within the boundaries of Fargo, North Dakota.

(r) Reserved.

(s) 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 drafting of the Indenture and that it is bound by, shall adhere to the provisions of, covenants and agrees to perform all obligations required of the Borrower pursuant to, and shall have the rights set forth by the applicable terms and conditions of, the Indenture.

(t) The Borrower will have a leasehold interest in the land and improvements on the Project, subject only to liens permitted under the Bond Mortgage.

(u) The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (iv) it has not relied on the Issuer, the Trustee, the Bondholder Representative or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Bond Financing Documents or otherwise relied on the Issuer, the Trustee, the Bondholder Representative or the Servicer in any manner.

**Section 2.03 *Representations and Warranties of the Trustee.*** The Trustee makes the following representations and warranties:

(a) The Trustee is a national banking association, duly organized and existing under the laws of the United States. The Trustee is duly authorized to act as a fiduciary and to execute the trust created by the Indenture, and meets the qualifications to act as Trustee under the Indenture.

(b) The Trustee has complied with the provisions of law which are prerequisite to the consummation of, and has all necessary power (including trust powers) and authority (i) to execute and deliver this Financing Agreement and the other Bond Financing Documents to which it is a party, (ii) to perform its obligations under this Financing Agreement and the other Bond Financing Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Financing Agreement and the other Bond Financing Documents to which it is a party.

(c) The Trustee has duly authorized (i) the execution and delivery of this Financing Agreement and the other Bond Financing Documents to which it is a party, (ii) the performance by the Trustee of its obligations under this Financing Agreement and the other Bond Financing Documents to which it is a party, and (iii) the actions of the Trustee contemplated by this Financing Agreement and the other Bond Financing Documents to which it is a party.

(d) Each of the Bond Financing Documents to which the Trustee is a party has been duly executed and delivered by the Trustee and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the Trustee, enforceable against the Trustee in accordance with its terms,

except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) The Trustee meets the qualifications to act as Trustee under the Indenture.

(f) The Trustee has complied with the provisions of law which are prerequisites to the consummation of the transactions on the part of the Trustee described or contemplated in the Bond Financing Documents.

(g) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Trustee as a prerequisite to (i) the execution and delivery of this Financing Agreement and the other Bond Financing Documents to which the Trustee is a party, (ii) the authentication or delivery of the Bonds, (iii) the performance by the Trustee of its obligations under this Financing Agreement and the other Bond Financing Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Financing Agreement and the other Bond Financing Documents to which the Trustee is a party. The Trustee makes no representation or warranty relating to compliance with any federal or state securities laws.

**Section 2.04** *Reserved.*

**Section 2.05** *Reserved.*

### ARTICLE III

#### THE BOND MORTGAGE LOAN

**Section 3.01** *Conditions to Funding the Bond Mortgage Loan.* On the Delivery Date, the Issuer shall cause the Bond proceeds to be deposited with the Trustee in accordance with Section 2.11 of the Indenture and Section 3.03 hereof. The Trustee shall use such proceeds as provided in Article II of the Indenture, provided that no such disbursements of proceeds of the Bonds shall be made until the following conditions have been met:

(a) The Borrower shall have executed and delivered to the Issuer the Bond Mortgage Note, and the Issuer shall have endorsed the Bond Mortgage Note to the Trustee;

(b) The Bond Mortgage shall have been executed and delivered by the Borrower and delivered to the title company for recording in the appropriate office for officially recording real estate documents in the jurisdiction in which the Project is located (the “**Recorder’s Office**”);

(c) Reserved;



(d) All other Bond Financing Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Trustee and the Bondholder Representative; and

(e) The Borrower shall have delivered to the Trustee, the Issuer and the Bondholder Representative a certificate confirming, as of the Delivery Date, the matters set forth in Section 2.02 hereof and an opinion of its counsel or other counsel satisfactory to the Trustee, the Issuer and the Bondholder Representative.

**Section 3.02 *Terms of the Bond Mortgage Loan; Servicing.***

(a) The Bond Mortgage Loan shall (i) be evidenced by the Bond Mortgage Note; (ii) be initially secured by the Bond Mortgage; (iii) be in the principal amount of \$[\_\_\_\_\_]; (iv) bear interest as provided in the Bond Mortgage Note; (v) provide for principal and interest payments in accordance with the Bond Mortgage Note; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Bond Mortgage Note.

(b) The Bondholder Representative may appoint a mortgage servicer to service the Bond Mortgage Loan for all or a portion of the term of the Bond Mortgage Loan by written notice provided to the Issuer, the Trustee and the Borrower. The Bondholder Representative may remove a Servicer or appoint a replacement Servicer, in its discretion, by written notice provided to the Issuer, the Trustee and the Borrower. During any period that a Servicer services the Bond Mortgage Loan, the Bondholder Representative may require that the Borrower make all payments in connection with the Bond Mortgage Loan to the Servicer and that the Servicer remit any such Bond Mortgage Loan Payment to the Trustee. The Issuer, the Trustee and the Borrower hereby acknowledge and agree that (i) the Bondholder Representative may appoint a Servicer to service and administer the Bond Mortgage Loan, (ii) the selection or removal of any Servicer is in the sole and absolute discretion of the Bondholder Representative; and (iii) neither the Issuer nor the Trustee shall terminate or attempt to terminate any Servicer as the servicer for the Bond Mortgage Loan or appoint or attempt to appoint a substitute servicer for the Bond Mortgage Loan. Initially, the Bondholder Representative shall be the Servicer.

**Section 3.03 *Initial Deposits.*** On the Delivery Date, proceeds of the Bonds in the amount of \$[\_\_\_\_\_] shall be deposited in the Project Account of the Bond Mortgage Loan Fund [and \$[\_\_\_\_\_] shall be transferred from the Project Account for deposit to the Cost of Issuance Fund]. The Borrower will deposit with the Trustee the sum of (i) \$[\_\_\_\_\_] for credit to the Cost of Issuance Fund; (ii) \$[\_\_\_\_\_] for credit to the Borrower Equity Account of the Bond Mortgage Loan Fund; and (iii) \$ \_\_\_\_\_ for credit to the Bond Fund as the Initial Debt Service Deposit. Subject to the conditions listed in Section 3.01 hereof, amounts on deposit in the Bond Mortgage Loan Fund are to be disbursed to the Borrower or otherwise as provided in Section 2.11(d) of the Indenture.

To the extent that amounts in the Cost of Issuance Fund from the above-mentioned sources are insufficient to pay all costs of issuing the Bonds, the Borrower shall cause the payment of such additional costs of issuing the Bonds to be made on its behalf as such amounts become due.

**Section 3.04 *Assignment to Trustee.*** The parties hereto acknowledge, and the Borrower consents to, the assignment by the Issuer to the Trustee pursuant to the Indenture of all of the Issuer's right, title and interest in this Financing Agreement (excluding the Unassigned Rights), the Bond Mortgage Loan, the Bond Mortgage Note, the Bond Mortgage (which is being assigned to the Bondholder Representative as well as the Trustee, as their interests may appear) and the Revenues as security for the payment of the principal of, premium, if any, and interest on the Bonds and the payment of any other amounts due under the Bond Financing Documents.

**Section 3.05 *Investment of Funds.*** Except as otherwise provided in the Indenture, any money held as a part of any fund or account established under the Indenture shall be invested or reinvested by the Trustee in Qualified Investments in accordance with Section 4.08 of the Indenture.

**Section 3.06 *Damage; Destruction and Eminent Domain.*** If, prior to payment in full of the Bonds, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Issuer, the Borrower, the Trustee or the Servicer receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized as provided in the Bond Mortgage Loan Documents and the Indenture.

**Section 3.07 *Enforcement of Bond Financing Documents.***

(a) The Trustee or the Bondholder Representative may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Financing Agreement and the other Bond Financing Documents as and to the extent set forth herein and therein.

(b) The Issuer covenants that it will not, without the prior written consent of the Bondholder Representative, take any of the following actions:

(i) prosecute any action with respect to a lien on the Project; or

(ii) take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Bond Mortgage Loan or of causing the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or

(iii) interfere with the exercise by the Trustee, the Bondholder Representative or the Servicer of any of their rights under the Bond Financing Documents upon the occurrence of an event of default by the Borrower under the Bond Financing Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Bond Mortgage Loan or the Bonds.

## ARTICLE IV

### LOAN PAYMENTS

#### **Section 4.01 *Payments Under the Bond Mortgage Note; Independent Obligation of Borrower.***

(a) **Payment Obligations.** The Borrower agrees to repay the Bond Mortgage Loan on each Bond Mortgage Loan Payment Date as provided in the Bond Mortgage Note, and in all instances at the times and in the amounts necessary to enable the Trustee, on behalf of the Issuer, to pay all amounts payable with respect to the Bonds, when due, whether at maturity or upon redemption (with premium, if applicable), acceleration or otherwise. The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent and separate obligation of the Borrower from its obligation to make payments under the Bond Mortgage Note, provided that in all events payments made by the Borrower under and pursuant to the Bond Mortgage Note shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason the Bond Mortgage Note or any provision of the Bond Mortgage Note shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, the Bond Mortgage Note or such provision of the Bond Mortgage Note shall be deemed to be the obligation of the Borrower pursuant to this Financing Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Bond Mortgage Note.

(b) **Obligations Unconditional; No Set-Off.** The obligations of the Borrower to repay the Bond Mortgage Loan, to perform all of its obligations under the Bond Mortgage Loan Documents, to provide indemnification pursuant to Section 6.01 hereof, to pay costs, expenses and charges pursuant to Section 4.02 hereof and to make any and all other payments required by this Financing Agreement, the Indenture or any other documents contemplated by this Financing Agreement or by the Bond Mortgage Loan Documents shall, subject to the limitations set forth in Section 4.06 hereof, be absolute and unconditional, and shall be paid or performed without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Issuer's legal organization or status, or any default of the Issuer or the Trustee hereunder or under any other Bond Financing Document, and regardless of the invalidity of any action of the Issuer or the invalidity of any portion of this Financing Agreement.

(c) **Payments from Borrower to Trustee.** Each payment by the Borrower hereunder or under the Bond Mortgage Note shall be made in immediately available funds to the

Trustee on each Bond Mortgage Loan Payment Date or such other date when such payment is due; provided, however, such Bond Mortgage Loan Payment shall be made to the Servicer if the Borrower is so directed in writing by the Bondholder Representative. Each such payment shall be made to the Trustee or the Servicer, as applicable, by deposit to such account as the Trustee or the Servicer may designate by written notice to the Borrower. Whenever any Bond Mortgage Loan Payment or any other payment under this Financing Agreement or under the Bond Mortgage Note shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day immediately thereafter.

**Section 4.02 *Additional Payments Under the Bond Mortgage Note and this Financing Agreement.***

(a) In addition to the payments set forth in Section 4.01 hereof, payments to be made by the Borrower under the Bond Mortgage Note include certain money to be paid in respect of, among others, the Bond Fee Component, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Bond Mortgage Loan Documents, as set forth in subsection (b) of this Section 4.02. To the extent that any portion of the Bond Fee Component, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Bond Mortgage Loan Documents remain due and owing at any time, such amounts remaining due and owing shall be payable from money on deposit in the Administration Fund as provided in Section 4.06 of the Indenture or from other money of the Borrower, to the extent that money in the Administration Fund is insufficient for such purposes. All other fees and expenses shall be payable from money of the Borrower as provided in subsection (b) of this Section 4.02.

(b) In addition to the funding of the initial deposits required of the Borrower described in Section 3.03, the Borrower shall pay (or cause to be paid by the Trustee, to the extent paid from money on deposit in the Administration Fund or the Cost of Issuance Fund, as applicable), in consideration of the funding of the Bond Mortgage Loan, the following fees, expenses and other money payable in connection with the Bond Mortgage Loan:

(i) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to Bondholder Representative, all third party and out-of-pocket expenses of Bondholder Representative (including but not limited to the fees and expenses of counsel to Bondholder Representative) in connection with the Bond Mortgage Loan.

(ii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Issuer, an initial financing fee in an amount equal to \$206,250, together with all third party and out-of-pocket expenses of the Issuer (including but not limited to the fees and expenses of counsel to the Issuer) in connection with the Bond Mortgage Loan and the issuance of the Bonds.

(iii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Trustee, an acceptance fee in an amount

equal to \$2,500, together with all third party and out-of-pocket expenses of the Trustee (including but not limited to the fees and expenses of counsel to the Trustee) in connection with the Bond Mortgage Loan and the issuance of the Bonds.

(iv) From money of the Borrower, to the Trustee, within two (2) Business Days of receipt from the Trustee of a notice of deficiency in the Administration Fund as provided in Section 4.06 of the Indenture, the amount of any such deficiency in the Administration Fund.

(v) From money on deposit in the Administration Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Trustee, the Ordinary Trustee's Fees and Expenses and the Extraordinary Trustee's Fees and Expenses when due from time to time.

(vi) From money on deposit in the Administration Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Issuer, the Issuer Fee when due and any extraordinary expenses not covered by the Issuer Fee the Issuer may incur in connection with the Bond Financing Documents or the Project from time to time.

(vii) Reserved.

(viii) From money of the Borrower, to the Bondholder Representative and/or the Servicer, any amount due and owing the Bondholder Representative from time to time but unpaid under the Continuing Covenant Agreement.

(ix) From money of the Borrower, to the Servicer, the amounts required to be deposited in respect of reserves and impounds required under the Continuing Covenant Agreement and the other Bond Mortgage Loan Documents.

**Section 4.03 *Reserved.***

**Section 4.04 *Prepayment of Bond Mortgage Loan.***

(a) **Optional and Mandatory Prepayment of the Bond Mortgage Loan.** The Borrower shall have the option to prepay the Bond Mortgage Loan as provided in the Bond Mortgage Note in connection with an optional redemption of the Bonds. The Borrower shall be required to prepay the Bond Mortgage Loan as provided in the Bond Mortgage Note in connection with a mandatory redemption of the Bonds.

(b) **Deposit of Prepayment.** In connection with any prepayment of all or any portion of the outstanding balance of the Bond Mortgage Loan, the Borrower shall deposit funds with the Trustee at least one Business Day prior to the date of such prepayment (unless otherwise consented to by the Bondholder Representative) at a prepayment price equal to the portion of the outstanding principal balance of the Bond Mortgage Loan being prepaid, plus accrued interest thereon to the date of prepayment, plus any Prepayment Premium due under the Bond Mortgage Note, together with a sum sufficient to pay all fees, costs and expenses in connection with such

redemption and, in the case of redemption in whole, to pay all other amounts payable under this Financing Agreement, the Indenture and the other Bond Financing Documents. Such amounts shall be applied to the redemption of Bonds and to the payment of fees and expenses as provided in the Indenture and the other Bond Financing Documents.

(c) **Reduction of Bond Mortgage Loan Principal.** Any prepayment, whether voluntary or involuntary, shall not be credited against the unpaid principal balance of the Bond Mortgage Loan until the date on which the resulting redemption of a like amount of Bonds is completed.

**Section 4.05 *Borrower's Obligations Upon Redemption.*** In the event of any redemption, the Borrower will timely pay, or cause to be paid to the Trustee an amount equal to the principal amount of such Bonds or portions thereof called for redemption, together with interest accrued to the redemption date and premium, if any. In addition, the Borrower will timely pay all fees, costs and expenses associated with any redemption of Bonds.

**Section 4.06 *Limits on Personal Liability.***

(a) Except as otherwise set forth in the Bond Mortgage Note and subsection 4.06(b) below, the obligations of the Borrower under this Financing Agreement and the other Bond Mortgage Loan Documents are non-recourse liabilities of the Borrower which shall be enforced only against the Project and other property of the Borrower encumbered by the Bond Mortgage Loan Documents and not personally against the Borrower or any partner or member of the Borrower or any successor or assign of the Borrower. However, nothing in this Section 4.06 shall limit the right of the Issuer, the Trustee, the Servicer or the Bondholder Representative to proceed against the Borrower to recover any fees owing to any of them or any actual out of pocket expenses (including but not limited to actual out of pocket attorneys' fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Financing Agreement or the other Bond Mortgage Loan Documents. Nothing in this Section 4.06 shall limit any right that the Servicer or the Bondholder Representative may have to enforce the Bond Mortgage Note, the Bond Mortgage, or any other Bond Mortgage Loan Document in accordance with their terms.

(b) Notwithstanding anything contained in any other provision of this Financing Agreement to the contrary (but subject to the provisions of Section 3.07 hereof), the following obligations of the Borrower shall be and remain full recourse obligations of the Borrower, payable from and enforceable against any and all income, assets and properties of the Borrower: (i) the Borrower's obligations to the Issuer and the Trustee under subsections (b)(ii), (b)(iv), (b)(vi), and (b)(vii) of Section 4.02 hereof; (ii) the Borrower's obligations under Sections 2.05 and 6.01 of this Financing Agreement; and (iii) the Borrower's obligation to pay legal fees and expenses under Section 7.04 hereof.

**ARTICLE V**

**SPECIAL COVENANTS OF BORROWER**

**Section 5.01 *Performance of Obligations.*** The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Bond Financing Documents, including, without limitation, its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

**Section 5.02 *Compliance With Applicable Laws.*** All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

**Section 5.03 *Indenture Provisions.*** The execution of this Financing Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower. 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 shall carry out and perform all of its obligations under the Indenture as fully as if the Borrower were a party to the Indenture.

**Section 5.04 *Reserved.***

**Section 5.05 *Borrower to Maintain Its Existence; Certification of No Default.*** The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

**Section 5.06 *Borrower to Remain Qualified in State and Appoint Agent.*** The Borrower will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Borrower.

**Section 5.07 *Sale or Other Transfer of Project.*** The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Bond Mortgage Loan Documents, and upon receipt of the prior written consent of the Bondholder Representative.

**Section 5.08 *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 Trustee, the Servicer and/or the Bondholder Representative, after giving requisite notice, if any, and subject to Section 5.05 of the Indenture, 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 Trustee, the Bondholder Representative or the Servicer shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand with interest thereon at the default rate of interest payable under the Bond Mortgage Loan Documents.

**Section 5.09 *Notice of Certain Events.*** The Borrower shall promptly advise the Issuer, the Trustee, the Bondholder Representative and the Servicer in writing of the occurrence of any 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, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

**Section 5.10 *Survival of Covenants.*** The provisions of Sections 2.04, 2.05, 4.02, 4.03, 6.01 and 7.04 hereof shall survive the expiration or earlier termination of this Financing Agreement and, with regard to the Trustee, the resignation or removal of the Trustee.

**Section 5.11 *Access to Project; Records.*** Subject to reasonable notice and the rights of tenants at the Project, the Issuer, the Trustee, the Servicer and the Bondholder Representative, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) at all reasonable times and during normal business hours: (a) to enter the Project and any other location containing the records relating to the Borrower, the Project, the Bond Mortgage Loan and the Borrower's compliance with the terms and conditions of the Bond Financing Documents; (b) to inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Bond Mortgage Loan and the Borrower's compliance with the terms and conditions of the Bond Financing Documents; and (c) to require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Issuer, the Trustee, the Servicer and the Bondholder Representative, as the Issuer, the Trustee, the Servicer or the Bondholder Representative, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Bond Financing Documents have been complied with and (ii) to make copies of any records that the Issuer, the Trustee, the Servicer or the Bondholder Representative or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Issuer, the Trustee, the Servicer and the Bondholder Representative, such information concerning the Project, the Bond Mortgage and the Bond Financing Documents as any of them may reasonably request.

**Section 5.12 *Reserved.***

**Section 5.13 *Damage, Destruction and Condemnation.*** If prior to full payment of the Bonds (or provision for payment of the Bonds in accordance with the provisions of the Indenture) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Financing Agreement and in the Bond Mortgage Note to the extent the Bond Mortgage Loan is not prepaid in accordance with the terms of the Bond Mortgage Loan Documents.

**Section 5.14 *Obligation of the Borrower To Acquire, Construct and Rehabilitate the Project.*** The Borrower shall proceed with reasonable dispatch to complete the acquisition, construction, rehabilitation, development and equipping of the Project. If amounts on deposit in the Bond Mortgage Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of such acquisition, construction, rehabilitation, development and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Issuer, the Trustee, the Servicer, the Bondholder Representative or the Bondholders in respect of any such costs or to any diminution or abatement in the repayment of the Bond Mortgage Loan. Neither of the Trustee nor the Issuer makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Bond Mortgage Loan Fund or otherwise made



available to the Borrower will be sufficient to complete the Project, and neither of the Trustee nor the Issuer shall be liable to the Borrower, the Bondholders or any other person if for any reason the Project is not completed.

**Section 5.15 *Filing of Financing Statements.*** The Borrower shall file or record or cause to be filed or recorded on or prior to the Delivery Date all UCC financing statements which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Bond Mortgage Loan, the Trust Estate and the Bond Mortgage, and the rights and powers of the Issuer, the Trustee and the Bondholder Representative in connection with such security interests. The Borrower shall cooperate with the Trustee in connection with the filing of any continuation statements for the purpose of continuing without lapse the effectiveness of such financing statements.

## ARTICLE VI

### INDEMNIFICATION

#### **Section 6.01 *Indemnification.***

(a) **Indemnified Losses.** To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Issuer, the Trustee, the Servicer, the Bondholder Representative and each of their respective officers, governing commissioners, members, directors, officials, employees, attorneys and agents (collectively, the “**Indemnified Parties**”), against any and all losses, damages (including, but not limited to, consequential and punitive damages), claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise (collectively, “**Losses**”), to the extent arising, directly or indirectly, out of or based upon or in any way relating to:

(i) any breach by the Borrower of its obligations under the Bond Financing Documents or the execution, amendment, restructuring or enforcement thereof, or in connection with transactions contemplated thereby, including the issuance, sale, transfer or resale of the Bonds;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Bond Mortgage Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, construction or equipping of, the Project or any part thereof;

(iii) any accident, injury to, or death of persons or loss of or damage to property occurring in, on or about the Project or any part thereof;

(iv) any lien (other than liens permitted under the Continuing Covenant Agreement) or charge upon payments by the Borrower to the Issuer, the Trustee or the Servicer hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, Impositions and other charges imposed on the Issuer or the Trustee in respect of any portion of the Project (other than income and similar taxes on fees received or earned in connection therewith);

(v) any violation of any environmental law, rule or regulation with respect to, or the release of any Hazardous Substances from, the Project or any part thereof;

(vi) Reserved;

(vii) the enforcement of, or any action taken by the Issuer, the Trustee or the Bondholder Representative related to remedies under this Financing Agreement, the Indenture or any other Bond Financing Document;

(viii) any untrue statement of a material fact or alleged untrue statement of a material fact by the Borrower contained in any offering statement or document for the Bonds or any of the Bond Financing Documents to which the Borrower is a party, or any omission or alleged omission by the Borrower of a material fact from any offering statement or document for the Bonds necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(ix) Reserved;

(x) any audit or inquiry by the Internal Revenue Service with respect to the Project; or

(xi) the Trustee's acceptance or administration of the trust of the Indenture, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Bonds to which it is a party;

except (A) in the case of the foregoing indemnification of the Trustee, or any of its respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the negligence, unlawful acts or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Servicer, the Bondholder Representative or the Issuer or any of their respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the gross negligence or willful misconduct of such Indemnified Party.

(b) **Procedures.** 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 such Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected or approved by the Indemnified Party, 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 such Indemnified Party 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 to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may employ separate counsel at the expense of the Borrower only if, in such Indemnified Party's good faith judgment, a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(c) **Borrower to Remain Obligated.** Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Financing Agreement, the Bond Mortgage and the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer unless (i) such subsequent owner assumed in writing at the time of such transfer all obligations of the Borrower under this Section 6.01 (including obligations under this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer) and (ii) any such transfer is in compliance with the requirements of the Bond Financing Documents.

(d) **Survival.** The provisions of this Section 6.01 shall survive the termination of this Financing Agreement.

#### ***Section 6.02 Limitation With Respect to the Bondholder Representative.***

Notwithstanding anything in this Financing Agreement to the contrary, in the event that the Bondholder Representative shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure, or comparable conversion of the Bond Mortgage Loan, the Bondholder Representative shall not be liable for any breach or default of any prior owner of the Project under this Financing Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Bondholder Representative is the owner of the Project. Accordingly, during any period that the Bondholder Representative owns the Project and that this Article VI is applicable to the Bondholder Representative, the Bondholder Representative's obligations under this Article VI shall be limited to acts and omissions of the Bondholder Representative occurring during the period of the Bondholder Representative's ownership of the Project.

## **ARTICLE VII**

### **EVENTS OF DEFAULT AND REMEDIES**

**Section 7.01 *Events of Default.*** The following shall be "Events of Default" under this Financing Agreement and the term "Event of Default" shall mean, whenever it is used in this Financing Agreement, one or all of the following events:

(a) Any representation or warranty made by the Borrower in the Bond Financing Documents or any certificate, statement, data or information furnished by the Borrower in connection therewith or included by the Borrower in its application to the Issuer for assistance proves at any time to have been incorrect when made in any material respect, and if such incorrecion or inaccuracy is capable of correction, the Borrower fails

to correct the incorrecion or inaccuracy within fifteen (15) days of discovering the incorrecion or inaccuracy;

(b) Failure by the Borrower to pay any amounts due under this Financing Agreement, the Bond Mortgage Note or the Bond Mortgage at the times and in the amounts required by this Financing Agreement, the Bond Mortgage Note and the Bond Mortgage, as applicable;

(c) The Borrower shall fail to observe or perform any other term, covenant, condition or agreement (after taking into account any applicable cure period) set forth in this Financing Agreement, which failure continues for a period of 30 days after notice of such failure by the Issuer, the Trustee or the Bondholder Representative to the Borrower (unless such default cannot with due diligence be cured within 30 days but can be cured within a reasonable period and will not, in the Bondholder Representative's sole discretion, adversely affect the Bondholder Representative or result in impairment of this Financing Agreement or any other Bond Financing Document, in which case no Event of Default shall be deemed to exist so long as Borrower shall have commenced to cure the default or Event of Default within 30 days after receipt of notice, and thereafter diligently and continuously prosecutes such cure to completion); provided, however, no such notice or grace periods shall apply in the case of any such failure which could, in the Bondholder Representative's judgment, absent immediate exercise by the Bondholder Representative of a right or remedy under this Agreement, result in harm to the Bondholder Representative, impairment of this Financing Agreement or any other Bond Financing Document;

(d) The occurrence of a default under the Continuing Covenant Agreement, the Bond Mortgage or any other Bond Financing Document (after taking into account any applicable cure period thereunder) shall at the discretion of the Bondholder Representative constitute an Event of Default under this Financing Agreement but only if the Trustee is provided written notice thereof by the Bondholder Representative that an Event of Default has occurred under such Bond Financing Document and the Trustee is instructed by the Bondholder Representative that such default constitutes an Event of Default hereunder. The occurrence of an Event of Default hereunder shall in the discretion of the Bondholder Representative constitute a default under the other Bond Financing Documents.

Nothing contained in this Section 7.01 is intended to amend or modify any of the provisions of the Bond Financing Documents or to bind the Issuer, the Trustee, the Servicer or the Bondholder Representative to any notice and cure periods other than as expressly set forth in the Bond Financing Documents.

**Section 7.02 Remedies on Default.** Subject to Section 7.06 hereof, whenever any Event of Default hereunder shall have occurred and be continuing, the Bondholder Representative (or the Trustee at the direction of the Bondholder Representative), may take any one or more of the following remedial steps:

(a) The Bondholder Representative (or the Trustee at the direction of the Bondholder Representative) may take such action, without notice or demand, as the Bondholder Representative deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Bond Mortgage Loan to be immediately due and payable (including, without limitation, declaring the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Bond Mortgage Note to be immediately due and payable).

(b) The Bondholder Representative (or the Trustee at the direction of the Bondholder Representative) may, without being required to give any notice (other than to the Issuer or the Trustee, as applicable), except as provided herein, pursue all remedies of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.

(c) The Bondholder Representative (or the Trustee at the direction of the Bondholder Representative) may take whatever action at law or in equity may appear necessary or desirable to collect the payments under this Financing Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Financing Agreement.

In addition, subject to Section 7.06 hereof, the Issuer and the Trustee may pursue remedies with respect to the Unassigned Rights.

Any amounts collected pursuant to Article IV hereof and any other amounts which would be applicable to payment of principal of and interest and any premium on the Bonds collected pursuant to action taken under this Section 7.02 shall be applied in accordance with the provisions of the Indenture.

**Section 7.03 *No Remedy Exclusive.*** No remedy conferred upon or reserved to the Issuer or the Trustee by this Financing Agreement 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 Financing Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any 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 expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Financing Agreement.

**Section 7.04 *Agreement to Pay Attorneys' Fees and Expenses.*** In the event the Borrower should default under any of the provisions of this Financing Agreement and the Issuer, the Trustee, the Servicer or the Bondholder Representative should employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Financing Agreement or in the Bond Mortgage Note, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

**Section 7.05 *No Additional Waiver Implied by One Waiver.*** In the event any agreement contained in this Financing Agreement should be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 7.06 *Control of Proceedings.***

(a) If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Bondholder Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Financing Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Financing Agreement. In addition, the Bondholder Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Trustee or the Issuer. In no event shall the exercise of any of the foregoing rights result in an acceleration of the Bond Mortgage Loan without the express direction of the Bondholder Representative.

(b) The Issuer and the Trustee covenant that they will not, without the prior written consent of the Bondholder Representative, take any of the following actions:

(i) prosecute any action with respect to a lien on the Project; or

(ii) 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 of, interest on, or other amounts due under, the Bond Mortgage Loan; or

(iii) interfere with or attempt to influence the exercise by the Bondholder Representative of any of its rights under the Bond Financing Documents upon the occurrence of any event of default by the Borrower under the Bond Financing Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Bond Mortgage Loan or the Bonds.

In addition, notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Issuer and the Trustee may seek specific performance of the other Unassigned Rights (provided no monetary damages are sought), and nothing herein shall be construed to limit the rights of the Issuer, the Trustee or any Indemnified Party related to the Issuer or the Trustee under Section 6.01 (each a "Related Indemnified Party") to enforce their respective rights against the Borrower under Sections 4.02, 4.03, 6.01 and 7.04 hereof, provided that no obligation of the Borrower to the Issuer, the Trustee or any Related Indemnified Party under such sections shall be secured by or in any manner constitute a lien on, or security interest in, the Project, whether in favor of the Issuer, the Trustee or any Related Indemnified Party, and all such obligations are and shall be subordinate in priority, in right to payment and in all other respects to all other obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Financing Documents (except for the Trustee's right to receive payment of reasonable fees and

expenses pursuant to Section 6.05(a) of the Indenture after an event of default with respect to the Bonds, which reasonable fees and expenses of the Trustee shall be payable as provided thereunder). Accordingly, none of the Issuer, the Trustee or any Related Indemnified Party shall have the right to enforce any monetary obligation arising under such sections other than directly against the Borrower, without recourse to the Project. In addition, any such enforcement must not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, construction, composition, reorganization, conservation or other similar law in effect now or in the future.

**Section 7.07 *Assumption of Obligations.*** In the event that the Trustee, the Bondholder Representative or the Bondholders or their respective assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Financing Agreement, the Bond Mortgage Note, and any other Bond Financing Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

## ARTICLE VIII

### MISCELLANEOUS

#### **Section 8.01 *Notices.***

(a) Whenever in this Financing Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Issuer, the Trustee, the Bondholder Representative, the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth in Section 11.05 of the Indenture or upon receipt of such notice or other communication delivered by facsimile transmission as required or permitted by this Financing Agreement (receipt of which shall be evidenced by confirmation of transmission). The Issuer, the Trustee, the Bondholder Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Bondholder Representative and a duplicate copy of each

notice or other communication given hereunder by any party to the Bondholder Representative shall be given to the Servicer.

The Trustee agrees to accept and act upon facsimile transmission or Electronic Notice of written instructions and/or directions pursuant to this Financing Agreement.

(b) The Trustee shall provide to the Bondholder Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default hereunder and (ii) any written information or other communication received by the Trustee hereunder within ten (10) Business Days of receiving a written request from the Bondholder Representative for any such information or other communication.

**Section 8.02 *Concerning Successors and Assigns.*** All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Financing Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Financing Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Issuer, the Trustee, the Servicer and the Bondholder Representative.

**Section 8.03 *Governing Law.*** This Financing Agreement and the Exhibits attached hereto shall be construed in accordance with and governed by the laws of the State and, where applicable, the laws of the United States of America.

**Section 8.04 *Modifications in Writing.*** Modification or the waiver of any provisions of this Financing Agreement or consent to any departure by the parties therefrom, shall in no event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Bondholder Representative and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given and so long as the interests of any Bondholders are not adversely affected and the Trustee consents in writing thereto. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

**Section 8.05 *Further Assurances and Corrective Instruments.*** The Issuer, the Trustee and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required (including such supplements or further instruments requested by the Bondholder Representative) for correcting any inadequate or incorrect description of the performance of this Financing Agreement.

**Section 8.06 *Captions.*** The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Financing Agreement.



**Section 8.07 Severability.** The invalidity or unenforceability of any provision of this Financing Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

**Section 8.08 Counterparts.** This Financing Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

**Section 8.09 Amounts Remaining in Bond Fund or Other Funds.** It is agreed by the parties hereto that any amounts remaining in the Bond Fund or other funds and accounts established under the Indenture upon expiration or sooner termination of the term hereof, shall be paid in accordance with the Indenture.

**Section 8.10 Effective Date and Term.** This Financing Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the Indenture shall terminate.

**Section 8.11 Cross References.** Any reference in this Financing Agreement to an “Exhibit,” an “Article,” a “Section,” a “Subsection” or a “Paragraph” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Financing Agreement, an article of this Financing Agreement, a section of this Financing Agreement, a subsection of the section of this Financing Agreement in which the reference appears and a paragraph of the subsection within this Financing Agreement in which the reference appears. All exhibits attached to or referred to in this Financing Agreement are incorporated by reference into this Financing Agreement.

**Section 8.12 Bondholder Representative and Servicer as Third-Party Beneficiaries.** The parties hereto agree and acknowledge that the Bondholder Representative and the Servicer are third party beneficiaries of this Financing Agreement.

**Section 8.13 Reserved.**

**Section 8.14 Non-Liability of Issuer.** The Issuer shall not be obligated to pay the principal (or redemption price) of or interest on the Bonds, except from Revenues and other money and assets received by the Trustee on behalf of the Issuer pursuant to this Financing Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Issuer or any member is pledged to the payment of the principal (or redemption price) or interest on the Bonds. The Issuer shall not 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 Financing Agreement, the Bonds or the Indenture, except only to the extent amounts are received for the payment thereof from the Borrower under this Financing Agreement.

The Borrower hereby acknowledges that the Issuer's sole source of money to repay the Bonds will be provided by the payments made by the Borrower pursuant to this Financing Agreement, together with investment income on certain funds and accounts held by the Trustee under the Indenture, and hereby agrees that if the payments to be made hereunder shall ever

prove insufficient to pay all principal (or redemption price) and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Trustee, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or redemption price) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Borrower, the Issuer or any third party, subject to any right of reimbursement from the Trustee, the Issuer or any such third party, as the case may be, therefor.

**Section 8.15 *No Liability of Officers.*** No recourse under or upon any obligation, covenant, or agreement or in any Bonds, or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Owner of any Bonds, of any sum that may be due and unpaid by the Issuer upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the Owner of any Bonds, of any sum that may remain due and unpaid upon the Bonds or any of them, is hereby expressly waived and released as a condition of and consideration for the execution of this Financing Agreement and the issuance of the Bonds.

**Section 8.16 *Capacity of the Trustee.*** The Trustee is entering into this Financing Agreement solely in its capacity as Trustee and shall be entitled to the rights, protections, limitations from liability and immunities afforded it as Trustee under the Indenture. The Trustee shall be responsible only for the duties of the Trustee expressly set forth herein and in the Indenture.

**Section 8.17 *Reliance.*** The representations, covenants, agreements and warranties set forth in this Financing Agreement may be relied upon by the Issuer, the Trustee, Kutak Rock LLP as Issuer's counsel, the Servicer and the Bondholder Representative. In performing their duties and obligations under this Financing Agreement and under the Indenture, the Issuer and the Trustee may rely upon statements and certificates of the Borrower, upon certificates of tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Issuer and the Trustee may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer or the Trustee under this Financing Agreement and under the Indenture in good faith and in conformity with the opinion of such counsel. It is expressly understood and agreed by the parties to this Financing Agreement (other than the Issuer) that:

- (a) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee, any

Bondholder or the Borrower as to the existence of a fact or state of affairs required under this Financing Agreement to be noticed by the Issuer;

(b) the Issuer shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Trustee, the Bondholder Representative, the Servicer or the Borrower, as applicable; and

(c) none of the provisions of this Financing Agreement shall require the Issuer or the Trustee to expend or risk its own funds (apart from the proceeds of Bonds issued under the Indenture) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Financing Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Financing Agreement, all as of the date first set forth above.

**NORTH DAKOTA HOUSING FINANCE  
AGENCY**

By \_\_\_\_\_  
David A. Flohr, Executive Director

[ISSUER'S SIGNATURE PAGE TO **LASHKOWITZ RIVERFRONT 9** FINANCING AGREEMENT]

**WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Trustee**

By: \_\_\_\_\_  
Lisa M. Lewis, Vice President

[TRUSTEE'S SIGNATURE PAGE *LASHKOWITZ RIVERFRONT 9* FINANCING AGREEMENT]

**LASHKOWITZ RIVERFRONT NINE, LLLP,**  
a North Dakota limited liability limited partnership

By: Lashkowitz BL Nine GP, LLC,  
a North Dakota limited liability company  
Its: Managing General Partner

By: BlueLine, LLC,  
a Montana limited liability company  
Its: Sole Member and Manager

By: \_\_\_\_\_  
Nathan Richmond  
Its Member

[BORROWER'S SIGNATURE PAGE TO *LASHKOWITZ RIVERFRONT 9* FINANCING AGREEMENT]



# OUTDOOR HERITAGE FUND PROJECT MANAGEMENT REPORT

Reice Haase, Deputy Executive Director, NDIC

June 26, 2024

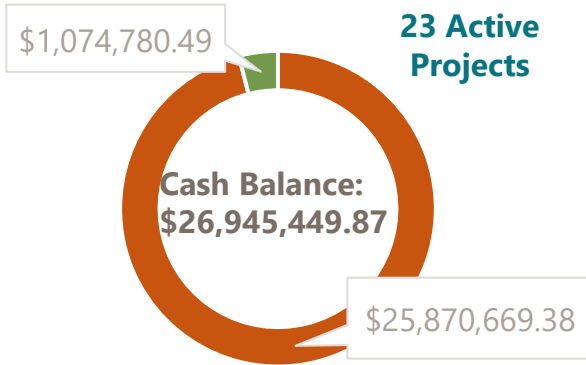


NORTH  
**Dakota**

Be Legendary.™

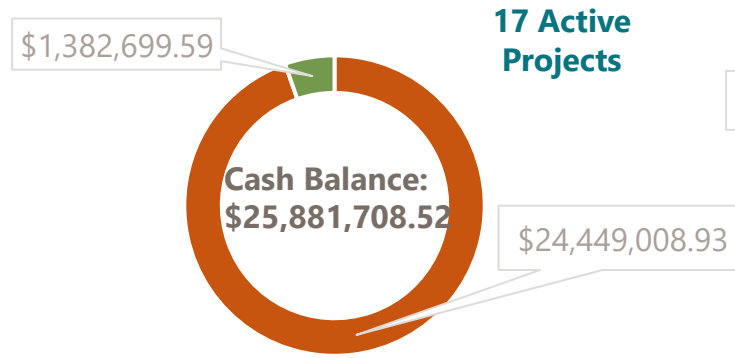
# INDUSTRIAL COMMISSION-MANAGED FUNDS

Lignite Research Fund



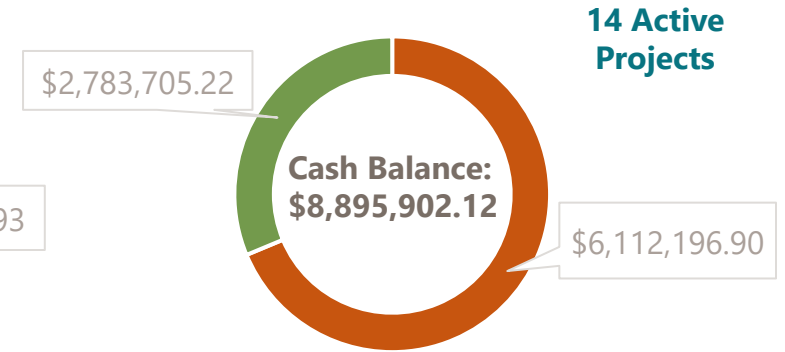
■ Committed ■ Uncommitted

Oil and Gas Research Fund



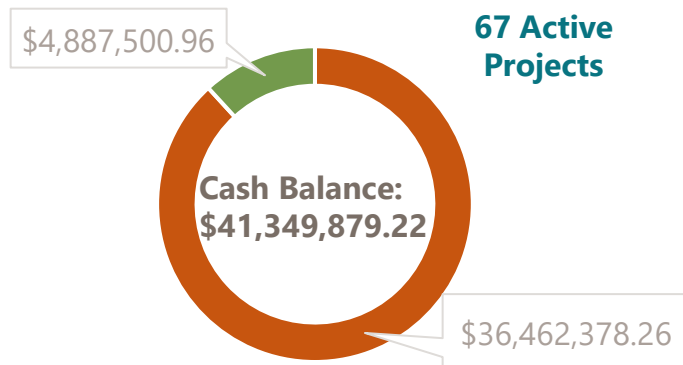
■ Committed ■ Uncommitted

Renewable Energy Fund



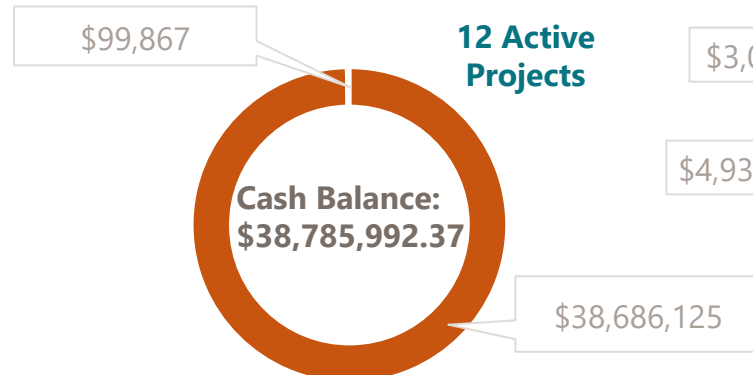
■ Committed ■ Uncommitted

Outdoor Heritage Fund



■ Committed ■ Uncommitted

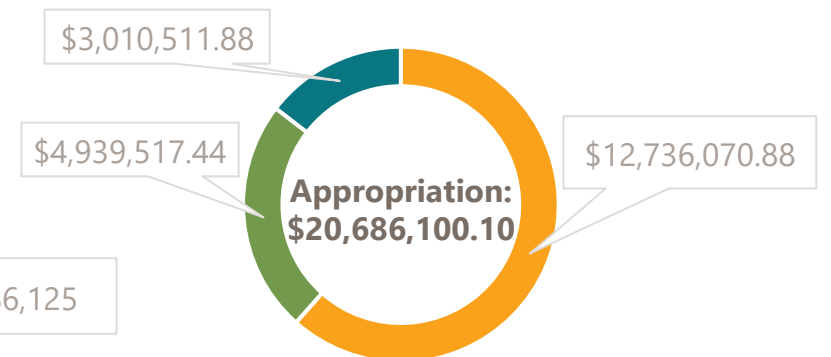
CSEA Fund\*



\*Does not include ARPA or Loans

■ Committed ■ Uncommitted

SERC Fund

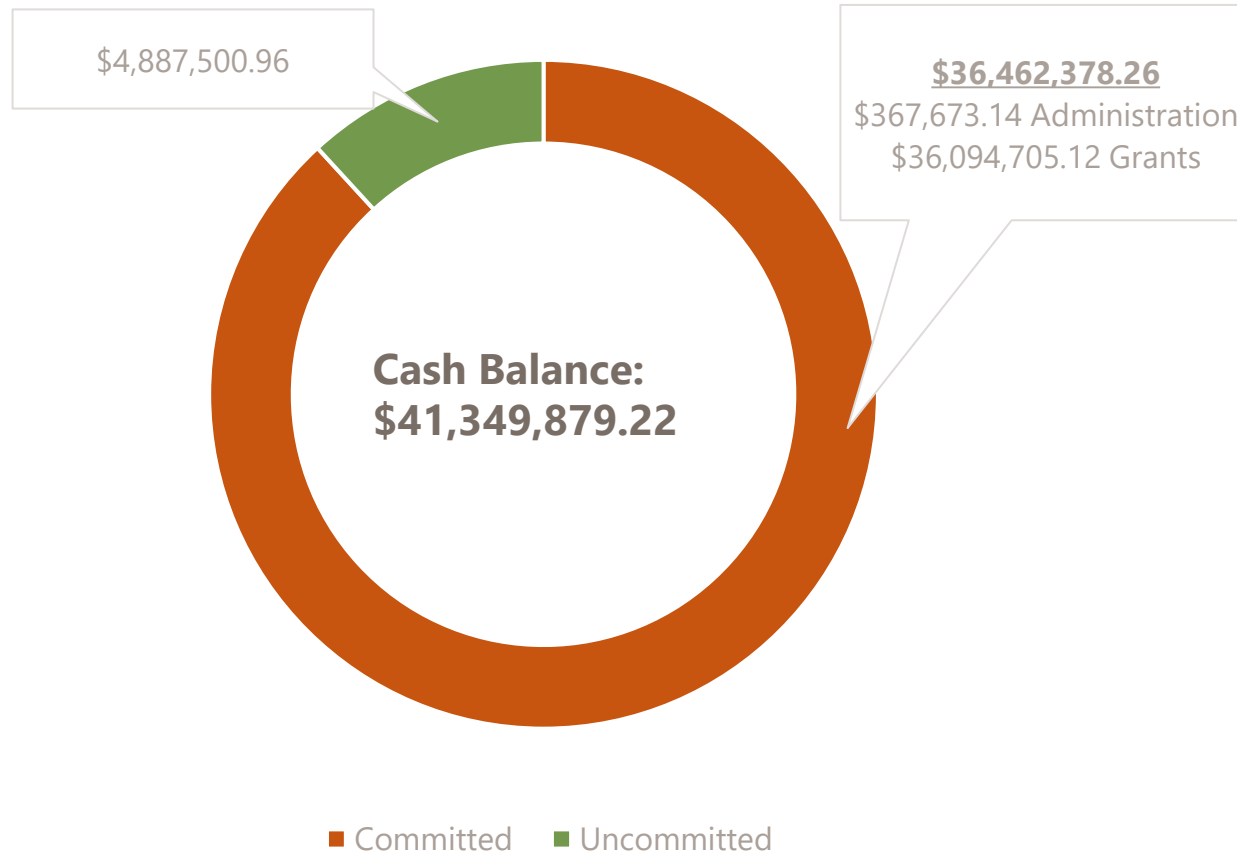


■ Leg. Directed ■ Remaining ■ Spent



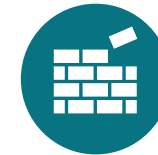
# OUTDOOR HERITAGE FUND BALANCE MAY 29<sup>TH</sup>, 2024

Outdoor Heritage Fund



### Funding Source:

- \$15 million oil production taxes



**232 Cumulative Projects**



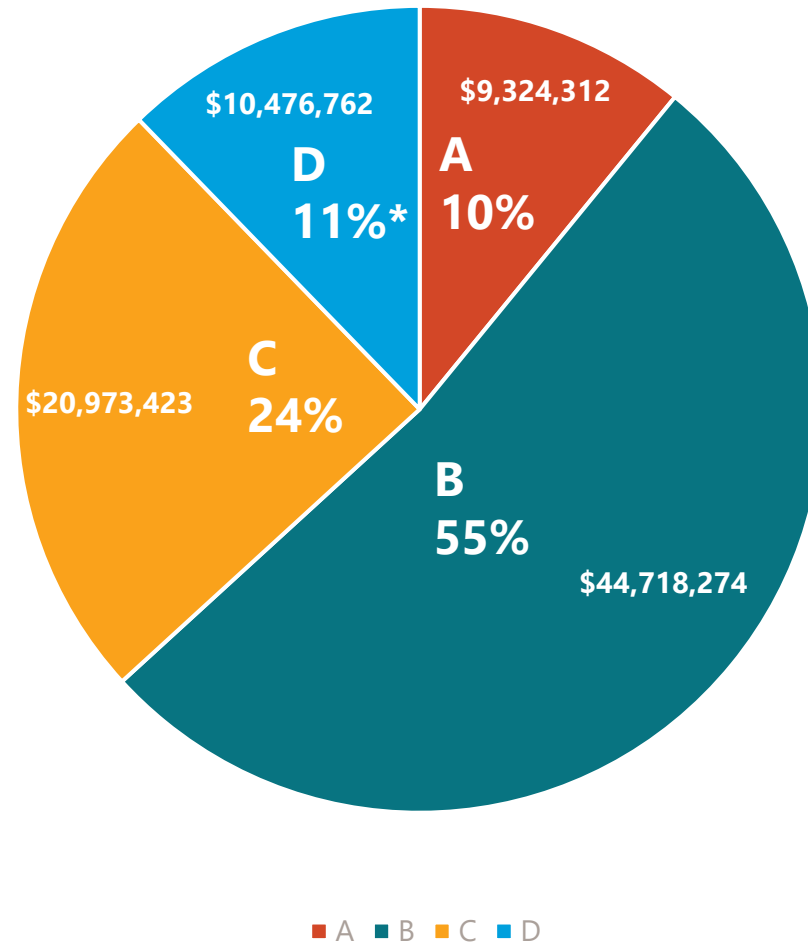
**67 Active Projects**



### Cumulative Value:

- \$85.5 million granted
- \$222.4 million project value

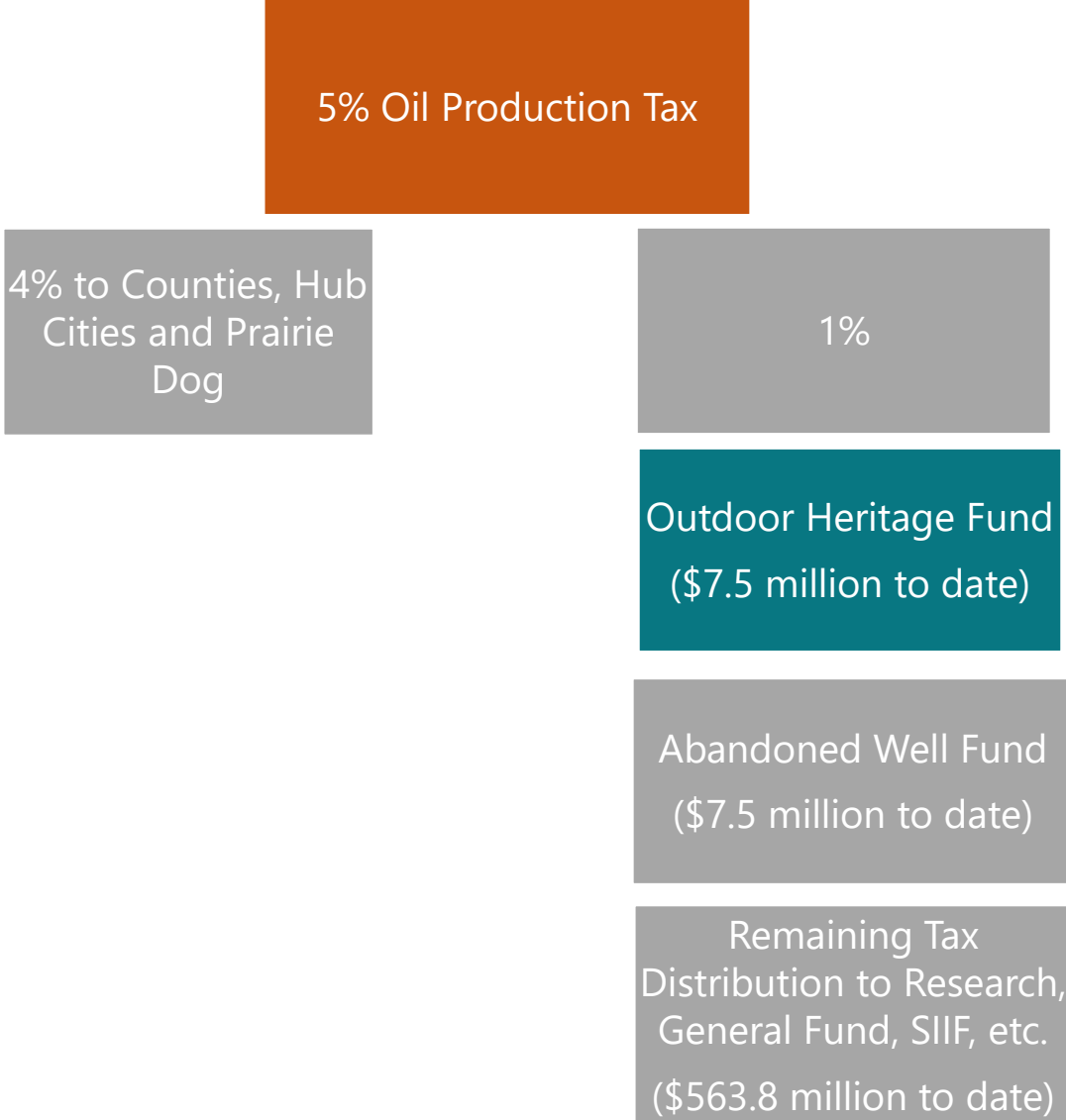
# OHF FUNDING BY DIRECTIVE



- A: Sportsmen Access
- B: Agricultural Stewardship
- C: Habitat Enhancement
- D: Recreation

\*Industrial Commission Goal:  
Minimum of 15% funding to  
Directive D

# 2023-2025 BIENNIUM APPROPRIATION AND FORECASTED INCOME



Outdoor Heritage Fund  
Grant Round 24  
Application Summary Page  
**GR 24-2**

Project Title: North Dakota Statewide Windbreak Renovation Initiative 4.0  
Applicant: North Dakota Forest Service  
Primary Contact: Loretta Forsberg  
Total Project Costs: \$1,200,000  
OHF Request: \$900,000

Match Amount	Funding Source	Match Type
\$150,000	Landowner	Cash
\$150,000	Landowner	In-Kind
\$300,000.00	Total	

Percentage of Matching Funds: 25%

Project Duration: September 30, 2024 through June 30, 2029

Major Directive: B

Additional Directive: C

Summary of Project: Continue to offer a financial assistance program for landowners to renovate windbreaks thereby protecting, enhancing, and preserving these essential forest resources.

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Technical Committee Comments:

- 4<sup>th</sup> round, popular initiative
- With limited funding in OHF, should state agencies be prioritized over non-state entities?

Technical questions from the OHF Advisory Board members:

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**Funded Projects**

<b>Contract</b>	<b>Total Project Cost</b>	<b>Title</b>	<b>Award Amount</b>	<b>Amount Expended</b>	<b>Project Timeframe</b>
5-74	\$3,600,000	North Dakota Statewide Windbreak Renovation Initiative	\$1,800,000	\$1,618,268.04	Completed
18-185	\$600,000	North Dakota Statewide Windbreak Renovation Initiative 2.0	\$300,000	\$48,366.44	July 1, 2021-June 30, 2024
20-200	\$62,000	Sheyenne River State Forest Access Improvement Project	\$45,000	\$41,779.46	Completed
21-210	\$1,200,000	North Dakota Statewide Windbreak Renovation Initiative 3.0	\$900,000	\$0.00	September 30, 2023-June 30, 2028
<b>Totals</b>	<b>\$5,462,000.00</b>		<b>\$3,045,000.00</b>	<b>\$1,708,413.94</b>	

**Unsuccessful Applications**

<b>Round</b>	<b>Request</b>	<b>Total Project Cost</b>	<b>Title</b>	<b>Vote</b>
1-AA	\$633,468	\$1,305,193	Forest Stewardship Initiative	2-10
<b>Totals</b>	<b>\$633,468.00</b>	<b>\$1,305,193.00</b>		

# Outdoor Heritage Fund Grant Application



## Instructions

After completing the form, applications and supporting documentation may be submitted by e-mail to [ndicgrants@nd.gov](mailto:ndicgrants@nd.gov). It is preferred that only electronic copies are submitted.

You are not limited to the spacing provided, except in those instances where there is a limit on the number of words. If you need additional space, please indicate that on the application form, answer the question on a separate page, and include with your submission.

The application and all attachments must be received by the application deadline. You may submit your application at any time prior to the application deadline. **Applicants are strongly encouraged to submit applications prior to the deadline for staff review in order ensure that proposals will be complete when submitted on deadline date.** Incomplete applications may not be considered for funding.

**Please review the back of this form to determine project eligibility, definitions, budget criteria, and statutory requirements.**

Project Name

Name of Organization

Federal Tax ID#

Contact Person/Title

Address

City

State

Zip Code

E-mail Address

Web Site Address (If applicable)

Phone

List names of co-applicants if this is a joint proposal

**MAJOR Directive:**

Choose only one response

- Directive A.** Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat and provide access for sportsmen;
- Directive B.** Improving, maintaining and restoring water quality, soil conditions, plant diversity, animal systems and by supporting other practices of stewardship to enhance farming and ranching;
- Directive C.** Developing, enhancing, conserving and restoring wildlife and fish habitat on private and public lands; and
- Directive D.** Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.

**Additional Directive:**

Choose all that apply

- Directive A.**
- Directive B.**
- Directive C.**
- Directive D.**

**Type of organization:**

- 

**Abstract/Executive Summary.**

Summarize the project, including its objectives, expected results, duration, total project costs and participants. (no more than 500 words)

**Project Duration:**

Indicate the intended schedule for drawing down OHF funds.

Amount of Grant request: \$

**Total Project Costs: \$**

Note: in-kind and indirect costs can be used for matching funds.

**Amount of Matching Funds: \$**

**A minimum of 25% Match Funding is required.** Indicate if the matching funds will be in-kind, indirect or cash. Please provide verification that these matching funds are available for your project. Note that effective as of July 1, 2015 no State General Fund dollars can be used for a match unless funding was legislatively appropriated for that purpose.

Amount of Match	Funding Source	Type of Match (Cash, In-kind or Indirect)
\$		
\$		
\$		
\$		
\$		
\$		

**Certifications**

I certify that this application has been made with the support of the governing body and chief executive of my organization.

I certify that if awarded grant funding none of the funding will be used for any of the exemptions noted in the back of this application.



## Narrative

### **Organization Information – Briefly summarize your organization’s history, mission, current programs and activities.**

Include an overview of your organizational structure, including board, staff and volunteer involvement. (no more than 300 words)

### **Purpose of Grant – Describe the proposed project identifying how the project will meet the specific directive(s) of the Outdoor Heritage Fund Program**

Identify project goals, strategies and benefits and your timetable for implementation. Include information about the need for the project and whether there is urgency for funding. Indicate if this is a new project or if it is replacing funding that is no longer available to your organization. Identify any innovative features or processes of your project. Note: if your proposal provides funding to an individual, the names of the recipients must be reported to the Industrial Commission/Outdoor Heritage Fund. These names will be disclosed upon request.

For tree/shrub/grass plantings: provide a planting plan describing the site design, planting methods, number of trees/shrubs by species and stock size, grass species and future maintenance. A statement certifying that the applicant will adhere to USDA-NRCS tree/shrub/grass planting specifications along with the name of the governmental entity designing the planting may be substituted for a planting plan.

For projects including Section 319 funding: provide in detail the specific best management practices that will be implemented and the specific projects for which you are seeking funding.

For projects including fencing: A minimum cost share of 40% by the recipient is preferred. Include detailed information on the type of fencing to be installed, whether funding is requested for boundary fencing, new or replacement of existing fencing, and/or cross fencing.

Is this project part of a Comprehensive Conservation Plan?  Yes  No

If yes, provide a copy with the application.

*Note: Projects involving buildings and infrastructure will only be considered if part of a Comprehensive Conservation Plan. Please refer to the “Definitions” section at the back of the form for more details.*

**Management of Project – Provide a description of how you will manage and oversee the project to ensure it is carried out on schedule and in a manner that best ensures its objectives will be met.**

Include a brief background and work experience for those managing the project.

**Evaluation – Describe your plan to document progress and results.**

Please be specific on the methods you will utilize to measure success. Note that regular reporting, final evaluation and expenditure reports will be required for every grant awarded.

**Financial Information**

**Project Budget – Use the table below to provide an itemized list of project expenses and describe the matching funds being utilized for this project.**

Indicate if the matching funds are in the form of cash, indirect costs or in-kind services. The budget should identify all other committed funding sources and the amount of funding from each source. **A minimum of 25% match funding is required. An application will be scored higher the greater the amount of match funding provided.** (See Scoring Form.)

Certain values have been identified for in-kind services as detailed under “Budget Information” at the back of this form. Refer to that section and utilize these values in identifying your matching funds. **NOTE: No indirect costs will be funded. Supporting documentation for project expenses, including bids, must be included or application will be considered incomplete.**

Project Expense	OHF Request	Applicant's Match Share (Cash)	Applicant's Match Share (In-Kind)	Applicant's Match Share (Indirect)	Other Project Sponsor's Share	Total Each Project Expense
	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$
<b>Total Costs</b>	\$	\$	\$	\$	\$	\$

Note: Costs for seeding, fencing, pipelines, wells, and cover crops cannot exceed NRCS Field Office Tech Guide without justification. Projects involving perimeter fencing must follow NRCS eligibility standards.

**Budget Narrative – Use the space below to provide additional detail regarding project expenses.**

**Sustainability – Indicate how the project will be funded or sustained in future years.**

Include information on the sustainability of this project after OHF funds have been expended and whether the sustainability will be in the form of ongoing management or additional funding from a different source.

**Partial Funding – Indicate how the project will be affected if less funding is available than that requested.**

**Partnership Recognition - If you are a successful recipient of Outdoor Heritage Fund dollars, how would you recognize the Outdoor Heritage Fund partnership? \* *There must be signage at the location of the project acknowledging OHF funding when appropriate.***

**Awarding of Grants - Review the appropriate sample contract for your organization on the website at <http://www.nd.gov/ndic/outdoor-infopage.htm>.**

Can you meet all the provisions of the sample contract?  Yes  No

If there are provisions in that contract that your organization is unable to meet, please indicate below what those provisions would be:

**ABOUT OHF:**

The purpose of the North Dakota Outdoor Heritage Fund is to provide funding to state agencies, tribal governments, political subdivisions, and nonprofit organizations, with higher priority given to projects that enhance **conservation** practices in this state by:

**Directive A.** Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat and provide access for sportsmen;

**Directive B.** Improving, maintaining and restoring water quality, soil conditions, plant diversity, animal systems and by supporting other practices of stewardship to enhance farming and ranching;

**Directive C.** Developing, enhancing, conserving and restoring wildlife and fish habitat on private and public lands; and

**Directive D.** Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.

## **EXEMPTIONS**

Outdoor Heritage Fund grants may not be used to finance the following:

- Litigation;
- Lobbying activities;
- Any activity that would interfere, disrupt, or prevent activities associated with surface coal mining operations; sand, gravel, or scoria extraction activities; oil and gas operations; or other energy facility or infrastructure development;
- The acquisition of land or to encumber any land for a term longer than twenty years; or
- Projects outside this state or projects that are beyond the scope of defined activities that fulfill the purposes of Chapter 54-17.8 of the North Dakota Century Code.

OHF funds may not be used, except after a finding of exceptional circumstances by the Industrial Commission, to finance:

- A completed project or project commenced before the grant application is submitted;
- A feasibility or research study;
- Maintenance costs;
- A paving project for a road or parking lot;
- A swimming pool or aquatic park;
- Personal property that is not affixed to the land;
- Playground equipment, except that grant funds may be provided for up to 25% of the cost of the equipment not exceeding \$10,000 per project and all playground equipment grants may not exceed 5% of the total grants per year (see Definitions/Clarifications for how this will be calculated);
- Staffing or outside consultants except for costs for staffing or an outside consultant to design and implement an approved project based on the documented need of the applicant and the expenditures may not exceed 5% of the grant to a grantee if the grant exceeds \$250,000 and expenditures may not exceed 10% of the grant to a grantee if the grant is \$250,000 or less (see Definitions/Clarifications for how this will be calculated);
- A building except for a building that is included as part of a comprehensive conservation plan for a new or expanded recreational project (see Definitions/Clarifications for definition of comprehensive conservation plan and new or expanded recreational project); or
- A project in which the applicant is not directly involved in the execution and completion of the project.

The goal of the Industrial Commission is that at a minimum 15% of the funding received for a biennium will be given priority for recreation projects that meet Directive D.

The following projects are not eligible for funding, unless there is a finding of exceptional circumstances by the Industrial Commission include:

- Construction or refurbishment of indoor/outdoor ice rinks,
- Construction or refurbishment of indoor/outdoor athletic courts and sports fields,
- Other substantially similar facilities.
- Infrastructure that is not part of a comprehensive conservation plan.
- Projects not meeting a minimum funding request of \$2,500.

## Budget Information

In-kind services used to match the request for Outdoor Heritage Fund dollars shall be valued as follows:

- Labor costs \$15.00 an hour
- Land costs Average rent costs for the county as shown in the most recent publication of the USDA, National Agricultural Statistics Services, North Dakota Field Office
- Permanent Equipment Any equipment purchased must be listed separately with documentation showing actual cost. (For example: playground equipment)
- Equipment usage Actual documentation
- Seed & Seedlings Actual documentation
- Transportation Mileage at federal rate
- Supplies & materials Actual documentation

More categories will be added as we better understand the types of applications that will be submitted. We will use as our basis for these standards other State and Federal programs that have established rates. For example, the North Dakota Nonpoint Source Pollution Management Program has established rates. If your project includes work that has an established rate under another State Program, please use those rates and note your source.

## **Definitions/Clarifications:**

**Building** - Defined as "A structure with a roof either with walls or without walls and is attached to the ground in a permanent nature."

**Comprehensive Conservation Plan** - Defined as "A detailed plan that has been formally adopted by the governing board which includes goals and objectives--both short and long term, must show how this building will enhance the overall conservation goals of the project and the protection or preservation of wildlife and fish habitat or natural areas." This does not need to be a complex multi-page document. It could be included as a part of the application or be an attachment.

**New and Expanded Recreational Project** means that the proposed building cannot be a replacement of a current building. The proposed building must also be related to either a new or expanded recreational project--either an expansion in land or an expansion of an existing building or in the opportunities for recreation at the project site.

**Playground equipment calculation** - Only the actual costs of the playground equipment (a bid or invoice showing the amount of the equipment costs must be provided) - cannot include freight or installation or surface materials or removal of old equipment, etc.

**Staffing/Outside Consultants Costs** - If you are requesting OHF funding for staffing or for an outside consultant, you must provide information in your application on the need for OHF funding to cover these costs. For example, if you are an entity that has engineering staff you must explain why you don't have sufficient staff to do the work or if specific expertise is needed or whatever the reason is for your entity to retain an outside consultant. If it is a request for reimbursement for staff time then a written explanation is required in the application of why OHF funding is needed to pay for the costs of that staff member(s)' time. **The budget form must reflect on a separate line item the specific amount that is being requested for staffing and/or the hiring of an outside consultant.** This separate line item

will then be used to make the calculation of 5% or 10% as outlined in the law. Note that the calculation will be made on the grant less the costs for the consultant or staff.

**Maintenance** – Activities that preserve or keep infrastructure in a given existing condition, including repairs. Repair means to restore to sound condition after damage, to renew or refresh; except repairs due to damage caused by Acts of God.

## **Scoring of Grants**

**Oral Presentation.** Please note that you will be given an opportunity to make a ten-minute Oral Presentation at a meeting of the Outdoor Heritage Fund Advisory Board. These presentations are strongly encouraged.

**Open Record.** Please note that your application and any attachments will be open records as defined by law and will be posted on the Industrial Commission/Outdoor Heritage Fund website.

All applications will be scored by the Outdoor Heritage Fund Advisory Board after your ten-minute oral presentation. The ranking form that will be used by the Board is available on the website at <http://www.nd.gov/ndic/outdoor-infopage.htm> .

## **Awarding of Grants**

All decisions on requests will be reported to applicants no later than 30 days after Industrial Commission consideration. The Commission can set a limit on duration of an offer on each application or if there isn't a specific date indicated in the application for implementation of the project, then the applicant has until the next Outdoor Heritage Fund Advisory Board regular meeting to sign the contract and get the project underway or the commitment for funding will be terminated and the applicant may resubmit for funding. Applicants whose proposals have been approved will receive a contract outlining the terms and conditions of the grant.

## **Responsibility of Recipient**

The recipient of any grant from the Industrial Commission must use the funds awarded for the specific purpose described in the grant application and in accordance with the contract. The recipient cannot use any of the funds for the purposes stated under Exemptions on the first page of this application.

If you have any questions about the application, the Commission can be reached at 701-328-3722 or [outdoorheritage@nd.gov](mailto:outdoorheritage@nd.gov).

Revised: November 4, 2019, April 12, 2023

	Application Deadline		Award Contracts		Project Completion & Reimbursement	
	Start Date	Completion Date	Start Date	Completion Date	Start Date	Completion Date
<b>Application Pool #1</b>	9/30/2024	9/30/2024	10/15/2024	10/31/2024	6/1/2025	12/31/2026
<b>Application Pool #2</b>	3/31/2025	3/31/2025	4/15/2025	4/30/2025	6/1/2026	12/31/2027
<b>Application Pool #3</b>	9/30/2025	9/30/2025	10/15/2025	10/31/2025	6/1/2026	12/31/2027
<b>Application Pool #4</b>	3/31/2026	3/31/2026	4/15/2026	4/30/2026	6/1/2027	12/31/2028
<b>Application Pool #5</b>	9/30/2026	9/30/2026	10/15/2026	10/31/2026	6/1/2027	12/31/2028

**Description of Tasks:**

Five grant application pools will be offered. Applications will be received, reviewed, and ranked according to objectives and priorities identified in the 2020 NDFS Forest Action Plan. Contracts will be awarded within 30 days of each application deadline. Award recipients will have two years to complete all renovation practices and apply for reimbursement, with the final reimbursements for the final application prior to June 30, 2029.

North Dakota

# Forest Action Plan



**Thomas Claeys**, State Forester  
NDSU-North Dakota Forest Service  
916 E. Interstate Ave., Suite 4  
Bismarck, ND 58503

May, 2020





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# Introduction

Forest action plans were integral to the state and private forestry (S&PF) redesign and were required as an amendment to the Cooperative Forestry Assistance Act (CFAA) as enacted in the 2008 farm bill. Forest action plans serve as a strategic framework to outline priority forest resources, designate important issues, and identify strategies to address challenges and opportunities. State forest action plans (FAP) are intended to ensure that federal and state resources are being focused on important landscape areas, with the greatest opportunity to address shared management priorities and achieve measurable outcomes.

North Dakota's forest action plan provides a long-term, comprehensive, coordinated strategy for leveraging state, federal and partner resources to address the management and landscape priorities identified. North Dakota's identified priorities align with the following national themes and associated management objectives:

- **Conserve working forestlands:** conserving and managing working forest landscapes for multiple values and uses
- **Protect forests from harm:** protect forests from threats, including catastrophic storms, flooding, insect or disease outbreaks, and invasive species
- **Enhance public benefits from trees and forests:** including air and water quality, soil conservation, biological diversity, carbon storage, forest products, forestry-related jobs, production of renewable energy and wildlife

The plan was developed through partner and stakeholder input, incorporation of existing statewide management plans, and data derived from the best geospatial data available.

The forest action plan consists of two primary components:

1. **Statewide assessment of forest resources** — provides an analysis of forest conditions and trends in the state, delineates priority rural and urban forest landscape areas, and identifies priority issues
  2. **Forest resource strategy** — provides long-term strategies for investing state, federal and other resources to manage priority landscapes identified in the assessment, focusing where federal investment can most effectively stimulate or leverage desired action and engage multiple partners
-

# Statewide Assessment of Forest Resources

The statewide assessment of forest resources provides a detailed account of the forest resources of North Dakota, an assessment of forest conditions and trends, and an analysis of challenges and threats to forest resources, and delineates priority forest resources in the state.

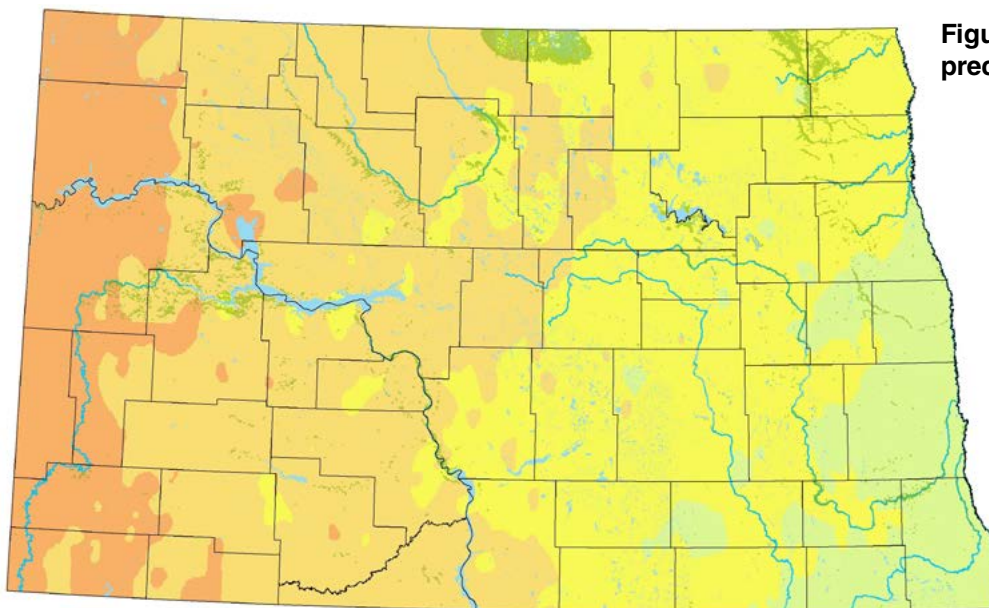
## Section 1. Forest and Tree Resources of North Dakota

North Dakota is characterized as a prairie state due to the topography, soils and climate that promote perennial grasses and forbs, and limit the natural succession to forestland. Soil formations derived from prehistoric glaciation (Figure 1) and low annual precipitation (Figure 2) limit the natural distribution of native forests and present logistical challenges to community and conservation tree planting efforts.

Despite these physiographic challenges for trees and forests, several diverse and unique forest resources persist in the state. Forest and tree resources found in North Dakota include upland forests, riparian forests, conservation plantings and community forests.



**Figure 1. Ecoregions of North Dakota. The current landscape reflects glaciation that occurred during the Pleistocene era.**



**Figure 2. Average annual precipitation (inches) 1980 – 2010**

- 10 - 12 inch
- 12 - 14 inch
- 14 - 16 inch
- 16 - 18+ inch



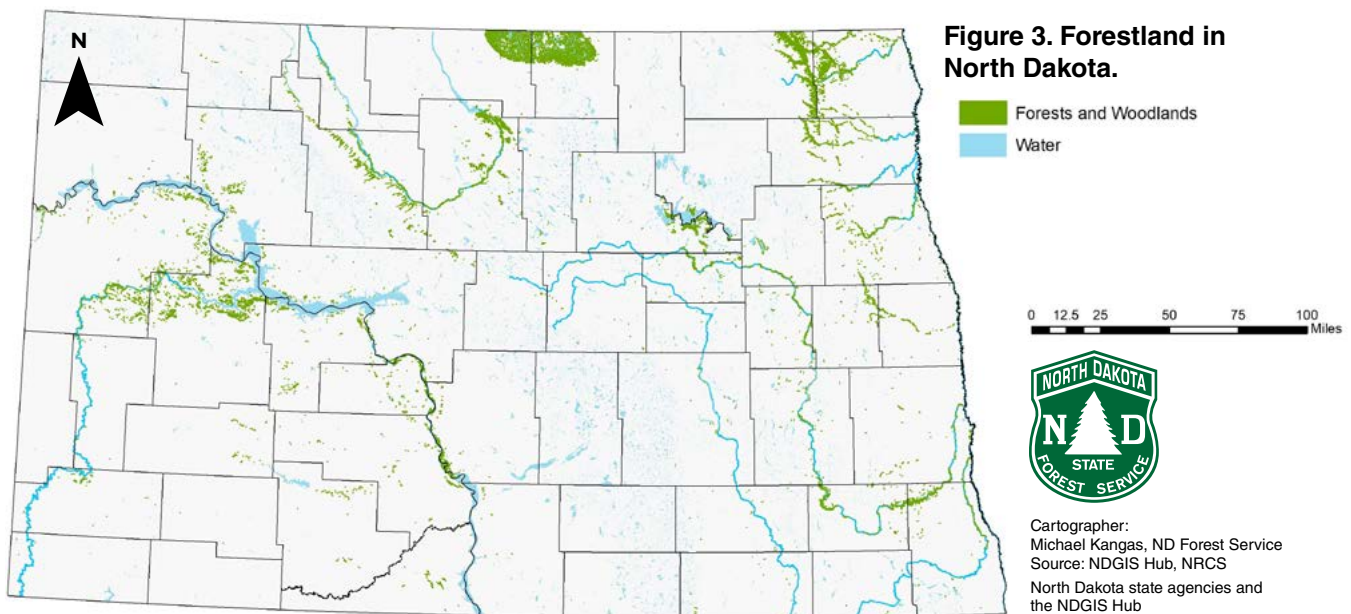
Cartographer:  
Michael Kangas, ND Forest Service  
Source: NDGIS Hub, NRCS  
North Dakota state agencies and  
the NDGIS Hub

Upland forests (including deciduous and coniferous forests and wooded shrublands) and riparian forests encompass 815,000 acres, or 1.8% of the total land area (Paulson, 2018). Eastern deciduous forest types and western coniferous forest types are found in North Dakota. Deciduous forest types comprise approximately 72% of the state’s forestland (Figure 3).

Conservation tree plantings account for hundreds of thousands of acres of additional forest resources. Conservation tree plantings include farmstead windbreaks, living snow fences, wildlife plantings and field windbreaks. An estimated 30,000 linear miles of field windbreaks can be found in the state (Kangas, 2016).

Community forests include boulevard trees, trees planted in city parks and trees that naturally occur in city limits or public rights of way. Community forests are important infrastructure of the state’s 387 communities, and represent 629 square miles (400,640 acres – U.S. Census 2010).

Upland and riparian forests, conservation tree plantings and community forests provide numerous ecological, social and economic benefits to North Dakota.

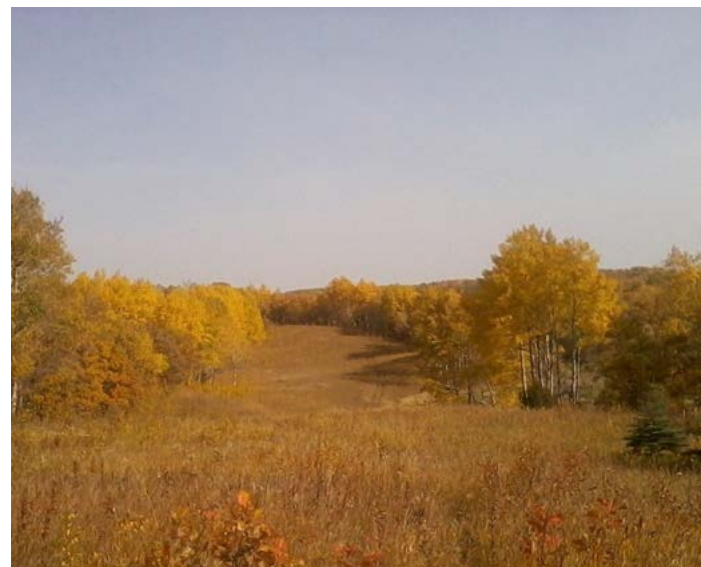


## Upland Forests

Upland forests can be found throughout the state but are most prevalent in the eastern half and northern areas of the state. The majority of these forests consist of deciduous species, most notably aspen/birch (*Populus tremuloides/ Betula papyrifera*) and bur oak (*Quercus macrocarpa*).

Forest types are categorized by the dominance of one or a few tree species, although numerous species may comprise each forest type. Bur oak and aspen/birch forests are common in the Turtle Mountain region, the Devils Lake Hills and the Pembina Gorge (Figure 3).

Pinyon/juniper forest types represent 28% of the state’s forestland. Isolated stands consisting of ponderosa pine (*Pinus ponderosa*) and limber pine (*Pinus flexilis*) are in the southwestern counties of the state. Although not considered forestland, woodlands of Rocky Mountain juniper (*Juniperous scopulorum*) can be found in the Badlands of western North Dakota.



**Aspen woodlands in the Turtle Mountains.**

## Riparian Forests

A riparian zone is the area between a body of water and the adjacent upland terrestrial zone; it is identified by soil characteristics and distinctive vegetation that requires an excess of water. Generally, it consists of trees and shrubs, as well as understory vegetation that includes a variety of grasses and forbs. The elm/ash/cottonwood forest type is the most abundant of all forest types in North Dakota and occurs along rivers, lakes and streams.

In North Dakota, riparian forests often are associated with sites that have deep alluvial soils, which are present at the base of slopes and often are present in coulees that were formed by glaciation and water erosion. Thick layers of organic matter are common in the deep soils of these areas.

Species such as green ash (*Fraxinus pennsylvanica*), boxelder (*Acer negundo*) and basswood (*Tilia americana*) may dominate along the eastern rivers, while cottonwood (*Populus deltoides*), ash and boxelder may be more common in the western part of the state. Other associated species include American elm (*Ulmus americana*), hackberry (*Celtis occidentalis*), bur oak and willow (*Salix* spp.). Riparian shrub species include chokecherry (*Prunus virginiana*), gooseberry (*Ribes* spp.) and snowberry (*Symphoricarpos* spp.).

## Conservation Tree Plantings

Conservation tree plantings generally refer to farmstead plantings, shelter belts, living snow fences, wildlife plantings, riparian buffer strips and others that are designed to achieve conservation, economic and societal goals.

North Dakota is largely a rural state with an economy that is deeply rooted in agriculture. North Dakota has a long history of tree planting efforts dating back to the Timber Culture Act of 1873. Early settlers planted trees to provide wind protection, fuel and food.

The Dust Bowl of the 1930s had far-reaching social, economic and environmental consequences, which accelerated tree planting programs. The most notable program was the Prairie States Forestry Project, which resulted in the planting of 217 million trees in the Great Plains. Tree planting efforts have continued throughout the state into present times.

Common species found in conservation tree plantings include green ash, Colorado blue spruce (*Picea pungens*), ponderosa pine, eastern redcedar (*Juniperus virginiana*), Rocky Mountain juniper, Siberian elm (*Ulmus pumila*), Siberian peashrub (*Caragana arborescens*) and cottonwood.



Shelter belts in central North Dakota.

## Community Forests

Community forests include boulevard trees, trees planted in city parks and trees that naturally occur in city limits or public rights of way. The management of such tree resources may fall under the responsibility of city foresters, public works departments and/or community tree boards.

The community forest also includes trees that are planted on private or commercial properties. Common tree species found in residential communities include cultivars of elm (*Ulmus* spp.), linden (*Tilia* spp.), ash (*Fraxinus* spp.), oak (*Quercus* spp.), hackberry (*Celtis occidentalis*) and silver maple (*Acer saccharinum*).



Arbor Day is celebrated by many communities across the state each spring.

## Section 2. Forest Conditions and Trends

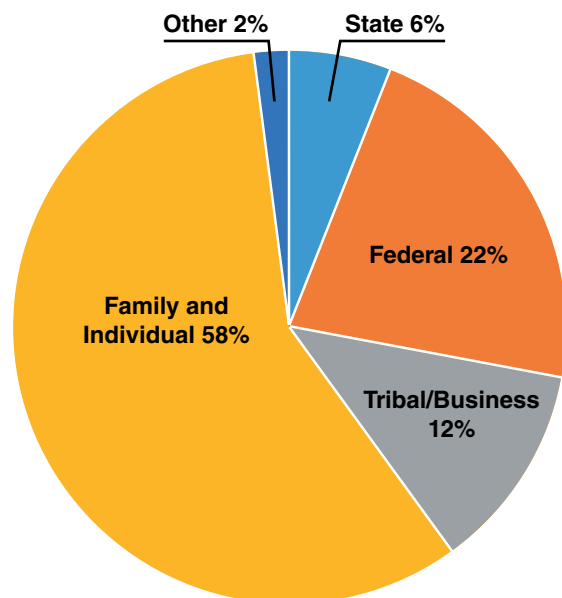
### Native Forests

Native forests including upland and riparian forests encompass 815,000 acres, or 1.8% of North Dakota's total land area. Eastern deciduous forest types and western coniferous forest types are found in the state. Deciduous forest types comprise approximately 72% of the state's forestland (Paulson, 2018).

The majority of the forestland in North Dakota is owned by families and individuals or other private groups (for example, corporations, tribes); collectively, private owners possess 70% of the state's forestland (Haugen et al., 2009).

The scarcity and limited distribution of native forests in North Dakota underscore their importance as these resources confront growing pressures. The Forest Legacy<sup>1</sup> Area Nomination process identified several distinct upland and riparian forests as being threatened by conversion to nonforest.

Figure 4. Forest Ownership in North Dakota.



<sup>1</sup>The Forest Legacy Program is a U.S. Forest Service program. States that implement this program protect environmentally sensitive forestlands through conservation easements, legally binding agreements and transferring a negotiated set of property rights from one party to another without removing the property from private ownership. On April 3, 1995, northern regional forester David Jolly issued a letter terminating the Forest Legacy process in North Dakota because of a conflict identified during the creation of the "Assessment of Needs" between state and federal law related to the program. Federal law that created the program requires that conservation easements that are obtained under the program be held in perpetuity, but North Dakota law limits any easements obtained by the state from third parties to 99 years, at which time the easement is canceled and the property is returned to the landowner with no continuing restrictions. Because this conflict in laws, at the time, could not be corrected by the North Dakota Legislature or the federal government, regional forester Jolly issued the termination letter releasing North Dakota from the program. The feasibility of the Forest Legacy Program recently was re-evaluated, but to date, no lead agency has been identified.

## Upland Forests

Despite their limited acreage, upland forests are important resources in North Dakota. These forests provide wildlife habitat and recreational opportunities, stabilize river banks, filter water runoff from adjacent agricultural lands, provide wood products, serve as seed sources for conservation tree production and increase the botanical diversity of the state. Woodlands and forests serve as important habitat for many species of animals, including birds, mammals, reptiles and amphibians (Hagen et al., 2005).

Upland forests provide numerous recreational opportunities, including hiking, camping, fishing, hunting, bird watching, cross-country skiing and snowmobiling. These are popular activities in the Turtle Mountains, Pembina Gorge, Devils Lake Hills and Sheyenne River Valley. These “outdoor laboratories” are critical for teaching future generations about nature and conservation.



Quaking aspen in the Turtle Mountain region of North Dakota.

## Aspen and Oak Forests

Nearly 27% of North Dakota’s timberland (a subset of “forestland” based on growth potential) is classified as the aspen/birch forest type (Haugen et al., 1999). The majority of this forest type is in the Turtle Mountain region and represents the state’s largest concentration of forestland.

Aspen forests also can be found in the Pembina Gorge, Mouse River sandhills, Badlands of western North Dakota, Killdeer Mountains and Sheyenne River Valley. Quaking aspen is the dominant species in these stands; however, paper birch, bur oak and green ash also are common on these sites.

A significant portion of this aspen resource can be characterized as decadent, with a high incidence of stem decay associated with stand overmaturity. In the absence of stand-replacing disturbances to encourage vigorous aspen regeneration, aspen stands age and deteriorate through time as the result of numerous inciting, predisposing and contributing factors. These may include frost injury, drought, hail damage, windstorms and several forest pests.

Defoliating insects, wood-rotting fungi and canker diseases contribute to the deterioration of these aspen stands. Aspen forests are prone to periodic defoliation episodes caused by the forest tent caterpillar (*Malacosoma disstria*) and large aspen tortrix (*Choristoneura conflictana*). Defoliation reduces growth, predisposes trees to other damaging agents and exacerbates the senescence of aging aspen stands.

Internal decay of live aspen trees is common in mature aspen stands, particularly those more than 50 years of age. Stem decay caused by the fungus *Phellinus tremulae* reduces the amount of useable wood in a stand in addition to increasing the probability of stem breakage.

The wood volume loss due to this stem decay has been increasing as the aspen resource continues to age. Similarly, mortality of large-diameter trees due to Hypoxylon canker (*Hypoxylon mammatum*) contributes to the deterioration of older stands (Kangas, 2007).

The damage caused by these pests should not be perceived as “unnatural,” but rather it reflects a shift of the disturbance regime. Without disturbance, whether by fire, harvesting or other means, to encourage vigorous aspen regeneration, pests and environmental factors deteriorate the aging aspen and give way to other species.

Throughout its western and eastern range, aspen is a pioneer species that often is succeeded (replaced) by shade-tolerant conifer species in the absence of disturbance. However, many aspen forests of the northern prairie regions of North America convert to shrubland where shade-tolerant conifers do not occur naturally (Perala, 1990; Harniss, 1981).

This successional scenario is apparent in some areas of the Turtle Mountains, where hazel (*Corylus* spp.) dominates the understory of deteriorating aspen stands and prevents the establishment of other tree species. During a 25-year period, the aspen forest type in the stand age category of zero to 20 years has decreased by more than 35,000 acres, while 60% of aspen stands in the state in 2005 were 40 years of age or older (Haugen et al., 2009).

## Pine Forests

Pine forests occupy 6,000 acres in the southwestern region of North Dakota. Ponderosa pine is the most common species; however, a small stand of limber pine is in Slope County. Rocky Mountain juniper, a small tree, dominates much of the Badlands, occupying about 600,000 acres. The preponderance of Rocky Mountain juniper is largely the result of decades of fire suppression and is considered undesirable by many resource managers.

Many stands of the state's ponderosa pine are very dense and prone to pest damage. Damage caused by herbivory, pests and pathogens has been documented in the native ponderosa pine stands of southwestern North Dakota. Animal damage caused by deer and porcupines is very common.

Shoot death and branch dieback caused by Western gall rust (*Endocronartium harknessii*), diplodia shoot blight and canker (*Diplodia pinea*), and pine pitch nodule maker (*Retinia metallica*) are encountered commonly. Such damage may incite tree mortality if conditions favor repeated infections/infestations for several years.

Pine weakened by these pests and other factors are more prone to colonization by pine engraver beetles (*Ips pini*) or turpentine beetles (*Dendroctonus valens*). Despite the presence of pests, these isolated pine stands are quite resilient and the level of tree mortality has remained low.

Perhaps the greatest concern in these areas has been wildfire. Such concerns were realized as a prairie fire (designated as the Deep Creek Fire) spread into portions of the native ponderosa pine stands of Slope County in September 2004. The fire occurred in an area of heavily overstocked ponderosa pine with heavy fine fuels and excessive ladder fuels.

These factors, coupled with unfavorable weather conditions, led to extreme fire behavior. A sustained crown fire threatened property and lives.

High stand densities persist in other pine stands in southwestern North Dakota due to years of fire suppression. Thinning, coupled with prescribed fire, would benefit this resource and create a healthier, fire-resistant, natural stand condition.

## Riparian Forests

Riparian forests provide many environmental and social benefits. Trees and woody plants along watercourses help control soil erosion and filter agricultural chemicals from reaching rivers. In addition, riparian forests provide recreational opportunities and provide habitat for numerous wildlife species. The two most prominent riparian forest types found in North Dakota are elm/ash forests and cottonwood forests.



**Riparian forests along the Red River of the North in eastern North Dakota.**

## Elm/Ash Riparian Forests

The elm/ash forest type is the most abundant of all native forestland and is common along rivers throughout the state. These forests have experienced significant alterations in the past decades due to Dutch elm disease (*Ophiostoma ulmi* and *O. novo-ulmi*), overgrazing, altered water flows and conversion to nonforest.

Since the first detection of Dutch elm disease in 1969, the disease has spread throughout North Dakota. The American elm was a major component of the state's riparian forests and occupied a wide range of sites. Dutch elm disease spread aggressively and decimated the elm population that once comprised a large portion of the riparian forests along the Red, James, Sheyenne and Pembina rivers. In addition, the disease continues to kill elms that occur in the wooded draws of western North Dakota.

Although the American elm has not been eliminated entirely from these forests, the species primarily persists as a small understory tree, occupies a small proportion of the total stand basal area and often succumbs to mortality prior to reaching maturity. The loss of American elm dominance in these systems has shifted the species composition toward green ash, boxelder and other species. The dominance of ash in riparian forests is a major concern to resource managers because the emerald ash borer (*Agrilus planipennis*) continues to spread throughout the Midwest.

In addition to the impacts of invasive tree pests, many riparian forests have been converted to nonforest through agricultural and residential development, particularly along the rivers of eastern North Dakota. The Forest Legacy Area Nomination process identified the lower Sheyenne River from Highway 46 to the confluence of the Red River as one of the riparian forest areas most threatened by conversion to nonforest.

Riparian forests are impaired further by damaging factors such as overgrazing and water flow alterations that gradually have reduced the vigor of existing trees and destroyed understory woody vegetation. Such forest changes and conversions adjacent to watercourses have important implications for water quality, flood control, wildlife habitat and recreation opportunities.

## Cottonwood Riparian Forests

The cottonwood forests that occur in the Missouri River flood plain are in poor condition that has resulted from progressive mortality of mature trees and the absence of natural regeneration to replace those that have died. Prior to flood mitigation, the Missouri flood plain experienced periodic inundation as high spring water flows deposited sand in low-lying areas.

These moist sandbars serve as seedbeds for cottonwood and are critical for natural regeneration of the species (Burns et al., 1990). This historical disturbance regime of periodic flooding drove the succession, distribution and age class structure of cottonwood forests along the flood plain (Ball, 1997).

In the absence of flooding and subsequent sandbar formation, the sustainability of cottonwood forests is questionable because recruitment of cottonwood seedlings is limited to replace the overmature trees that are in a state of senescence. Consequently, the flood plain that once persisted as a fluctuating mosaic of backwater wetlands, sandbars and cottonwood forests now exists as a xeric, fire-prone flood plain bisected by a channelized river. The cottonwood component of the Missouri flood plain eventually may die out and give way to other tree species (native and non-native) with the exception of a few isolated sites adjacent to the ever-deepening river channel.



Fall colors being displayed by a Missouri River cottonwood.



In 1980, an estimated 66,000 acres were in the cottonwood forest type; by 2005, that had dropped to 55,000 acres, a decrease of approximately 20% (Haugen et al., 2009). During a 25-year period, the cottonwood forest type in the stand age category of zero to 20 years dropped to zero acres.

Across all forest types in the state, the number of cottonwood saplings in the 1- to 2.9-inch-diameter range is zero and only 445,000 saplings were in the 3- to 4.9-inch-diameter range from 1994 to 2005 (Haugen et al., 2009). These estimates illustrate the lack of cottonwood regeneration in the state. If these trends persist across the state, the area and the number of cottonwood trees growing in the state will continue to decrease.

### **Conservation Tree Plantings**

Conservation tree plantings generally refer to farmstead plantings, shelterbelts, living snow fences, wildlife plantings and others that are designed to achieve conservation, economic and societal goals. These resources are an important component of many agricultural systems and can improve rural life in the northern Plains.

For example, field windbreaks reduce soil erosion during years of drought, reduce water evaporation from adjacent cropland and increase crop yields. Similarly, some plantings are designed to stabilize streambanks, filter water runoff from adjacent agricultural lands, provide wildlife habitat, protect stretches of highway prone to severe snow accumulation, provide wind protection for livestock or protect farmsteads and rural homes from snow and wind.

Although many rural tree plantings occur in areas where the historical vegetation type was prairie, these resources are critical for the present needs of rural residents who live in the current agricultural landscape. According to a geospatial evaluation, North Dakota has an estimated 29,784 linear miles of field windbreaks alone (Kangas, 2016). Countless additional acres/miles of trees have been established across the landscape in the form of farmstead plantings, living snow fences, livestock protection plantings, wildlife plantings and riparian buffer strips.



**Living snow fences protect rural homes and stretches of highway from blizzards.**

Tree plantings of the northern Plains are exposed to numerous pests and environmental conditions that hinder planting success, reduce their effectiveness and limit long-term survival. Deterioration of tree plantings often is incited by drought, flooding, frosts, inadequate spacing, weed competition, herbicide exposure, defoliating insects and foliar diseases. As trees become weakened, canker diseases and wood-boring insects may cause further damage to these plantings.

Lack of species diversity is an underlying factor in the decline of many rural plantings. Plantings composed of one or few species often experience episodes of abrupt decline simply because all trees are vulnerable to the same damaging factors. Similarly, these plantings are more susceptible to pest outbreaks in comparison with those that consist of several different (or nonhost) species.

Some examples include the decline of single-row Siberian elm (*Ulmus pumila*) field windbreaks due to herbicide exposure, marginal cold hardiness and canker diseases; the decline of Colorado blue spruce (*Picea pungens*) plantings due to yellowheaded spruce sawfly (*Pikonema alaskensis*), needlecasts (*Rhizosphaera spp.* and *Stigmina spp.*) and valsa (formerly cytospora) canker (*Leucostoma kunzei*). The impacts of these damaging factors could have been greatly reduced had additional species been incorporated into these plantings.

The damage to rural plantings caused by these cumulative factors are prevented more effectively than treated. Incorporating various weed control techniques, manipulating planting density and arrangement, and selecting species most suitable for the site have been effective to achieve greater longevity and utility of rural tree plantings.

In recent years, state, federal and university forestry/tree care professionals have promoted species diversification in an attempt to avoid past experiences in tree planting decline. In practice, these techniques greatly enhanced the effectiveness of rural plantings.

Research focusing on the identification of species and seed sources that perform well in the northern Plains is still a critical need for conservation tree planting efforts. The number of suitable native species for the northern Plains is relatively limited in comparison with more forested regions of the country. Therefore, the loss of a single species due

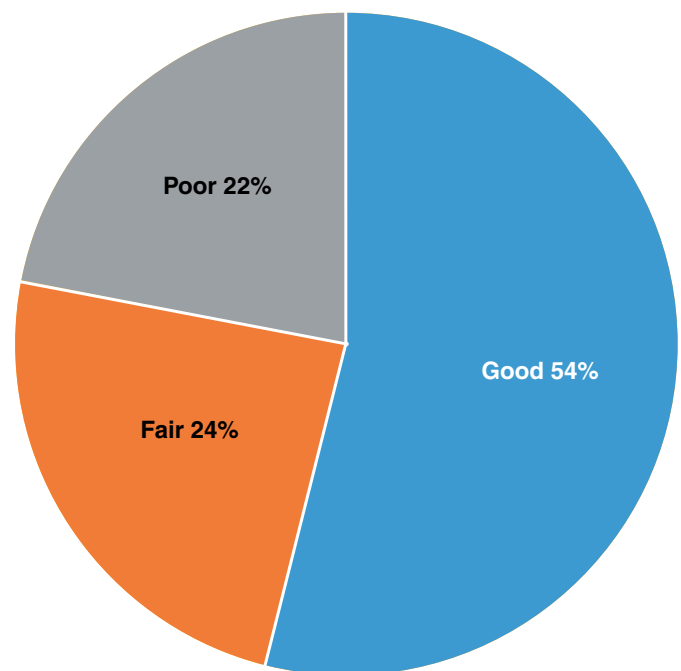
to the introduction of invasive pests or other factors is magnified and further limits tree planting options and diversification efforts.

The removal of windbreaks has been a growing concern during the past decade. Following the dust bowl of the 1930s, field windbreaks were planted extensively throughout the Great Plains to reduce soil erosion on adjacent agricultural lands. The trend continued into the 1970s.

Many of these resources have begun to deteriorate due to lack of maintenance and old age (Figure 5). In recent decades, farming practices and the equipment used has changed dramatically. The cumulative effect of larger equipment, windbreak deterioration, fluctuating commodity prices and changing perspectives of windbreaks' value has directed the removal of many conservation tree plantings.

An estimated 1,128 linear miles of field windbreaks were removed between 2010 and 2015 (Kangas, 2016). The continued loss of windbreaks has negative implications for soil erosion control and winter wildlife habitat. Dust storm events associated with recent open winters have drawn renewed awareness of this issue.

**Figure 5. Only 54% of windbreaks surveyed were classified as in “good” condition.** (Johnson 2020)



## Community Forests

Community forests provides many benefits. Green infrastructure can reduce energy expenses by reducing summer cooling costs and winter heating costs. Trees increase the aesthetic appeal of residential environments. Trees also can improve air quality, reduce storm water runoff and add to property values of homes. Vibrant, diverse community forests have been associated with enhanced human health and overall well-being.

The green infrastructure also is a source of employment as arborists and foresters are employed to maintain this resource. A survey of 108 North Dakota community forests revealed an estimated annual economic benefit of \$31,292 per community (North Dakota Forest Service 2020).

Trees that are planted in residential areas are exposed to insects, diseases and environmental stresses. Commonly observed forest pests in residential areas include various defoliating insects, piercing insects, wood-boring insects, foliar diseases and canker diseases. In addition, abiotic stressors such as compacted soils, turf herbicides, lack of (or too much) watering, nutrient deficiency and mechanical injuries often exacerbate the damage caused by insects and disease.

Despite the copious environmental stresses and pests, Dutch elm disease continues to be one of the most prominent damaging factors of community tree resources. This disease has eliminated many of the stately elms that once graced North Dakota communities.

Several of the larger cities have developed management programs to combat Dutch elm disease with notable success. However, smaller communities that lack the resources to support a forestry program have been and continue to be severely impacted by this disease.

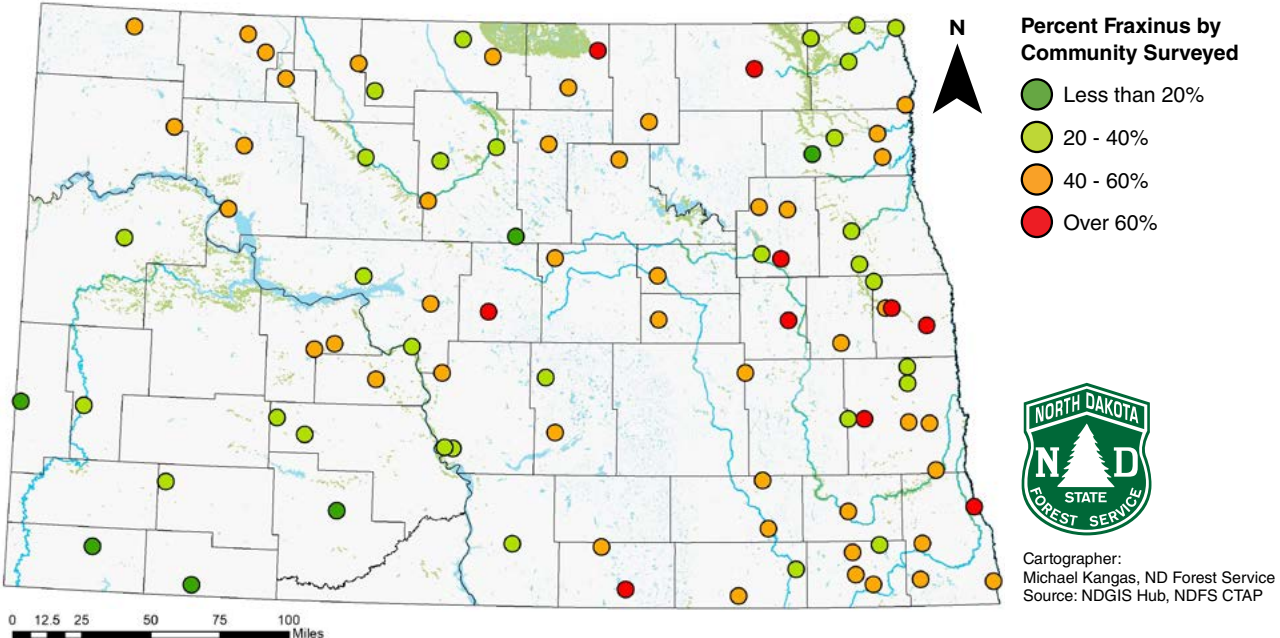
Ash and cultivated varieties of the species were the most common replacements for dying elm trees following Dutch elm disease. As a result, many community forests that once were dominated by elm now are dominated by ash. Although ash performs well on a variety of sites and conditions, the overabundance of this species has raised concerns since the discovery and spread of the emerald ash borer in adjacent states and provinces.

Many North Dakota communities have realized that their community tree resources are susceptible to another episode of tree mortality once emerald ash borer spreads into North Dakota (Figure 6). As a result, many communities are beginning to embrace the concept of species diversification in their respective community forests. This awareness has driven many communities to conduct inventories, prioritize removals and identify alternative species to plant.



Rural communities such as Stanton, N.D., receive numerous benefits from community tree resources.

Figure 6. Vulnerability of surveyed North Dakota communities to emerald ash borer.



## Section 3. Challenges and Threats to Forest Resources

The following narratives describe challenges and threats to resources identified by North Dakota Forest Service (NDFS) forestry personnel, natural resource professionals and stakeholders. These threats are intended to align the state and private forestry national objectives of conserving working forestlands, protecting forests from harm, and enhancing public benefits from trees and forests.

### Invasive Tree Pests

Invasive tree pests (exotic or non-native tree insects and pathogens) are perhaps the greatest threat to forests, shade trees and woody ornamentals in the U.S. Non-native insects and pathogens such as the Gypsy moth (*Lymantria dispar*), Dutch elm disease fungus and chestnut blight (*Cryphonectria parasitica*) have impacted ecological, cultural and economic resources throughout the U.S. More recently, invasive pest detections such as the emerald ash borer, Japanese beetle (*Popillia japonica*) and Ramorum blight (*Phytophthora ramorum*) pathogen in the U.S. have raised great concerns among foresters, scientists, arborists and nursery personnel.

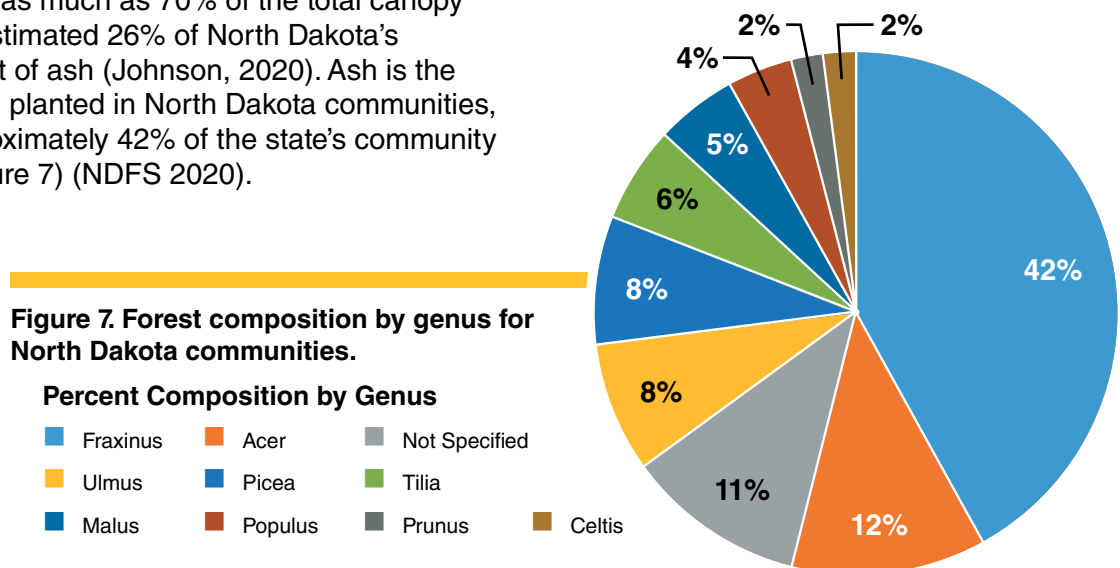
North Dakota, too, has felt the impact of invasive tree pests. Since 1969, Dutch elm disease has spread throughout the native forests, rural plantings and community tree resources of the state. This invasive pathogen has altered riparian forests, decimated field windbreaks and eliminated many boulevard trees in communities.

The **emerald ash borer** a prominent threat to North Dakota’s tree and forest resources. According to U.S. Forest Service Forest Inventory and Analysis data, North Dakota has an estimated 90 million ash trees in its woodlands, upland forests and riparian forests (Paulson, 2018).

Green ash is a dominant species in the state’s riparian forests, occupying as much as 70% of the total canopy composition. An estimated 26% of North Dakota’s windbreaks consist of ash (Johnson, 2020). Ash is the most common tree planted in North Dakota communities, representing approximately 42% of the state’s community tree resource (Figure 7) (NDFS 2020).



**Ash-lined street in Michigan before (top) and after (bottom) the arrival of emerald ash borer.** (photo courtesy of Bioforest Technologies Inc.)



## Forest Decline Associated With Natural Disturbance Alterations

Native forests in North Dakota are limited in overall acreage but provide numerous environmental services. The species composition and distribution of these forests are largely a reflection of natural disturbances, notably fire and flooding. Alterations to natural disturbance cycles have a corresponding impact on these forest resources.

Fire suppression impacts have been most apparent in the aging aspen forests of the Turtle Mountain region. In the absence of disturbance to regenerate declining aspen stands, many stands eventually will succeed to hazel scrubland.

Fire exclusion has impacted the ponderosa pine stands of southwestern North Dakota. Years of fire

suppression have resulted in overly dense pine thickets that will experience stand replacement fires when fire is reintroduced.

Similarly, disruption of flooding regimes has impacted the cottonwood forests of several of the state's river systems. Prior to flood control infrastructure, spring-time flooding was critical to sandbar formation necessary for cottonwood regeneration. The lack of recruitment of cottonwood saplings to replace the aging declining overstory has resulted in undesirable changes to these forests, notably the predominance of non-native shrubs and forbs.



**Brome grass encroachment in a declining cottonwood stand.**

## Vulnerability to Damaging Agents Due to Limited Species Diversity

Limited species diversity limits the success and sustainability of the state’s rural tree plantings and community forests. The climate and soils of the northern Plains restricts the number of tree species that can be utilized.

Tree plantings composed of one or few species are more likely to experience episodes of abrupt decline as a result of vulnerability to the abiotic factors. Similarly, monocultures are more susceptible to pest outbreaks in comparison with plantings that consist of several different (or nonhost) species.

In the state’s conservation tree plantings, four species constitute 63% of all plantings (Figure 8) (Johnson, 2020). Additionally, two genera make up more than 50% of the state’s community forests (NDFS, 2020). Such limited species diversity highlights the susceptibility to damaging agents and stresses the need for continued tree research focusing on hardy adaptable plant material for the northern Plains.

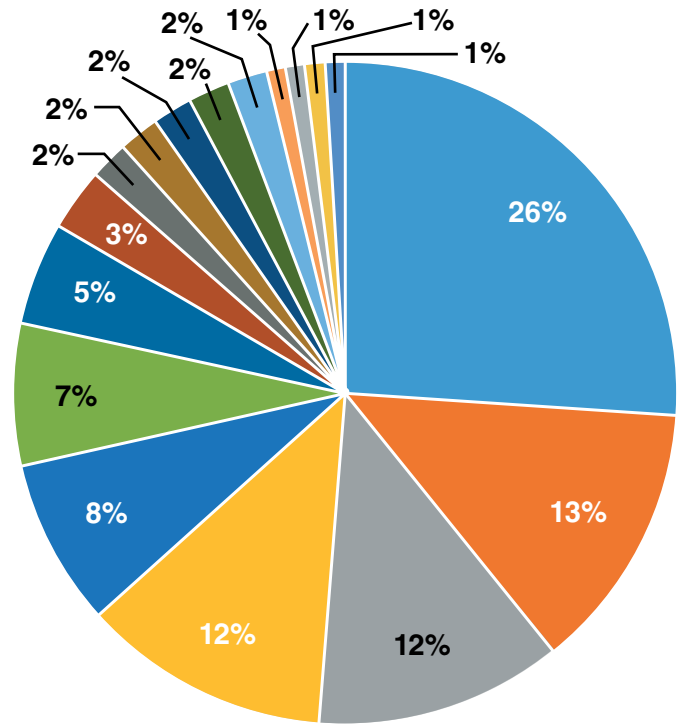
Limited species diversity is most notable in western North Dakota, where average annual rainfall is less than 15 inches per year. This, coupled with pests and abiotic pressures, limits the number of species suitable for conservation and community tree plantings. Additional investments in woody plant improvement research remains an important need for the region.

## Societal Disconnect From Forests and Natural Resources

The public’s perception of the role trees and forests play in society is changing constantly. An understanding of people’s dependence on the land and its natural resources for survival is no longer inherent. A disconnect from nature is developing in children as they spend more time indoors engaging in technology.

In the coming decades, the public will be called upon more frequently to understand complex forestry issues, assess risk, evaluate proposed environmental plans, and understand the local and global impacts individual decisions affect. Creating a scientifically informed citizenry is

Figure 8. Species composition of surveyed North Dakota windbreaks.



### Dominant Species in Windbreaks Surveyed

- Green ash
- Blue spruce
- Siberian peashrub
- Lilac
- White spruce
- Other
- Willow
- Broadleaf deciduous small
- Dogwood
- Cottonwood
- Siberian elm
- Ponderosa pine
- Juniper
- Boxelder
- Broadleaf deciduous medium
- Scotch pine
- Chokecherry

critical to the long-term sustainability of forest resources.

Utilizing new technologies, social networks and distance learning opportunities will be key in the future to providing access to lifelong learning opportunities for younger, more technology oriented generations. Utilizing electronic opportunities must be accompanied by opportunities to connect youth to nature.

Research shows that people who grow up to care about the environment enjoyed meaningful experiences in the outdoors as a child. The North

Dakota Forest Service's *Project Learning Tree* program is committed to creating those meaningful experiences for today's K-12 youth.

Educating decision makers about the importance of trees, the ecological and social services they provide, and the benefits to communities remains an important issue to ensure policies incorporate the best available science.

## Conversion to Nonforest

Conversion to nonforest is a pressure to upland forests, riparian forests and rural tree plantings. Conversion takes on many forms, including residential development, clearing for agricultural uses, removal of windbreaks and fragmentation of land ownership in smaller, less manageable parcels.

Although North Dakota generally is regarded as a rural state, urbanized areas do exist. Recently, residential development has encroached into historically wooded riparian areas as communities such as Fargo, Bismarck, Grand Fork, West Fargo and Minot have expanded. This trend may continue because larger communities have shown the greatest population growth in North Dakota.

Economic pressures may result in the conversion of nonproductive forestland to agricultural uses. This conversion may be driven in part by reduced productivity and vigor of the stands, coupled with a lack of harvesting opportunities for private landowners. Private landowners are inclined to clear low-production forests and use the land for agricultural purposes.

Conversion of aspen to nonforest has been prominent in the Turtle Mountains. This conversion may be driven in part by reduced productivity and vigor of the stands, coupled with a lack of harvesting opportunities for private landowners. As a result, some private landowners are inclined to clear low-production forests and use the land for agricultural purposes that generate marginal economic benefits.

In 1980, an estimated 154,000 acres were in the aspen/birch forest type; by 2005, the area of aspen/birch had dropped to 116,000 acres, a decrease of approximately 25% (Haugen et al., 2009). The aspen/birch forest type accounted for 88,200 acres in the Turtle Mountains in 2017 (Paulson, 2018).

During the past 50 years, a majority of the riparian areas in eastern North Dakota watersheds have

been degraded by activities such as overgrazing, intensive agriculture and indiscriminate logging (Rush, 2005). According to estimates, more than 50% of the original forest cover in many watersheds in eastern North Dakota has been cleared for agricultural use.

In addition, unmanaged grazing has damaged a significant portion of the remaining riparian forests. Overgrazing, in combination with periodic drought, has left many riparian areas in a weakened condition and susceptible to insects and diseases.

Many rural tree plantings were established following the Dust Bowl of the 1930s to help curb soil erosion. Farming practices have changed substantially since that time and many producers opt for no-till farming instead of establishing windbreaks.

In addition, many windbreaks have been removed because they limit the use of larger farm machinery. The role of windbreaks needs to be considered in future farm systems.

Potential land transfer may increase fragmentation and further limit management opportunities. Private individuals own 58% of North Dakota's forestland. Among these forest owners, 59% are 65 years of age or older; suggesting the potential for a larger intergenerational shift in ownership by sale or transfer to an heir (Haugen et al., 2005).

## Wildland Fire

Wildfire always has been common and widespread in North Dakota. Travelers, settlers and explorers, including Lewis and Clark, documented huge fires on the horizon, with the constant smell of smoke and miles of blackened prairie.

The fire regime on the northern Plains has been disrupted severely since Euro-American settlement. Due to the intermingled land ownership pattern and land use, naturally occurring fires across the landscape are less frequent than the historical fire return interval of every three to four years. This disruption of the natural fire has influenced North Dakota's fire regimes in a multitude of ways, including changing fuel types, modifying fuel structure and fuel continuity, and the introduction of human-caused ignitions in different seasons under various weather conditions (Bowman et al., 2011).

Despite the conversion of much of the indigenous prairie to non-native grasses and crops, the majority of the state's fuels are still highly combustible. These light fuels can burn readily and rapidly,



given the right environmental conditions. Large unbroken acreages of native mixed grasses persist in the central and western portions of the state and uncontrolled wildfire still remains a threat to North Dakota's people, property and natural resources.

Wildland fire can be destructive, causing economic disruption, loss of life, damage to physical and mental health, and degradation of natural resources (Bowman et al., 2011). Despite the undesired social and economic impacts of wildland fire, it is crucial for the functioning of many ecosystems, augmenting ecological services and maintaining biological diversity. The introduction of prescribed fire in these fuels is imperative for maintaining and restoring prairie ecosystems and for limiting the buildup of hazardous fuels (Figure 9).

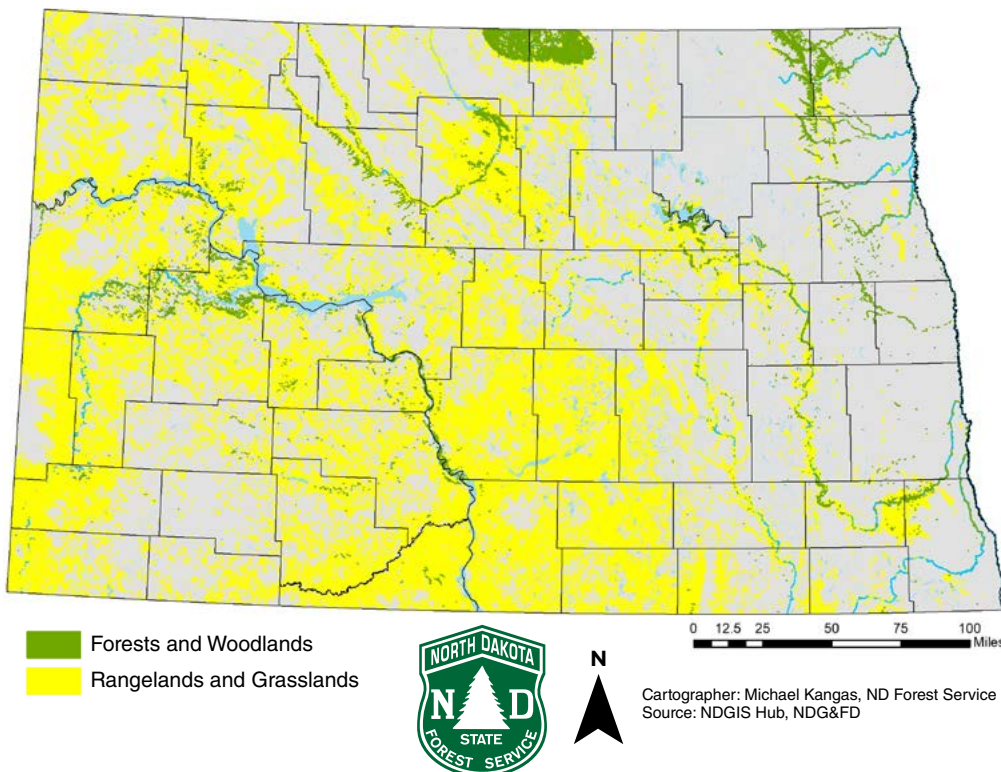
The occurrence of catastrophic wildfire in forests is rare in North Dakota due to the limited acreage and location of the forestland. Wildfire can be beneficial and detrimental to forested upland, depending upon management objectives and stand conditions.

Overmature aspen forests, as seen in many areas of the Turtle Mountains, may benefit from the introduction of fire because disturbance facilitates vigorous regeneration. Opportunities to implement such treatments are limited because homes and other properties are in these areas.

The population across much of North Dakota has increased with the oil and gas development in the western portion of the state. The development of oil and gas in rural North Dakota has led to an increased wildland urban interface and oil and gas interface that fire departments will face, with some areas of multi-resident facilities with limited infrastructure and a high population density of a transient workforce. Additionally, the oil and gas interface has created complex fire hazards in the wildland setting by introducing hazardous material sites with large amounts of extremely volatile fuels.

This additional complexity, coupled with infrastructure development associated with oil and gas extraction, increases wildland fire risks. The construction, maintenance and operation of well pads, pipelines and other infrastructure adjacent to fuels exerts additional pressures on fire departments (Figure 10).

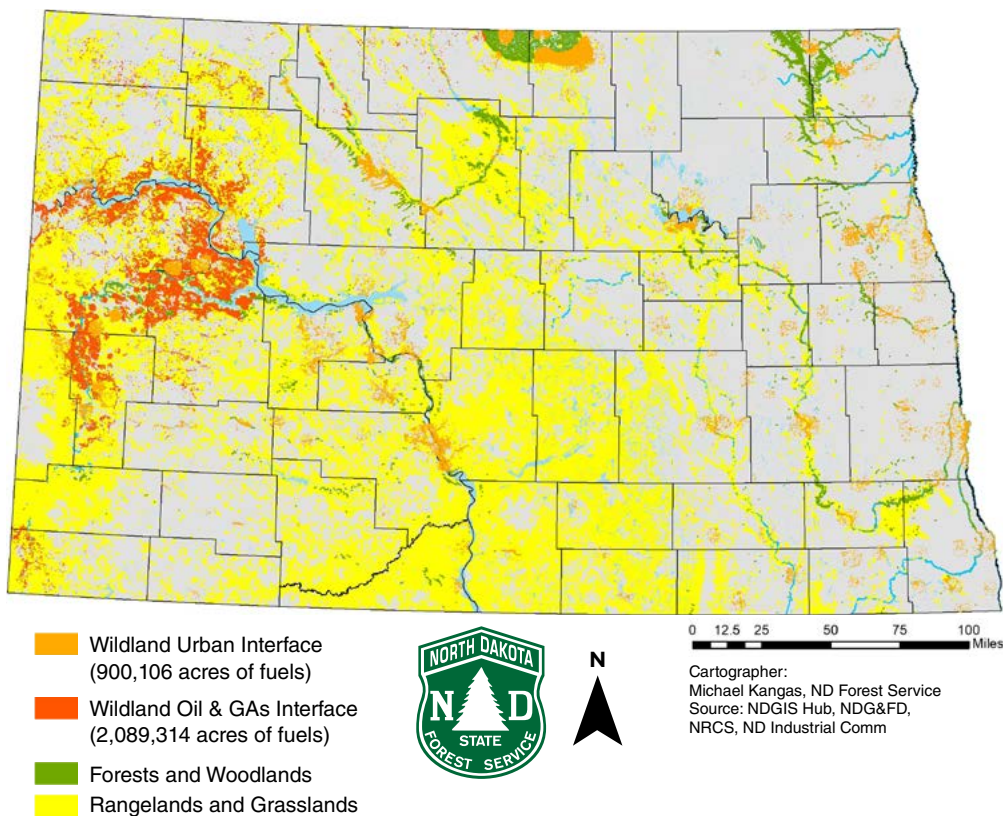
**Figure 9. Distribution of wildland fuels in North Dakota.**





Oil and gas exploration has added additional complexity to wildland fire.

Figure 10. Distribution of WUI and WOGI in North Dakota.



## Limited Wood Utilization Incentives

North Dakota's wood products manufacturing industries employ more than 2,000 workers and have an output of approximately \$355 million (U.S. Commerce, 2005). Most of the wood product manufacturers in the state are secondary manufacturers, such as cabinet and mill works.

Sawmills are the primary wood-using industry in the state (Haugen et al., 2009). North Dakota's primary wood-using industry consists mainly of small sawmills operating on a part-time basis. Products include rough lumber, pallet cants, chips, planking and other unfinished products of cottonwood, green ash, American elm, basswood, bur oak and ponderosa pine (Harsel, 2014).

A mill survey was conducted of all known primary wood-using mills in North Dakota between 2010 and 2015 (Meneguzzo et al., 2018). The study included the size of the industry, the amount of roundwood harvested and its uses. Information on the generation and distribution of wood residues also was included.

The top three hardwood species harvested in the state were cottonwood, aspen and bur oak, while spruce was the top softwood species harvested. A total of 609,000 board feet of saw logs was processed and 120,000 cubic feet of roundwood was harvested.

Cottonwood remains the most commonly harvested species in the state. This is partly due to the fact that the elm/ash/cottonwood forest type covers an estimated 165,000 acres of forestland, and cottonwoods are some of the state's largest trees. Interest from Minnesota's timber industry in this resource is periodic (Haugen et al., 2009).

As previously illustrated, North Dakota's wood product manufacturing industry is very small. The absence of viable forest product markets limits the economic incentive of landowners to manage forest resources sustainably.

## Climate Change

North Dakota has experienced temperature increases, with annual average temperatures increasing at a rate of 0.26 degree per decade since 1990. This increase is most evident in winter warming, which has been characterized by the much below-average occurrence of extremely cold days since 1980 (Frankson, 2016).

Climate changes will affect disturbance regimes, insect and disease outbreaks, fire season length, recreational values and productivity. Forests should be managed sustainably to help them adapt to anticipated changes. Practices such as afforestation and agroforestry, reforestation, lengthening of forest rotation, protection of forestland from conversion, and community and urban forestry offer opportunities for carbon offsets.

Forests, woodlands and grasslands have an important role in mitigating climate change. Mitigation addresses the mechanisms by which ecosystems can sequester carbon, mechanisms to increase carbon stored in wood products, and the ways that forests and woodlands can provide renewable energy from woody biomass to offset fossil fuel consumption. Mitigation also includes ways state and federal agencies can reduce their environmental footprint and lead by example in greening our practices.

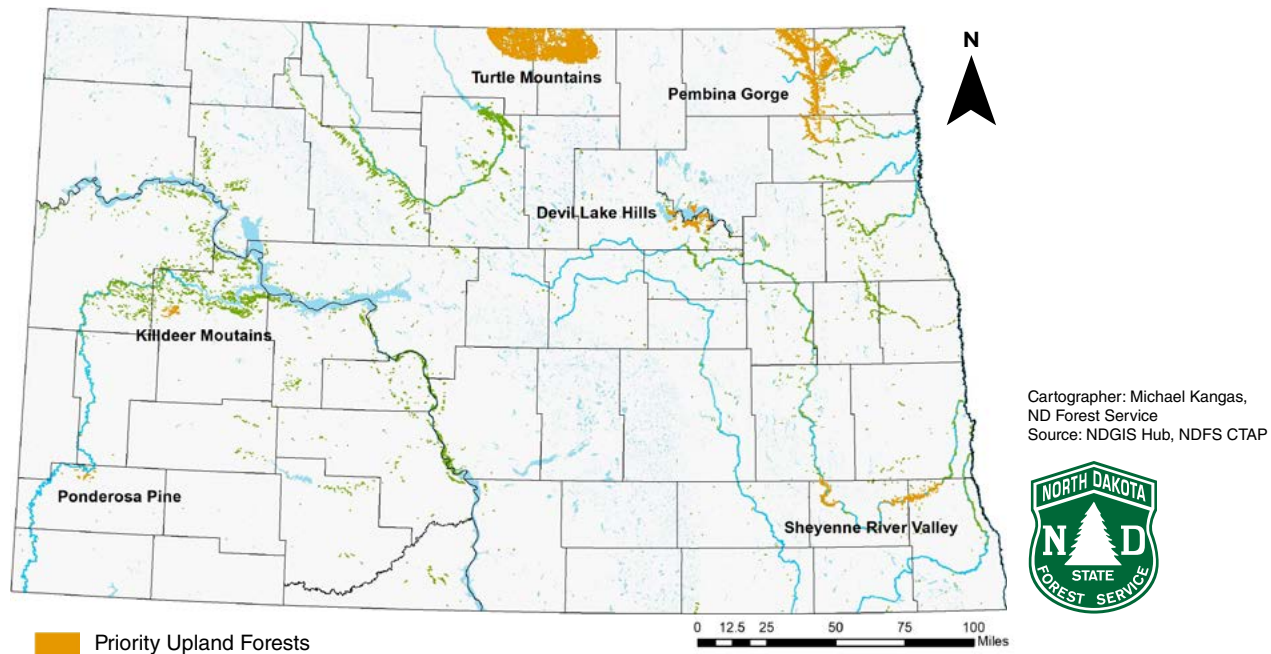
## Section 4. Priority Forest Resources

This section provides a brief description of priority forest resources identified by stakeholders. These forested resources are categorized as upland forests, riparian forests, rural tree plantings, community forests and multistate resources.

### Upland Forests

Priority areas of upland forests are delineated primarily on the basis of the concentration of forested lands in the state. Priority areas may include the Turtle Mountains, Devils Lake Hills, Pembina Gorge, Sheyenne River Valley, Killdeer Mountains and the pine forests of southwestern North Dakota (Figure 11). The following provides a brief description of priority areas.

**Figure 11. Upland forest priority areas.**



#### Pembina Gorge

**Area:** 68,000 acres

**Description and condition:** Nominated as a Forest Legacy Area, the Pembina Gorge is a steep, dissected escarpment on the edge of the drift prairie and bordering the Red River Valley and Canada. The steep slopes maintain the natural woodland community, consisting of bur oak, quaking aspen, green ash, cottonwood and American elm. Other areas have been cleared for cropland of small grains, sunflowers and flax. A few areas are used for cattle grazing. Primary ownership groups include non-industrial private forest owners, the North Dakota Forest Service, North Dakota Game and Fish and North Dakota Parks and Recreation.

#### Turtle Mountain region

**Area:** 90,000 acres

**Description and condition:** Nominated as a Forest Legacy Area, the Turtle Mountain plateau rises 800 feet above the surrounding northern drift prairie. The elevational change results in an extra 10 inches of precipitation per year that support a deciduous forest cover of bur oak, aspen, green ash, paper birch, boxelder, Juneberry and snowberry. Hundreds of large, deep wetlands and lakes are present throughout this geologic feature. Many areas have been cleared for crops and pastureland despite the soil being rather erodible and poorly suited for farming.

### Sheyenne River Valley

**Area:** 12,000 acres

**Description and condition:** The valley slopes maintain a natural woodland community consisting of bur oak, basswood, ironwood, quaking aspen, green ash, cottonwood and American elm.

### Devils Lake Hills

**Area:** 10,500 acres

**Description and condition:** The deciduous forest surrounding Devils Lake bears many similarities to the Pembina Gorge. Fluctuating water levels have inundated many of the forests along the lake.

### Killdeer Mountains

**Area:** 3,000 acres

**Description and condition:** Nominated as a Forest Legacy Area, the Killdeer Mountains rise 700 to 1,000 feet above the surrounding prairie/badlands landscape. These forests consist of bur oak, quaking aspen, green ash, paper birch, black birch (*Betula fontinalis*) and American elm. Grazing is common on private land.

### Pine Forests

**Area:** 6,000 acres

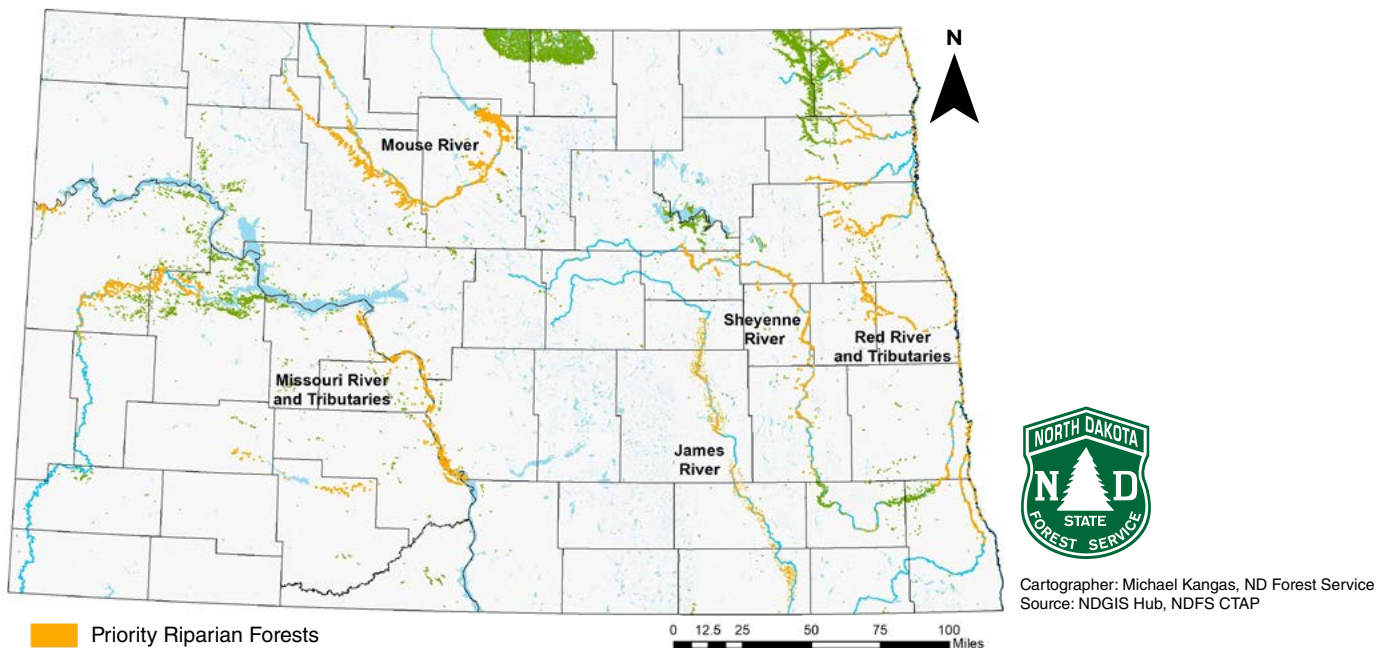
**Description and condition:** Native stands of ponderosa pine and limber pine can be found in the southwestern counties of North Dakota. These stands encompass approximately 6,000 acres. In addition, Rocky Mountain juniper covers vast areas of the North Dakota Badlands. These woodlands are not considered “forests,” and their widespread occurrence is largely a reflection of fire suppression throughout the region. The encroachment of Rocky Mountain juniper into draws and the adjacent prairie landscape has emerged as a significant management issue because the species is prone to stand-replacing crown fires that threaten property, infrastructure and wildlife habitat.

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## Riparian Forests

Nearly one-fifth of North Dakota’s forests occur within 200 feet of water. Major rivers in North Dakota include the Red River (and tributaries), Sheyenne River, Mouse River, James River and Missouri River (and tributaries) (Figure 12). Each of these major river systems is composed of numerous tributaries and subwatersheds.

**Figure 12. Priority riparian forests.**

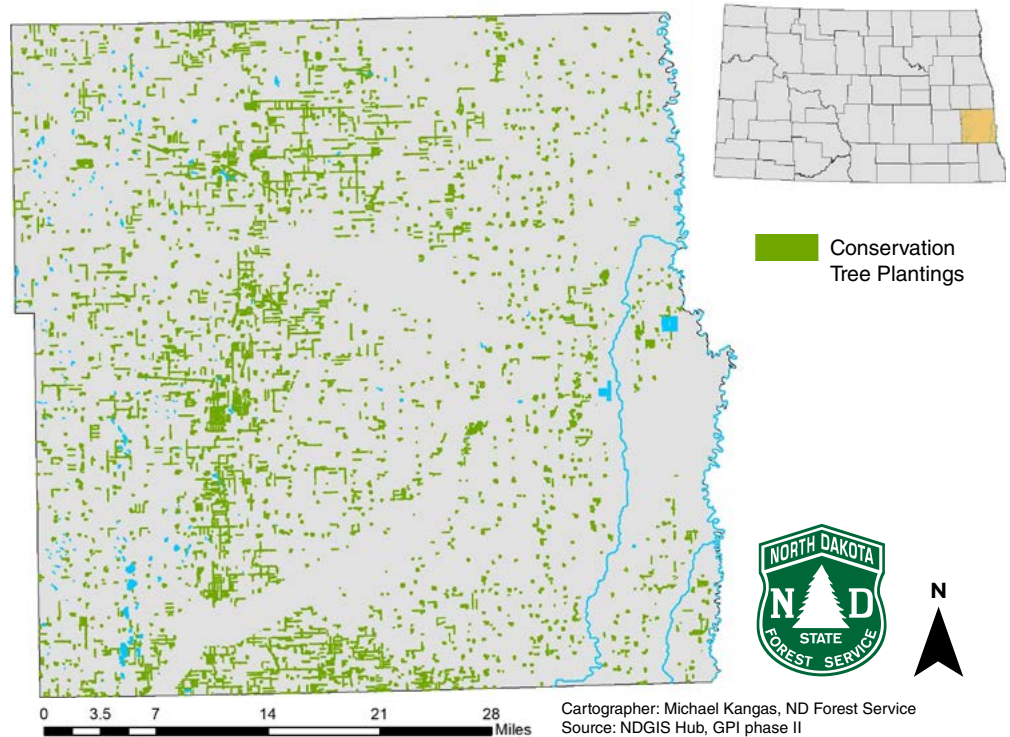


## Conservation Tree Plantings

Conservation tree plantings are an important component of many agricultural systems and improve the quality of rural living in the northern Plains. Rural tree plantings generally refer to field windbreaks, farmstead shelterbelts, living snow fences, wildlife plantings, riparian buffer strips, livestock protection plantings and others that are designed to achieve conservation, economic and societal goals.

For example, field windbreaks reduce soil erosion during years of drought, reduce water evaporation from adjacent cropland and increase crop yields. Similarly, some plantings are designed to stabilize riverbanks, filter water runoff from adjacent agricultural lands, provide wildlife habitat, protect stretches of highways prone to severe snow accumulation, provide wind protection for livestock, or protect farmsteads and rural homes from snow and wind. Collectively, conservation tree plantings form an extensive green infrastructure system across the northern Plains landscape (Figure 13).

**Figure 13. Conservation tree plantings in Cass County, N.D., alone encompass more than 19,000 acres.**



**Conservation tree plantings such as living snow fences, field windbreaks, farmstead protection plantings and riparian buffer strips form an extensive green infrastructure that provides many environmental, social and economic benefits.**

## Community Forests

Community forests include boulevard trees, trees planted in city parks and trees that naturally occur in city limits or public rights of way. The management of such tree resources may fall under the responsibility of city foresters, public works departments and/or community tree boards.

The level of forest management in communities can be categorized as managing, developing and underserved. “Managing” refers to a program with all four community forestry program elements (performance indicators) in place. They are an ordinance, an advocacy organization (tree board), a management plan and a professional staff.

A “developing” program refers to a program with one, two or three of the listed elements in place. A “potential” program refers to a community with none of the four elements (Figure 14).

## Wildland Fire Priority Areas

Wildland fire risk varies by county and the region of the state (Figure 15). By incorporating factors such as historical fire occurrences, weather data, wildland urban and wildland oil and gas interface data, preponderance of fuels and wildfire protection plans, wildland fire risk across North Dakota’s landscape can be discerned.

## Multistate Priority Areas

The states that make up the northern Plains region bear many similarities in terms of forest resource types and forest resource issues. Concerns about the deterioration of cottonwood forests extend throughout the watersheds of large rivers and beyond state borders.

Vulnerability to emerald ash borer and other invasive pests in the northern Plains will have wide-ranging implications for all states in the region. Similarly, the deterioration and removal of windbreaks has been observed throughout the region. All of the priority issues outlined in the North Dakota Forest Action Plan bear some resonance in adjacent states and the need for interstate collaboration exists to discover creative solutions to these shared issues.

Figure 14. Community forest program status, 2020.

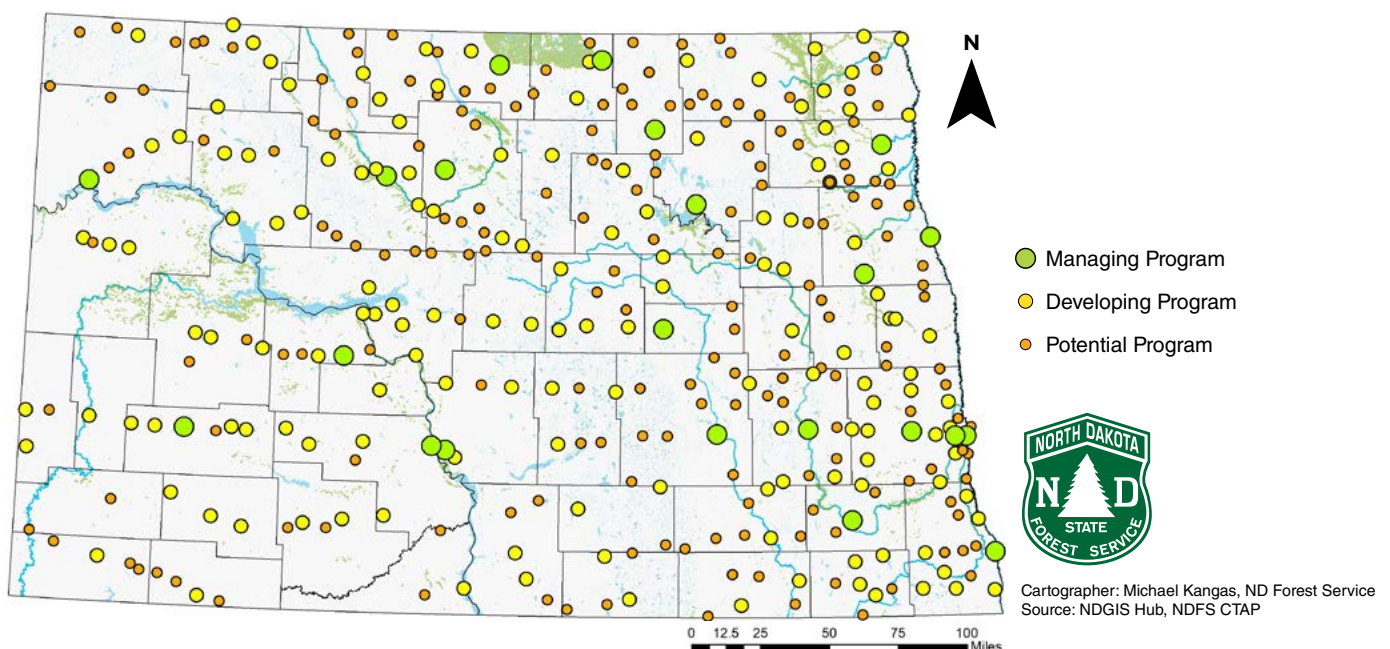
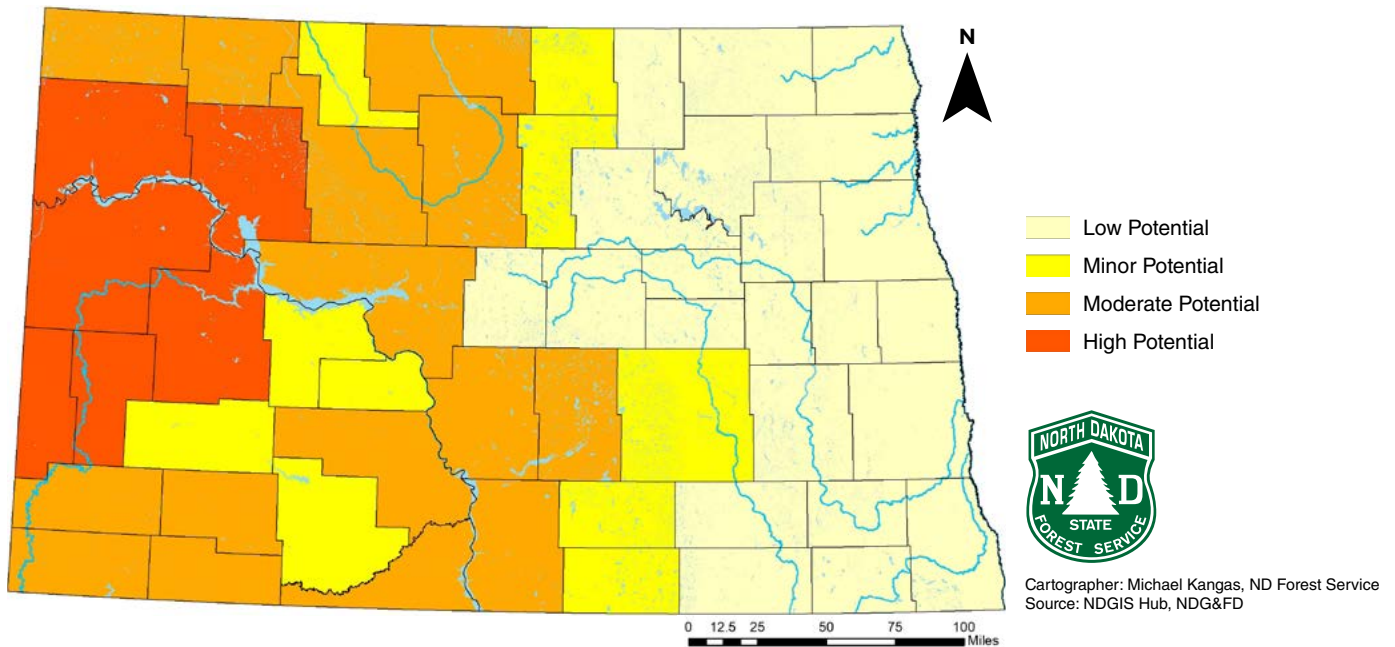


Figure 15. Wildfire risk by county.



## Section 5. Incorporation of Existing State Resource Plans

### State Wildlife Action Plan

The farm bill requires states to consider existing state wildlife action plans and community wildfire protection plans as state assessments are being developed. The intent is to build upon and complement such resource plans, identify opportunities for coordination and avoid contradictions or omission of key items. The North Dakota Forest Service coordinated with the North Dakota Game and Fish Department planning staff to identify areas of mutual interest to address resource needs.

The North Dakota comprehensive wildlife conservation strategy, developed by the North Dakota Game and Fish Department, represents a strategy rather than a detailed plan to guide the process of preserving the state's fish and wildlife resources for the foreseeable future. The plan is habitat based rather than species based.

North Dakota was divided into nine primary landscape components, which are essentially the state's major habitat types. They are tall-grass prairie (Red River Valley); eastern mixed-grass

prairie (Drift Prairie); mixed-grass prairie (Missouri Coteau); western mixed-grass/short-grass prairie (Missouri Slope); planted or tame grassland; wetlands and lakes; rivers, streams and riparian; Badlands; and upland deciduous forest.

The 2015 state wildlife action plan identifies important forest resources in the Turtle Mountains, Pembina Gorge, Devils Lake Hills, Killdeer Mountains and pine forests of southwestern North Dakota. These priority areas align closely with those identified in the North Dakota Forest Action Plan. Notable forest-dependent species of interest include little brown bat (*Myotis lucifugus*), big brown bat (*Eptesicus fuscus*), northern long eared bat (*Myotis septentrionalis*), golden eagle (*Aquila chrysaetos*), American marten (*Martes Americana*) and horned grebe (*Podiceps auritus*) (Dyke et al., 2015).



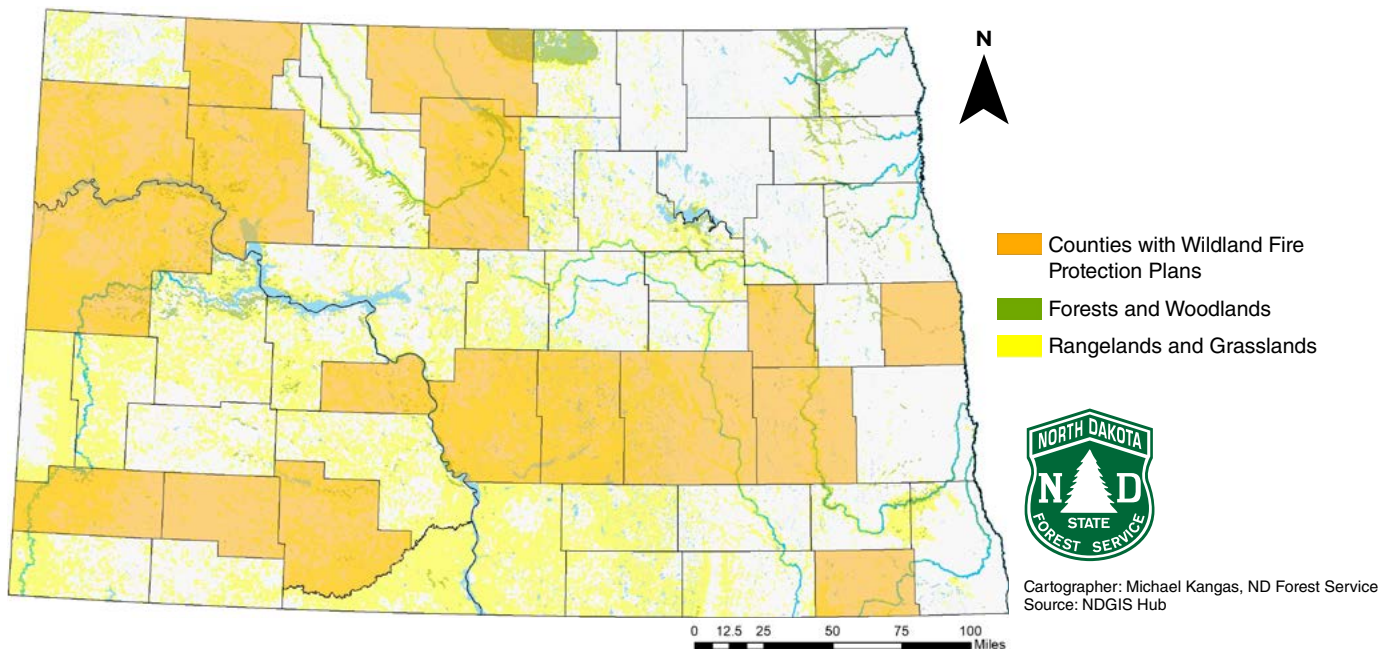
## Community Wildfire Protection Plans

Community wildfire protection plans (CWPP) were incorporated in the implementation of the statewide assessment through countywide wildfire assessments. CWPP are developed to address issues such as wildfire response, hazard mitigation, community preparedness and structure protection in communities. The local scale of these plans may limit their incorporation into the state assessment. Seventeen counties in North Dakota have CWPP in place. These are Barnes, Bottineau, Burke, Burleigh, Grant, Griggs, Hettinger, Kidder, McHenry, McKenzie, Mountrail, Oliver, Sargent, Slope, Stutsman, Traill and Williams (Figure 16).

Since the passage of the Healthy Forests Restoration Act (HFRA) in 2003, communities have been charged with becoming active partners in their own protection from wildfire. Drafting CWPP in collaboration with state and local officials, communities identify prominent sources of fire risk, summarize structural ignitability concerns and prioritize areas for fuels reduction treatment.

The main purpose of CWPP is for localities to improve their wildfire mitigation capacity and work with government agencies to coordinate efforts to identify high fire risk areas and prioritize areas for mitigation, suppression and emergency preparedness management. State governments have a key role to play in the formulation of CWPP because communities may look for long-term guidance from outside experts.

Figure 16. Counties with CWPP in place.



# Forest Resource Strategy

## Overview

North Dakota's forest action plan provides a long-term, comprehensive, coordinated strategy for investing state, federal and leveraged partner resources to address the management and landscape priorities identified in the assessment. The plan incorporates existing statewide forest and resource management plans (such as community wildfire protection plans and the state wildlife action plan) and provides the basis for future program, agency and partner coordination.

The overall goal of the North Dakota forest resource strategy is to identify a long-term, coordinated strategy for investing state, federal and leveraged partner resources to address forestry issues of interest. Partner and stakeholder input were integrated to identify resource issues, priority areas and strategies to address resource needs.

Specifically, the North Dakota Forest Service coordinated with the North Dakota State Stewardship Coordinating Committee, North Dakota Community Forestry Council, North Dakota State Technical Committee, North Dakota Game and Fish Department, U.S. Forest Service- Dakota Prairie Grasslands, tribal liaisons and other land management agencies in the development and update of the forest action plan.

## Timeline of Events – Forest Action Plan Update 2020

**June 2010** – Final submission of 2010 forest action plan to secretary of agriculture for approval

**July 2015** – Completed a five-year review of the forest action plan as required

**December 2018** – SSSC/CFC coordination session

**January through July 2019** – Online survey for partner and stakeholder feedback

**May 2019** – Coordination meeting with NDG&FD

**July 2019** – Forest action plan coordination meeting with U.S. Forest Service-Dakota Prairie Grasslands

**Fall 2019 and winter 2020** – Data and feedback summarization and geospatial analysis

**Spring 2020** – Plan reviewed by internal and external stakeholders

The forest resources strategy consists of two components. **Section 1** outlines the national priorities and the corresponding state priorities. **Section 2** describes the resources and programs available to implement the strategic actions targeting the national and state priorities.

# Section 1.

## Conserve and Manage Working Forest Landscapes for Multiple Values and Uses

### **North Dakota Priority Issue 1.1: Forest Decline Associated With Natural Disturbance Alterations**

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.1b:** Develop incentives and cost-effective measures for management (harvesting, Rx burn, thinning)

**Strategy 1.1c:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 1.1d:** Develop strategies to reach/motivate landowners to apply principles of sustainable forest management

### **North Dakota Priority Issue 1.2: Conversion to Nonforest**

**Strategy 1.2a:** Encourage retention of forestland at risk for urban sprawl, agricultural clearing and utility development

**Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants.

### **North Dakota Priority Issue 1.3: Limited Wood Utilization Incentives**

**Strategy 1.3a:** Identify wood utilization and biomass opportunities

**Strategy 1.3b:** Actively and sustainably manage trees and forests

## Protect Forests From Threats

### **North Dakota Priority Issue 2.1: Native and Invasive Tree Pests**

**Strategy 2.1a:** Detect, monitor, evaluate and report forest pests and forest health conditions, and conduct activities to improve or maintain forest health conditions and sustainability

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.1c:** Coordinate efforts with state and federal regulatory partners to augment prevention and suppression efforts

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

### **North Dakota Priority Issue 2.2: Vulnerability to Damaging Agents Due to Limited Species Diversity**

**Strategy 2.2a:** Identify seed sources and species adapted to biotic and abiotic conditions of the state

**Strategy 2.2b:** Promote species diversity and forest health practices in communities

**Strategy 2.2c:** Encourage commercial production of less common well-adapted tree species

**Strategy 2.2d:** Promote tree species diversity and forest health practices in windbreak and conservation tree plantings

**Strategy 2.2e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

### **North Dakota Priority Issue 2.3: Wildland Fire**

**Strategy 2.3a:** Provide training and assistance to communities and rural fire departments to meet critical preparedness needs, including firefighter safety, fire planning, firefighter training, increased initial attack capacity, and mobilization readiness for the efficient suppression and prevention of wildfires on nonfederal forestlands and other nonfederal lands

**Strategy 2.3b:** Restore fire-adapted lands and implement hazardous fuel-reduction activities

**Strategy 2.3c:** Implement prescribed fire to assist in meeting hazardous fuel-reduction, ecosystem maintenance/restoration, wildlife habitat improvement, native plant community restoration, forest health and silvicultural practice goals

## Enhance Public Benefits From Trees and Forests

### **North Dakota Priority Issue 3.1: Societal Disconnect From Forests and Natural Resources**

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.1b:** Connect people to trees and forests and engage them in environmental stewardship activities

### **North Dakota Priority Issue 3.2: Climate Change**

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2b:** Reduce forest conversion

**Strategy 3.2c:** Plant new trees to increase carbon sequestration

**Strategy 3.2d:** Utilize best available data and assessments to anticipate emerging management tools

## Section 2.

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### Resources and Programs to Address Strategic Actions

The following descriptions provide an overview of existing state and private forestry programs, initiatives, and leveraged state and federal programs that are employed in North Dakota to address shared management priorities and achieve measurable outcomes. For each program, the corresponding strategic actions addressed are listed.

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#### **NDFS — Forest Health Protection Program**

The forest health program provides statewide surveys to assess threats to our trees and forest resources; provides technical assistance and training for natural resource professionals, arborists/city foresters and educators; and provides timely reports documenting pests conditions.

##### **Strategies Addressed:**

- Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands
- Strategy 1.1c:** Strengthen collaborative and large-scale planning at city, county, state and federal levels
- Strategy 1.1d:** Develop strategies to reach/motivate landowners to apply principles of sustainable forest management
- Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants
- Strategy 1.3b:** Actively and sustainably manage trees and forests
- Strategy 2.1a:** Detect, monitor, evaluate and report forest pests and forest health conditions, and conduct activities to improve or maintain forest health conditions and sustainability
- Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication
- Strategy 2.1c:** Coordinate efforts with state and federal regulatory partners to augment prevention and suppression efforts
- Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species
- Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels
- Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings
- Strategy 2.2d:** Promote tree species diversity and forest health practices in windbreak and conservation tree plantings
- Strategy 2.2e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels
- Strategy 2.3b:** Restore fire-adapted lands and implement fuel-reduction activities
- Strategy 2.3c:** Implement prescribed fire to assist in meeting hazardous fuel-reduction, ecosystem maintenance/restoration, wildlife habitat improvement, native plant community restoration, forest health and silvicultural practice goals
- Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources
- Strategy 3.2a:** Manage existing forests to improve health
- Strategy 3.2d:** Utilize best available data and assessments to anticipate emerging management tools

## Section 2.

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### NDFS — Forest Stewardship Program (FSP)

The FSP provides technical assistance to nonindustrial, private forest landowners to encourage and enable active, long-term forest management. The Forest Stewardship Program offers a written forest stewardship plan to private landowners. These 10-year plans are designed to help landowners better understand their forest and manage the forest to meet their individual goals, for the benefit of the landowners and the resource.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.1b:** Develop incentives and cost-effective measures for management (harvesting, Rx burn, thinning)

**Strategy 1.1c:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 1.1d:** Develop strategies to reach/motivate landowners to apply principles of sustainable forest management

**Strategy 1.2a:** Incentivize retention of forestland at risk for urban sprawl, agricultural clearing and utility development

**Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants.

**Strategy 1.3a:** Identify wood utilization and biomass opportunities

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.2a:** Identify seed sources and species adapted to biotic and abiotic conditions of the state

**Strategy 2.2d:** Promote tree species diversity and forest health practices in windbreak and conservation tree plantings

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2b:** Reduce forest conversion

**Strategy 3.2d:** Utilize best available data and assessments to anticipate emerging management tools

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### NDFS — Community Forestry Program

The community forestry program provides statewide technical and financial assistance to all North Dakota communities. The NDFS provides a variety of community forestry grants to stimulate the development of innovative and effective community forestry program development projects or community forestry tree planting projects that increase the diversity of trees in the community. These include America the Beautiful (ATB) program development (ATB PD) and tree planting (ATB TP) grants. Community family forest (CFF) grants were developed to honor families in the state by planting trees in North Dakota communities and to strengthen the tradition of annual tree planting. The state also established the North Dakota disaster recovery task force, a long-term recovery team intended to assist local leaders deal with disaster recovery planning for green infrastructure. The project included a damage inventory of community forest and tree resources, an assessment of biomass utilization opportunities, a disaster recovery guide for communities, and assistance to communities for tree removal and replanting.

#### Strategies Addressed:

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1a:** Detect, monitor, evaluate and report forest pests and forest health conditions, and conduct activities to improve or maintain forest health conditions and sustainability

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.2a:** Identify seed sources and species adapted to biotic and abiotic conditions of the state

**Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.1b:** Connect people to trees and forests and engage them in environmental stewardship activities

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2c:** Plant new trees to increase carbon sequestration

**Strategy 3.2d:** Utilize best available data and assessments to anticipate emerging management tools

## Section 2.

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### NDFS – Conservation Education

Natural resource conservation education funds are used to raise awareness about natural resource values, support informed decision making and foster individual responsibility for forest resources in stewards of all ages. The North Dakota Forest Service (NDFS) delivers Project Learning Tree (PLT) professional development, curriculum, resources and a support network to natural resource educators and teachers of students in grades PreK-16. PLT workshops and hands-on activities use the Excellence in EE Guidelines established by the North American Association for Environmental Education (NAAEE) and are used in school and university classrooms, informal settings and outdoors. The outreach and educational program participates in Marketplace for Kids, Envirothon, Eco Eds, the Keep North Dakota Clean poster contest and many other programs used to educate youth about becoming stewards of the environment.

#### Strategies Addressed:

**Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants.

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1c:** Coordinate efforts with state and federal regulatory partners to augment prevention and suppression efforts

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.1b:** Connect people to trees and forests and engage them in environmental stewardship activities

**Strategy 3.2d:** Utilize best available data and assessments to anticipate emerging management tools

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### NDFS – Cooperative Fire Protection

State fire assistance (SFA) and volunteer fire assistance (VFA) funds provided technical and financial assistance to North Dakota fire departments and aided in acquiring and managing the state's federal-excess firefighting property program. Partnership efforts continue with the North Dakota Firefighter's Association (NDFA) to conduct regional training opportunities focused on wildfire suppression. The NDFS and its partners provided comprehensive fire training to more than 866 firefighters from 175 communities. VFA funds were utilized to provide cooperative fire protection assistance grants to 30 fire departments for the purchase of personal protective equipment, fire-suppression equipment, communication equipment and fire-suppression vehicles. SFA funds were utilized for training fire staff, maintaining the NDFS fire cache, prepositioning of fire staff and equipment during high fire danger events and suppression-assistance requests from fire departments. Funds also were used to secure new equipment to bolster suppression capacity, maintain five Type 6 wildland fire engines and two initial attack utility terrain vehicles (UTV). These investments were critical for suppressing wildfires across North Dakota and in neighboring states, as well as strengthening national interagency cooperation and coordination.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high priority native forestlands

**Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants.

**Strategy 2.3a:** Provide training and assistance to communities and rural fire departments to meet critical preparedness needs, including firefighter safety, fire planning, firefighter training, increased initial attack capacity, and mobilization readiness for the efficient suppression and prevention of wildfires on nonfederal forestlands and other nonfederal lands

**Strategy 2.3b:** Restore fire-adapted lands and implement hazardous fuel-reduction activities

**Strategy 2.3c:** Implement prescribed fire to assist in meeting hazardous fuel-reduction, ecosystem maintenance/restoration, wildlife habitat improvement, native plant community restoration, forest health and silvicultural practice goals

**Strategy 3.2a:** Manage existing forests to improve health

## Section 2.

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### NDFS – Federal Excess Property Program

Through the Federal Excess Personal Property (FEPP) and Department of Defense (DOD) Firefighter Property (FFP) programs, the federal government allows states the opportunity to access excess property that can be used for wildland and structure firefighting. In North Dakota, administration and oversight of this opportunity is the responsibility of the NDFS. Federal excess property for firefighting items may be received through two programs: Federal Excess Personal Property (FEPP) Program and (2) Firefighter Property (FFP) Program.

The **Federal Excess Personal Property (FEPP)** program refers to U.S. Department of Agriculture Forest Service (USDA FS)-owned property that is on loan to state foresters for the purpose of wildland and rural firefighting. Most of this property originally was owned by the USDA FS or other federal agencies but became excess to their needs. Ownership of FEPP property remains with the USDA FS.

The **Firefighter Property (FFP)** program refers to items obtained from the Defense Logistics Agency – Disposition Services (DLA-DS) for use in fire and emergency services by a state agency and its cooperators. Ownership may pass to the user after program requirements are met.

Both programs authorize the USDA FS to manage the transfer of items to North Dakota through memorandum of agreements (MOA). Strict program controls are in place to ensure proper accounting, inventory and use of items in both programs.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants.

**Strategy 2.3a:** Provide training and assistance to communities and rural fire departments to meet critical preparedness needs, including firefighter safety, fire planning, firefighter training, increased initial attack capacity, and mobilization readiness for the efficient suppression and prevention of wildfires on nonfederal forestlands and other nonfederal lands

**Strategy 2.3b:** Restore fire-adapted lands and implement hazardous fuel-reduction activities

**Strategy:** Implement prescribed fire to assist in meeting hazardous fuel-reduction, ecosystem maintenance/restoration, wildlife habitat improvement, native plant community restoration, forest health and silvicultural practice goals

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### Forest Stewardship Tax Law (FSTL)

More than 44,000 acres are enrolled in the FSTL, which is authorized by North Dakota Century Code Chapter 57-57 and administered by the state forester. The FSTL offers tax incentives to landowners for preserving and protecting forest resources. The program reduces value-based property taxes to 50 cents per acre per year on eligible lands.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.1b:** Develop incentives and cost-effective measures for management (harvesting, Rx burn, thinning)

**Strategy 1.2a:** Incentivize retention of forestland at risk for urban sprawl, agricultural clearing and utility development

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2b:** Reduce forest conversion

## Section 2.

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### Nature Preserves Act

In 1975, the North Dakota Legislature passed the Nature Preserves Act (NDCC 55-11), which gives the North Dakota Parks and Recreation Department the responsibility to set aside a system of natural areas and nature preserves for the benefit of North Dakota citizens. Three programs that are managed by the North Dakota Parks and Recreation Department are related. The natural area designation means any area of land and/or water, whether in public or private ownership, that has unique natural features. Five areas have been enrolled in the Natural Areas program. Public or private landowners also may enter into a nonbinding agreement to protect their land through the Natural Areas Registry Program. Approximately 50 sites have been registered successfully to date. The Natural Heritage Inventory identifies North Dakota's natural features and establishes priorities for their protection. Since the inventory's inception in 1981, more than 5,000 records of important species and habitats have been identified and catalogued.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2b:** Reduce forest conversion

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### North Dakota State Wildlife Action Plan (SWAP)

The 2015 North Dakota SWAP replaces the 2005 North Dakota Comprehensive Wildlife Conservation Strategy as the principal document for safeguarding rare and declining fish and wildlife species in North Dakota. The SWAP is a habitat-based rather than a species-based approach. The landscape classification system includes rivers, streams and riparian; Badlands; and upland forests, and identifies forested focus areas for each classification.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2b:** Reduce forest conversion

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### Great Plains Initiative (GPI) Phase II

This project will characterize the current status of linear agroforestry systems, focusing on windbreaks across the Great Plains in Kansas, Nebraska, South Dakota and North Dakota. The assessment will produce high-resolution geospatial datasets that allow users to determine location, extent and functioning condition of windbreaks based on criteria developed in GPI I. These detailed images will assist Great Plains forestry agencies and partners in identifying sites where forestry investments will produce the greatest soil and water quality conservation investment return. Utilizing this data, new educational and outreach approaches will be developed that increase landowner adoption of windbreak renovation and establishment practices. State and federal cost share programs (for example, CRP, EQIP) will support outreach efforts. The project also will assess risk and potential economic impacts from invasive pests such as the emerald ash borer, thousand cankers disease of walnut, Asian long-horned beetle and other non-native and indigenous plants, insects and diseases.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.1c:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 1.3a:** Identify wood utilization and biomass opportunities

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2d:** Utilize best available data and assessments to anticipate emerging management tools



## Section 2.

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### Hazardous Fuels Reduction — North Dakota Forest Service (NDFS)

The NDFS hazardous fuel reduction project is targeted at nonfederal lands adjacent to National Forest System (NFS) lands. These lands are targeted due to the USDA-FS prescribed fire program in the areas of concern, and provide risk mitigation by removing hazardous fuel and offering a higher degree of protection to communities and homes that may be at risk. The hazardous fuels reduction efforts are centered in the southwest portion of North Dakota, west of Amidon. The Ponderosa Pine Hazardous Fuels Reduction Prescription is outlined in the landowner's forest stewardship management plan. This multiyear effort is taking place on private land, treating overstocked, deteriorating ponderosa pine stands adjacent to the Dakota Prairie Grasslands.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants.

**Strategy 1.3a:** Identify wood utilization and biomass opportunities

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.3b:** Restore fire-adapted lands and implement hazardous fuel-reduction activities

**Strategy 2.3c:** Implement prescribed fire to assist in meeting hazardous fuel-reduction, ecosystem maintenance/restoration, wildlife habitat improvement, native plant community restoration, forest health and silvicultural practice goals

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2d:** Utilize best available data and assessments to anticipate emerging management tools

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### Good Neighbor Authority — NDFS/USFS

Good Neighbor Authority allows the USDA Forest Service to enter into agreements with state forestry agencies to do the critical management work to keep our forests healthy and productive. This multiyear effort is taking place on federal land and treating overstocked, deteriorating ponderosa pine stands in the Dakota Prairie Grasslands.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants.

**Strategy 1.3a:** Identify wood utilization and biomass opportunities

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.3b:** Restore fire-adapted lands and implement hazardous fuel-reduction activities

**Strategy 2.3c:** Implement prescribed fire to assist in meeting hazardous fuel-reduction, ecosystem maintenance/restoration, wildlife habitat improvement, native plant community restoration, forest health and silvicultural practice goals

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2d:** Utilize best available data and assessments to anticipate emerging management tools

## Section 2.

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### Forestry Best Management Practices (BMP)

The NDFS developed BMP to help ensure productivity of forestland during tree planting, timber harvesting, thinning and other forest management activities. BMP serve as a basis for sound management decisions and often can be applied directly by the landowner. The NDFS provides assistance to landowners to develop a forest stewardship plan for their forestland and planting areas.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants.

**Strategy 1.3a:** Identify wood utilization and biomass opportunities

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.1a:** Detect, monitor, evaluate and report forest pests and forest health conditions, and

conduct activities to improve or maintain forest health conditions and sustainability

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.3b:** Restore fire-adapted lands and implement hazardous fuel-reduction activities

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2b:** Reduce forest conversion

**Strategy 3.2d:** Utilize best available data and assessments to anticipate emerging management tools

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### Shared Stewardship

The shared stewardship strategy builds on a foundation of collaborative work, such as the Joint Chief's Landscape Restoration Partnership, National Cohesive Strategy for Wildland Fire Management and Collaborative Forest Landscape Restoration Program. It also builds on authorities created or expanded in the 2018 omnibus bill and 2018 farm bill, such as Good Neighbor Authority.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants.

**Strategy 1.3a:** Identify wood utilization and biomass opportunities

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 2.3b:** Restore fire-adapted lands and implement hazardous fuel-reduction activities

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2d:** Utilize best available data and assessments to anticipate emerging management tools

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### Community Threat Assessment Protocol (CTAP)

CTAP is an urban forest survey and assessment approach that was developed under the first project phases of the Great Plains Initiative (GPI). Rapid street tree inventories are conducted in selected communities across North Dakota by North Dakota Forest Service Community Forestry Program staff. These inventories provide detailed and specific assessments of the environmental and economic impacts of selected invasive pests on these communities at the community level. In addition, the use of iTree and Forest Health Risk Assessment protocols provide a means of data analyses, spatial mapping and reporting. Emerald ash borer is one of the primary potential threats facing North Dakota's community forests. Preliminary summaries of CTAP street tree data reveal populations of green ash ranging from 16% to nearly 80%, with an average street tree population consisting of 46% green ash. In 2012-2014, NDFS community forestry staff completed 63 CTAP assessments in communities.

#### Strategies Addressed:

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1a:** Detect, monitor, evaluate and report forest pests and forest health conditions, and conduct activities to improve or maintain forest health conditions and sustainability

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.1c:** Coordinate efforts with the state and federal regulatory partners to augment prevention and suppression efforts

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 2.2a:** Identify seed sources and species adapted to biotic and abiotic conditions of the state

**Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.1b:** Connect people to trees and forests and engage them in environmental stewardship activities

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2c:** Plant new trees to increase carbon sequestration

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### Tree City, Tree Line, Tree Campus USA and Arbor Day

Tree City USA is a national recognition program that began in 1976 and is sponsored by the Arbor Day Foundation in partnership with the U.S. Forest Service and National Association of State Foresters. By meeting four fundamental standards, an incorporated municipality of any size can qualify for certification in the program. In 2020, 53 Tree City USA communities were certified in North Dakota for their outstanding accomplishments in forestry including Sibley, the smallest Tree City USA with a population of 20 residents. Today, nearly 70% of North Dakota's residents live in a Tree City USA community. A healthy urban forest is the result of proper planning, management and community investment. Key messages include benefits depend on healthy trees, healthy trees require good-quality care, and good-quality care depends on tree advocates and decision makers.

Tree Line USA recognizes public and private utilities across the nation that demonstrate practices that protect and enhance America's urban forests. Best practices in utility arboriculture result in healthier and more abundant community forests and increased reliability of service because properly pruned and maintained trees result in fewer downed lines during storms. Montana-Dakota Utilities Co. is North Dakota's only utility certified in the program.

The Tree Campus USA program is designed to award national recognition to college campuses promoting healthy urban forest management and engaging the campus community in environmental stewardship. NDSU and Dakota College at Bottineau are certified in the program, along with United Tribes Technical College, one of the first tribal campuses to be certified as a Tree Campus USA.

Arbor Day is a holiday on which individuals and groups are encouraged to plant and care for trees and is one of the annual requirements for a Tree City USA. It provides an opportunity to teach people about the importance of trees and how to plant and care for them properly. Trees planted today will improve water quality and protect our drinking water; slow and reduce stormwater runoff, reducing silt and sediment in our streams, rivers and lakes; restore damaged forests and rebuild healthy ecosystems; provide food and animal shelters; shade our homes, lowering energy bills for all of us; clean our air and reduce air pollution; beautify our homes, parks, streets and schools; and make the quality of life better in our neighborhoods.

#### Strategies Addressed:

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1a:** Detect, monitor, evaluate and report forest pests and forest health conditions, and conduct activities to improve or maintain forest health conditions and sustainability

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.1c:** Coordinate efforts with state and federal regulatory partners to augment prevention and suppression efforts

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 2.2a:** Identify seed sources and species adapted to biotic and abiotic conditions of the state

**Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.1b:** Connect people to trees and forests and engage them in environmental stewardship activities

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2c:** Plant new trees to increase carbon sequestration

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### Hazardous Fuel Reduction – National Park Service

The North Dakota Forest Service provides assistance to National Park Service units in North Dakota with a variety of fuels work for the purpose of fuels reduction and management. Tasks range from cutting, thinning, piling, pile burning and assistance with prescribed fire activities. This effort assists both agencies with fire-suppression efforts in and outside the parks boundaries by reducing fuels and making fires easier to control while reducing the risk of fires starting in the parks and burning outside their boundaries.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants.

**Strategy 1.3a:** Identify wood utilization and biomass opportunities

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.3b:** Restore fire-adapted lands and implement hazardous fuel-reduction activities

**Strategy 2.3c:** Implement prescribed fire to assist in meeting hazardous fuel-reduction, ecosystem maintenance/restoration, wildlife habitat improvement, native plant community restoration, forest health and silvicultural practice goals

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2d:** Utilize best available data and assessments to anticipate emerging management tools

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### State Fire School

The NDFS and NDFA work as partners to conduct the annual NDFA State Fire School. Education and firefighter and public safety are top priorities for both entities. The NDFA hosts and facilitates an annual state fire school with training on wildland firefighting including basic wildland firefighting skills, wildland fire leadership classes and wildland fire practical classes. Nearly 800 firefighters from all across the state attend the event for training from basic level firefighter up to leadership training for the fire officer.

#### Strategies Addressed:

**Strategy 2.3a:** Provide training and assistance to communities and rural fire departments to meet critical preparedness needs, including firefighter safety, fire planning, firefighter training, increased initial attack capacity, and mobilization readiness for the efficient suppression and prevention of wildfires on nonfederal forestlands and other no-federal lands

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### Outdoor Heritage Fund (OHF) – Windbreak Renovation Initiative

The Windbreak Renovation Initiative is a \$1.8 million grant (\$3.6 million project) provided to the NDFS by the North Dakota Industrial Commission through the Outdoor Heritage Fund. The project serves to ensure that windbreaks remain a part of North Dakota's conservation heritage and viable part of the agricultural landscape; reduce the number of windbreaks destroyed by offering incentives to replace dead/deteriorating windbreaks; incorporate species diversity and select species most suitable for the site to mitigate future losses due to abiotic factors or insect and disease issues; provide technical and financial assistance to landowners to help achieve their conservation goals; and administer a simple, effective, statewide cost-share program that leverages landowners' match with a source of grant funds for a variety of windbreak renovation practices.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.1b:** Develop incentives and cost-effective measures for management (harvesting, Rx burn, thinning)

**Strategy 1.2a:** Incentivize retention of forestland at risk for urban sprawl, agricultural clearing and utility development

**Strategy 1.3a:** Identify wood utilization and biomass opportunities

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.1b:** Connect people to trees and forests and engage them in environmental stewardship activities

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2b:** Reduce forest conversion

**Strategy 3.2c:** Plant new trees to increase carbon sequestration

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### Mitigation Tree Planting Partnerships

Mitigation criteria established by the North Dakota Public Service Commission (PSC) ensures that trees and shrubs lost or destroyed during construction projects are replaced at a 2:1 ratio. A minimum of 75% of these replacement trees and shrubs must be living at the end of three growing seasons to meet the mitigation requirements. The PSC also is responsible for authorizing mitigation tree planting partnerships. The NDFS has facilitated multiple tree mitigation partnerships, including the Keystone Pipeline (Case # PU-06-421) - 158 projects with 85,316 trees and shrubs planted; Bridger Pipeline, LLC (Case # PU-09-750) - 246 projects with 106,656 trees and shrubs planted; and Enbridge (Case #s PU-10-612, PU-10-613, PU-11-232, and PU-11-606) - 11 projects with 1,869 trees and shrubs planted.

#### Strategies Addressed:

**Strategy 1.2a:** Incentivize retention of forestland at risk for urban sprawl, agricultural clearing and utility development

**Strategy 3.2b:** Reduce forest conversion

**Strategy 3.2c:** Plant new trees to increase carbon sequestration

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### **OHF – Tree Planting Assistance**

The North Dakota Conservation District Employees Association, in partnership with the NDFS and North Dakota Association of Soil Conservation Districts, were successful in securing a \$1.878 million OHF - Tree Planting Assistance grant from the Industrial Commission. The effort engages stewards to embrace conservation practices that promote the ecological services trees provide. The initiative focuses on encouraging and providing financial assistance to implement agroforestry practices in North Dakota, including farmstead, feedlot and field windbreaks; forestry, wildlife and riparian plantings; buffers; and living snow fences.

#### **Strategies Addressed:**

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 3.2c:** Plant new trees to increase carbon sequestration

**Strategy 2.2a:** Identify seed sources and species adapted to biotic and abiotic conditions of the state

**Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings

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### **USDI – Theodore Roosevelt National Park**

Theodore Roosevelt National Park's prescribed fire program addresses three interrelated goals. Resource benefit burning is intended to impact specific species and is performed to the benefit or detriment of a certain species. Examples include promoting grass growth by reducing woody plants, or controlling invasive plants such as leafy spurge. Hazard fuel reduction removes fuels such as woody plants that contribute to uncontrollable wildfires. Hazardous fuel buildup leads to the destructive wildfires that destroy homes and lives. Wildland-urban interface fires remove fuels adjacent to populated areas to protect lives and property. The goal is to lower the chance of an uncontrollable wildfire. Hazard fuel reduction and wildland-urban interface management goals also are achieved by mechanical means such as cutting and haying.

#### **Strategies Addressed:**

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 2.3b:** Restore fire-adapted lands and implement hazardous fuel-reduction activities

**Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants.

**Strategy 2.3c:** Implement prescribed fire to assist in meeting hazardous fuel-reduction, ecosystem maintenance/restoration, wildlife habitat improvement, native plant community restoration, forest health and silvicultural practice goals

**Strategy 1.3a:** Identify wood utilization and biomass opportunities

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 3.2d:** Utilize best available data and assessments to anticipate emerging management tools

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

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### Dakota Prairie Grasslands/Nature Conservancy

The USFS - Dakota Prairie Grasslands and The Nature Conservancy entered into a memorandum of understanding to cooperate in managing prescribed fire activities on the Sheyenne National Grassland and adjacent conservancy lands. This agreement provides capability for the Dakota Prairie Grasslands and The Nature Conservancy to coordinate and assist one another with the use of prescribed fire for restoring, maintaining and conserving the tall grass prairie. Fire is a key disturbance factor in restoring and maintaining the tall grass prairie ecosystem. The two entities continue sharing personnel and equipment, and implementation of cross-boundary prescribed burns that benefit the USFS and conservancy lands.

#### Strategies Addressed:

**Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants.

**Strategy 2.3b:** Restore fire-adapted lands and implement hazardous fuel-reduction activities

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### USDI Fish and Wildlife Service (USF&WS)

The USF&WS uses prescribed fire on refuges and waterfowl production areas in North Dakota to manage grasslands. Historically, natural fires caused by lightning burned the refuge's grasslands and marshes, recycling nutrients, cleaning out old growth and promoting new vegetation. Refuge staff incorporates prescribed burning to manage grasslands the way natural fires once did. Benefits of burning include improving native habitats and controlling noxious weeds, reducing thatch and promoting seed germination, increasing nesting and escape cover for birds, and stimulating the growth of sprouts that are food for deer and other wildlife.

#### Strategies Addressed:

**Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants.

**Strategy:** Restore fire-adapted lands and implement hazardous fuel-reduction activities

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### The North Dakota Game and Fish Department – Habitat Improvement Projects

The NDG&F has identified Russian olive as a non-native, exotic, woody invader that out-competes native vegetation such as cottonwoods and willows, degrades wildlife habitat and reduces recreational values. Russian olives have contributed to a change in the riverine habitat by shading river banks, reducing available water resource, and displacing native plant species, herbaceous and woody. The department's habitat improvement projects address habitat fragmentation by removing a non-native, invasive tree species (Russian olive) from native ecosystems, including riparian forests. The project serves to restore riverine systems to a more historical state and directly benefit species identified as species of conservation priority in the North Dakota comprehensive wildlife conservation strategy. The restoration efforts target wildlife management areas around the Missouri-Yellowstone River confluence.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 3.2a:** Manage existing forests to improve health



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### **Biomass Boiler — Bismarck Public Works Landfill Building**

Two wood waste biomass projects have been implemented in Bismarck. The city and the NDFS developed a pilot project for the city using wood chips to heat the public works landfill building. The conversion resulted in significant annual savings in the cost of heating the complex. The wood-fired hot water heating system utilizes proven existing technology. Construction consisted of a centrally housed biomass-fired hot water boiler with hot water piping to connect the buildings at the public works landfill buildings and modernization of existing distribution systems to provide maximum heating efficiency.

**Strategies Addressed:**

**Strategy 1.3a:** Identify wood utilization and biomass opportunities

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### **Biomass Boiler — Bismarck Aquatic Center**

The Bismarck Parks and Recreation District (BPRD) completed a feasibility study to determine that utilizing wood chips to heat the BPRD Indoor Aquatic Wellness Center building is economically viable. Construction of the Indoor Aquatic Wellness Center included utilization of wood chips as a heating fuel source, resulting in significant annual savings in the cost of heating the complex. The wood-fired hot water heating system utilizes proven existing technology and serves as a demonstration site and enhancement to the National Energy Center of Excellence at Bismarck State College.

**Strategies Addressed:**

**Strategy 1.3a:** Identify wood utilization and biomass opportunities

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### **North Dakota Urban and Community Forestry Association (NDUCFA) — Planning**

The NDUCFA developed an emerald ash borer (EAB) preparedness and response plan template for communities to utilize. Guidelines provide additional background, information and resources for each element of a community plan. Preparedness and response assist communities in managing the threat posed by EAB. The materials provide additional information that may be incorporated into plans or referenced by the plan.

The NDUCFA, along with the North Dakota Nursery & Greenhouse Association, hosts a jointly planned annual conference. The event includes speakers, a trade show and social events. The NDUCFA has hosted this conference for 27 years, and topics range from proper tree planting, tree pruning and hazardous tree identification to a variety of EAB-related topics. Many sessions are geared to assist communities in planning to mitigate potential damage caused by invasive tree pests.

**Strategies Addressed:**

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1a:** Detect, monitor, evaluate and report forest pests and forest health conditions, and conduct activities to improve or maintain forest health conditions and sustainability

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.1c:** Coordinate efforts with the state and federal regulatory partners to augment prevention and suppression efforts

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 2.2a:** Identify seed sources and species adapted to biotic and abiotic conditions of the state

**Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings

**Strategy 2.2c:** Encourage private-sector production of less common well-adapted tree species

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.1b:** Connect people to trees and forests and engage them in environmental stewardship activities

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2c:** Plant new trees to increase carbon sequestration

**Strategy 3.2d:** Utilize best available data and assessments to anticipate emerging management tools

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### Landscape Scale Restoration: Enhancement of Small/Midsize Urban Forests in North Dakota

More than 75% of North Dakota's population resides in cities and benefits significantly from healthy and resilient urban forests. But most cities are small - 95% have less than 5,000 people - and have limited resources for tree stewardship, which generally is undertaken by a volunteer tree board without a full-time municipal forester. In addition, North Dakota's fragmented urban forests are dominated by green ash and American elm, making them a target for invasive species. The North Dakota Urban and Community Forestry Association (NDUCFA) is helping build planning and management capacity of small and midsize North Dakota city tree boards to better protect urban forests. The NDUCFA is providing tools, including the online Tree Inventory and Planning (TIP) tool, training and one-on-one assistance to small and midsize North Dakota cities to encourage ethical practices and help them meet technical standards for arboriculture. They also are connecting experienced North Dakota municipal foresters and certified arborists with small and midsize cities to develop a strong statewide peer network committed to ethical tree stewardship.

#### Strategies Addressed:

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1a:** Detect, monitor, evaluate and report forest pests and forest health conditions, and conduct activities to improve or maintain forest health conditions and sustainability

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.1c:** Coordinate efforts with the state and federal regulatory partners to augment prevention and suppression efforts

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 2.2a:** Identify seed sources and species adapted to biotic and abiotic conditions of the state

**Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.1b:** Connect people to trees and forests and engage them in environmental stewardship activities

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2c:** Plant new trees to increase carbon sequestration

**Strategy 3.2d:** Utilize best available data and assessments to anticipate emerging management tools

### N.D. First Detectors Program

The N.D. First Detectors program trains volunteers to help diagnose and report possible infestations of invasive species to the North Dakota Department of Agriculture. First detectors are a part of the National Plant Diagnostic Network (NPDN) First Detector Program, which promotes the early detection of invasive plant pathogens, arthropods, nematodes and weeds. This component centers on enhancing educational outreach and building capacity to detect and respond to invasive pests and pathogens that threaten the state's forest resources. More than 300 first detectors have been trained since the program was initiated.

#### Strategies Addressed:

**Strategy 2.1a:** Detect, monitor, evaluate and report forest pests and forest health conditions, and conduct activities to improve or maintain forest health conditions and sustainability

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.1c:** Coordinate efforts with the state and federal regulatory partners to augment prevention and suppression efforts

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

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### EAB Awareness Week

EAB Awareness Week is an opportunity for state and local agencies, environmental groups, community organizations, schools, businesses, industry, tourists and citizens to take action against the introduction and spread of emerald ash borer. In 2013, more than a dozen communities participated in EAB Awareness Week; the number grew to 31 in 2014 and 49 in 2015.

#### Strategies Addressed:

**Strategy 2.1a:** Detect, monitor, evaluate and report forest pests and forest health conditions, and conduct activities to improve or maintain forest health conditions and sustainability

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.1c:** Coordinate efforts with the state and federal regulatory partners to augment prevention and suppression efforts

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

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### Invasive Tree Pest Survey

The North Dakota invasive tree pest survey initiative is a collaborative effort involving the USDA's Animal and Plant Health Inspection Service (APHIS), the North Dakota Department of Agriculture, NDFS and tribal cooperators. Invasive pest surveys employ a variety of detection tools to locate potential invasive tree pest populations in North Dakota.

#### Strategies Addressed:

**Strategy 2.1a:** Detect, monitor, evaluate and report forest pests and forest health conditions, and conduct activities to improve or maintain forest health conditions and sustainability

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.1c:** Coordinate efforts with state and federal regulatory partners to augment prevention and suppression efforts

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

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### River Keepers

River Keepers has identified riparian forests as being among the most important of all forests in the Great Plains. These forests face tremendous pressures such as invasive pests, noxious weed encroachment and summer flooding that has impacted existing trees and forests. The loss of riparian forest has increased bank slumping, which adds sediment to the river and threatens water quality. River Keepers helps restore riparian forests by establishing local riparian demonstration sites, educating and connecting our urban residents and youth groups, and restoring the natural, social and esthetic values once associated with our riparian forests. Using professionals and volunteers, noxious weeds are removed, new trees planted and interpretive signs installed along recreational trails in the riparian forest.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants.

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1b:** Reduce damage through effective integrated pest management, including prevention, suppression and/or eradication

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.1b:** Connect people to trees and forests and engage them in environmental stewardship activities

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2b:** Reduce forest conversion

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### North Dakota State University (NDSU) – Master Gardeners Program

The NDSU Extension Master Gardener Program invests in creating leaders to serve the needs of their communities. Master Gardeners become ambassadors to assist NDSU Extension in providing accurate and environmentally sustainable horticultural advice.

#### Strategies Addressed:

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.1b:** Connect people to trees and forests and engage them in environmental stewardship activities

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### North Dakota State University (NDSU) – Woody Plant Improvement Program

The NDSU woody plant improvement research program involves the breeding, selection, evaluation and introduction of hardy woody plants for the northern Plains. This program has introduced more than 50 superior woody plants for production and sale. These plants have increased disease tolerance and winter hardiness for landscapes throughout the northern Plains. NDSU woody plant introductions are being propagated for sale by commercial wholesale firms in three countries: Australia, Canada and the U.S. (14 states, including 35 nurseries).

#### Strategies Addressed:

**Strategy 2.2a:** Identify seed sources and species adapted to biotic and abiotic conditions of the state

**Strategy 2.2b:** Promote species diversity and forest health practices in communities

**Strategy 2.2c:** Encourage private-sector production of less common well-adapted tree species

**Strategy 2.2d:** Promote tree species diversity and forest health practices in windbreak and conservation tree plantings

**Strategy 2.2e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 3.2c:** Plant new trees to increase carbon sequestration

## Section 2.

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### Towner State Nursery

Towner State Nursery produces 1 million conifer (evergreen) seedlings in more than 30 different species and stock types annually for distribution to landowners. The trees are used for farmsteads, living snow fences, field windbreaks, wildlife, forestry and other conservation plantings. The nursery is a self-supporting operation, and since 1927, has sold more than 81 million trees. The nursery also provides tree improvement services such as testing, evaluation, selection and development of improved nursery stock for forestry and conservation plantings.

#### Strategies Addressed:

**Strategy 2.2a:** Identify seed sources and species adapted to biotic and abiotic conditions of the state

**Strategy 2.2b:** Promote species diversity and forest health practices in communities

**Strategy 2.2c:** Encourage private-sector production of less common well-adapted tree species

**Strategy 2.2d:** Promote tree species diversity and forest health practices in windbreak and conservation tree plantings

**Strategy 2.2e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 3.2c:** Plant new trees to increase carbon sequestration

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### USDA NRCS Plant Materials Center (PMC)

The PMC in Bismarck is devoted to promoting and providing plant materials for conservation. Other federal and state agencies, universities and nonprofit organizations are important partners in the process, which includes assembling plants or seed collections from representative areas, evaluating initial performance, determining potential for release, documenting production procedures, evaluating cultural and management techniques, testing under actual use conditions and releasing new plants with cooperators. Its goal is to produce high-quality, pedigreed seed/plants and make them available to commercial growers and nurseries.

#### Strategies Addressed:

**Strategy 2.2a:** Identify seed sources and species adapted to biotic and abiotic conditions of the state

**Strategy 2.2b:** Promote species diversity and forest health practices in communities

**Strategy 2.2c:** Encourage private-sector production of less common well-adapted tree species

**Strategy 2.2d:** Promote tree species diversity and forest health practices in windbreak and conservation tree plantings

**Strategy 2.2e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 3.2c:** Plant new trees to increase carbon sequestration

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### Deep Creek Ponderosa Pine Restoration

In September 2004, the Deep Creek Fire burned across private land and USDA Dakota Prairie Grasslands, forcing the evacuation of ranches and threatening the community of Amidon. Many acres of ponderosa pine forest on public and private land were impacted. Due the intensity of the fire, extensive areas are not regenerating due to a lack of adjacent surviving trees to serve as a seed source. NDFS staff has collected ponderosa pine cones from trees in the area and containerized seedling are being grown at the Towner State Nursery. A multiyear reforestation program that reintroduces a local ponderosa pine seed source to the Deep Creek burn area began in 2016.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants.

**Strategy 1.3a:** Identify wood utilization and biomass opportunities

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.3b:** Restore fire-adapted lands and implement hazardous fuel-reduction activities

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2d:** Utilize best available data and assessments to anticipate emerging management tools

## Section 2.

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### Community Wildfire Protection Plans (CWPP)

The Healthy Forests Restoration Act (HFRA) in 2003 included the first meaningful statutory incentives for the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) to give consideration to the priorities of local communities as they develop and implement forest management and hazardous fuel-reduction projects. In North Dakota, 17 communities prepared CWPP. CWPP address issues such as wildfire response, hazard mitigation, community preparedness or structure protection - or all of the above.

#### Strategies Addressed:

**Strategy 2.3a:** Provide training and assistance to communities and rural fire departments to meet critical preparedness needs, including firefighter safety, fire planning, firefighter training, increased initial attack capacity, and mobilization readiness for the efficient suppression and prevention of wildfires on nonfederal forestlands and other nonfederal lands

**Strategy 2.3b:** Restore fire-adapted lands and implement hazardous fuel-reduction activities

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### Geographically FIT (Forestry Institute for Teachers)

The NDFS and North Dakota Geographic Alliance partner to deliver Geographically FIT annually. During the last eight years, participants have toured a portion of North Dakota. This professional development opportunity enables educators to expand their content knowledge of North Dakota's Badlands, forests, geography, geology and grasslands, and provides them with resources for curriculum planning and development.

#### Strategies Addressed:

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.1b:** Connect people to trees and forests and engage them in environmental stewardship activities

---

### Envirothon

The North Dakota Envirothon is a hands-on, problem-solving environmental education program open to high school students throughout the state. The goal of the North Dakota Envirothon is to promote a desire to learn more about North Dakota's natural environment and equip students with the knowledge and skills needed to apply the basic principles and practices of resource management and ecology to complex environmental issues. Teams are associated with a sponsoring school and usually train the entire school year with their adviser or "coach" in preparation for the annual statewide competition. Study resources in the fields of soils, aquatics, wildlife, prairie (forestry and rangeland) and a current environmental issue are assembled by natural resource professionals and provided to the teams. Using these resources, students learn the skills of thinking and working as a team to assess natural resource issues affecting the environment. In late spring, each team has the option to select five members and one alternate to compete in the North Dakota state Envirothon competition.

#### Strategies Addressed:

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.1b:** Connect people to trees and forests and engage them in environmental stewardship activities

## Section 2.

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### Eco-Ed

The Barnes County Soil Conservation District (SCD) in North Dakota began a program using an EPA section 319 grant as the basis for improving the format of the county's conservation tour. Five topics of study were identified. Thirty-four SCDs sponsor ECO-Ed, and each event addresses prairie/grasslands, soils, wetlands, woodlands and water quality. All of the subjects are covered in relation to water and its importance.

#### Strategies Addressed:

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.1b:** Connect people to trees and forests and engage them in environmental stewardship activities

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### Project Learning Tree (PLT)

PLT is a national award-winning environmental education program designed for teachers and other educators, parents and community leaders working with youth from preschool through grade 12. In PLT, the goal is to teach students how to think, not what to think about complex environmental issues. Recognized as a leader in environmental education for more than 35 years, PLT enhances critical thinking, problem solving and effective decision-making skills. PLT materials are multidisciplinary and aligned with state and national education standards.

#### Strategies Addressed:

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.1b:** Connect people to trees and forests and engage them in environmental stewardship activities

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### Trees Bowl and Trees Awards

The Trees Awards recognize individuals, organizations and agencies who contribute in an outstanding way to forestry activities. Forestry activities can include fire mitigation, protection and suppression; tree planting, preservation or maintenance; community forestry efforts; forest management practices; forest recreation; or environmental education. In 2015, the state celebrated the 25th Trees Bowl anniversary. Looking back on 25 years of Trees Bowls, 353 Trees Awards have been presented to award winners, nearly 350,000 fans have attended the games and 66,200 trees have been handed out to fans.

#### Strategies Addressed:

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.1b:** Connect people to trees and forests and engage them in environmental stewardship activities

## Section 2.

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### NDFS – State Forests Program

State forests provide wildlife habitat, clean air and water, recreational opportunities, forest products, scenic beauty and other conservation benefits. The North Dakota Forest Service owns five state forests comprising approximately 13,290 acres that are managed to promote sound forestry practices. State forests play an important role in the economic well-being of several rural communities by attracting hunters, hikers, campers, skiers, snowmobilers, tourists and other outdoor enthusiasts.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.2b:** Incorporate management techniques and/or disturbances that promote/sustain terrestrial ecosystems. Develop, learn and teach methods to remove nuisance woody plants.

**Strategy 1.3a:** Identify wood utilization and biomass opportunities

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2b:** Reduce forest conversion

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### Tree Promotion Meeting

Since 1999, the NDFS has partnered with SCDs to host an annual tree promotion meeting. The meeting serves to promote, expand and improve conservation tree planting in North Dakota and promote new concepts including climate change, design and planting specifications and tree species selection programs.

#### Strategies Addressed:

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 2.2a:** Identify seed sources and species adapted to biotic and abiotic conditions of the state

**Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2b:** Reduce forest conversion

**Strategy 3.2c:** Plant new trees to increase carbon sequestration



## Section 2.

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### Environmental Quality Incentives Program (EQIP)

EQIP has been designed through a locally led process. The North Dakota State Technical Committee, consisting of conservation stakeholders across the state, provides the Natural Resources Conservation Service (NRCS) with invaluable recommendations for localizing the program to meet the natural resource needs in North Dakota. The State Technical Committee helps determine statewide resource concerns, develop application ranking criteria, identify eligible conservation practices, recommend practice payment rates and suggest funding allocations. To accomplish the natural resource goals developed by local work groups, 62% of North Dakota's EQIP allocation will be allocated to the counties. The remaining allocation has been prioritized to address statewide priorities recommended by the State Technical Committee, including the statewide priority of forestry and energy, which aids in enhancing forestry and energy conservation resources.

#### Strategies Addressed:

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 2.2a:** Identify seed sources and species adapted to biotic and abiotic conditions of the state

**Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2b:** Reduce forest conversion

**Strategy 3.2c:** Plant new trees to increase carbon sequestration

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### N.D. Petroleum Foundation — Planting for the Future — Outdoor Heritage Fund

This conservation tree planting effort, led by the North Dakota Petroleum Foundation, leverages industry and landowner support for tree planting, which is crucial for the preservation of wildlife and habitat, as well as protection of watersheds and soils. The partnership plants conservation trees in multiple counties using traditional and scalp-planting techniques, depending on the site.

#### Strategies Addressed:

**Strategy 1.1a:** Identify, conserve and actively manage high-priority native forestlands

**Strategy 1.2a:** Incentivize retention of forestland at risk to urban sprawl, agricultural clearing, and utility development

**Strategy 3.2c:** Plant new trees to increase carbon sequestration

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### N.D. Conservation District Employees Association — N.D. Statewide Conservation Tree Planting Initiative — Outdoor Heritage Fund

This program engages stewards to embrace conservation practices that promote the ecological services that trees provide. The initiative focuses on encouraging and providing financial assistance to implement agroforestry practices including farmstead, feedlot and field windbreaks; forestry; wildlife and riparian plantings; buffers; and living snow fences.

#### Strategies Addressed:

**Strategy 1.3b:** Actively and sustainably manage trees and forests

**Strategy 2.1d:** Enhance educational outreach efforts to limit the spread of invasive species

**Strategy 2.1e:** Strengthen collaborative and large-scale planning at city, county, state and federal levels

**Strategy 2.2a:** Identify seed sources and species adapted to biotic and abiotic conditions of the state

**Strategy 2.2b:** Promote species diversity and forest health practices in communities and conservation tree plantings

**Strategy 3.1a:** Increase awareness (educational sessions and distance learning) of the benefits and threats to forest resources

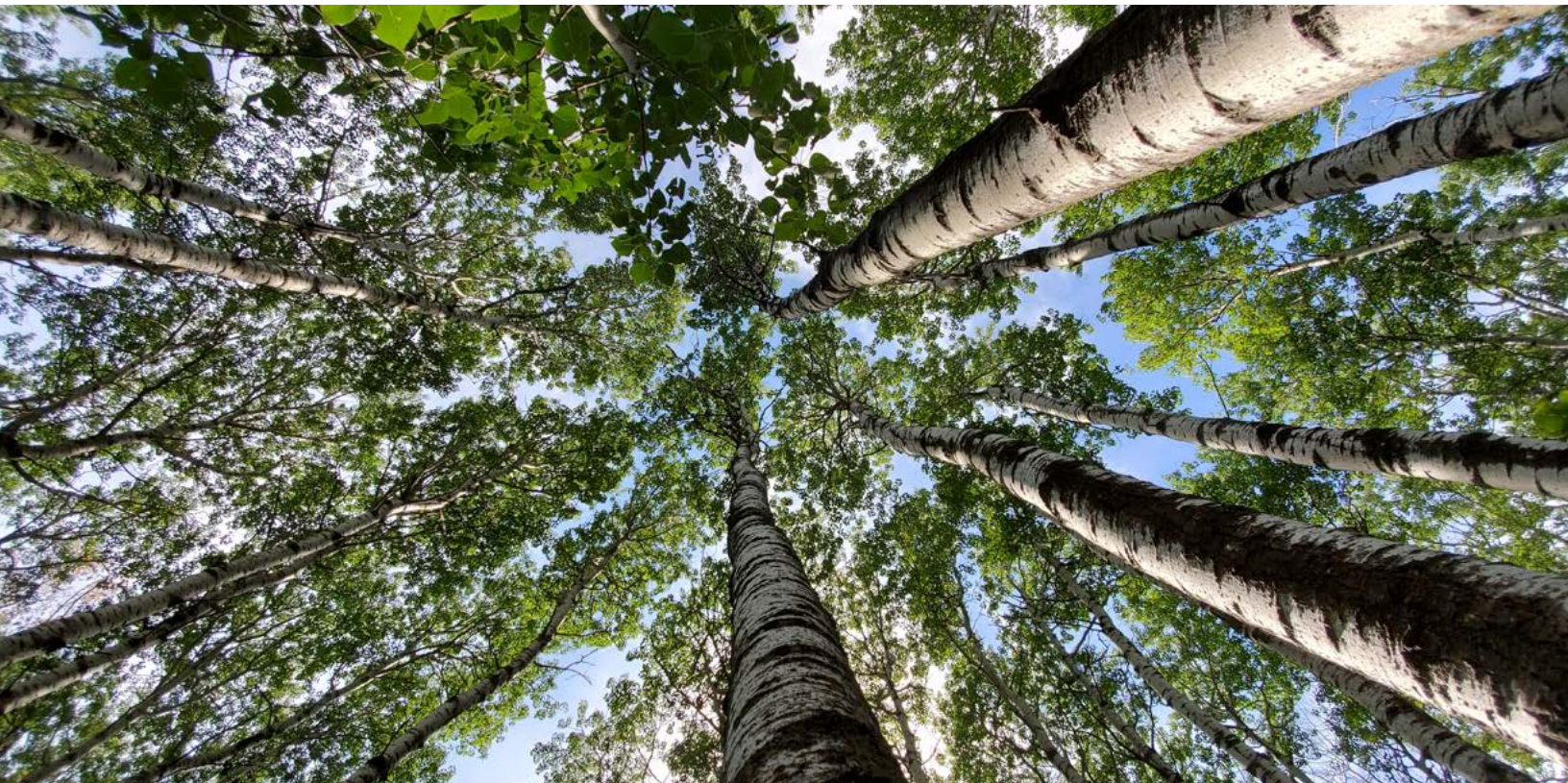
**Strategy 3.2a:** Manage existing forests to improve health

**Strategy 3.2b:** Reduce forest conversion

**Strategy 3.2c:** Plant new trees to increase carbon sequestration

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# North Dakota Forest Action Plan



# NDSU

Partial funding for this report is made available through support from the USDA Forest Service State and Private Forestry Program.

Any inquiries about the North Dakota Forest Service insect trapping or the Forest Health Program in general can be directed to [Lezlee.Johnson@ndsu.edu](mailto:Lezlee.Johnson@ndsu.edu) or (701) 231-5138. This publication is available in alternative formats by calling (701) 231-5138.

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Outdoor Heritage Fund  
Grant Round 24  
Application Summary Page  
**GR 24-5**

Project Title: Belfield Dam Improvement  
Applicant: City of Belfield  
Primary Contact: Jeff Iverson  
Total Project Costs: \$193,500  
OHF Request: \$145,125

Match Amount	Funding Source	Match Type
\$48,375	City of Belfield	Cash
\$48,375.00	Total	

Percentage of Matching Funds: 25%

Project Duration: June 2024 through October 2024

Major Directive: C

Additional Directive: B

Summary of Project: Repair the bank and regrade, establish a beach area, install a kayak ramp, fix pavement for the path, and build two storm shelters.

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Technical Committee Comments:

- Great project to provide access for local kids to fish
- Big part of the local community, active local club involvement
- Questions raised if the path repairment would fall under maintenance, may consider removing that portion from an approved project

Technical questions from the OHF Advisory Board members:

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City of Belfield has not previously received funds.

**\*Total OHF funds awarded to date: \$0.00. Total OHF funds spent to date: \$0.00.**

City of Belfield has not submitted any unsuccessful applications.

# Outdoor Heritage Fund Grant Application



## Instructions

After completing the form, applications and supporting documentation may be submitted by e-mail to [ndicgrants@nd.gov](mailto:ndicgrants@nd.gov). It is preferred that only electronic copies are submitted.

You are not limited to the spacing provided, except in those instances where there is a limit on the number of words. If you need additional space, please indicate that on the application form, answer the question on a separate page, and include with your submission.

The application and all attachments must be received by the application deadline. You may submit your application at any time prior to the application deadline. **Applicants are strongly encouraged to submit applications prior to the deadline for staff review in order ensure that proposals will be complete when submitted on deadline date.** Incomplete applications may not be considered for funding.

**Please review the back of this form to determine project eligibility, definitions, budget criteria, and statutory requirements.**

Project Name: Belfield Dam Improvement

Name of Organization: City of Belfield

Federal Tax ID#: 45-6002034

Contact Person/Title: Jeff Iverson – Mayor 701-290-9581

Address: PO Box 5

City: Belfield

State: North Dakota

Zip Code: 58622

E-mail Address: [audito@cityofbelfield.com](mailto:audito@cityofbelfield.com)

Web Site Address (If applicable) [Cityof Belfield.com](http://CityofBelfield.com)

Phone: (701)-525-4235

List names of co-applicants if this is a joint proposal

Roger Decker – 701-290-7245, [rogergdecker@hotmail.com](mailto:rogergdecker@hotmail.com), Belfield Sportsman Club.

**MAJOR Directive:**

Choose only one response

**Directive A.** Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat and provide access for sportsmen;

**Directive B.** Improving, maintaining and restoring water quality, soil conditions, plant diversity, animal systems and by supporting other practices of stewardship to enhance farming and ranching;

**Directive C.** Developing, enhancing, conserving and restoring wildlife and fish habitat on private and public lands; and

**Directive D.** Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.

**Additional Directive:**

Choose all that apply

**Directive A.**

**Directive B.**

**Directive C.**

**Directive D.**

**Type of organization:**

State Agency

Political Subdivision

Tribal Entity

Tax-exempt, nonprofit corporation.

**Abstract/Executive Summary.**

Summarize the project, including its objectives, expected results, duration, total project costs and participants. (no more than 500 words)

The project would begin with bank repair and regrading. Once restored and ready for riprap type RR fabric will be placed with riprap on top. This will provide the protection needed to prevent any further erosion to the banks of the dam. The beach area will be established to give the residents a place to lay in the sun and enjoy the dam. The kayak ramp will help give easier access to those who wish to kayak at the dam. Fixing the path pavement in the plan sheet will help bring the remaining portion of path up to a quality of the rest of the path. The two proposed storm shelters will give anyone a chance to get out of storm if they were to get caught on the path while a storm blows through. This proposed project is to improve the

overall quality of the dam to give the public the best recreation experience in the City of Belfield.

**Project Duration: June 2024 – October 2024**

**Indicate the intended schedule for drawing down OHF funds: September 2024 – December 2025**

**Amount of Grant request: \$145,125.00**

**Total Project Costs: \$193,500.00**

Note: in-kind and indirect costs can be used for matching funds.

**Amount of Matching Funds: \$48,375.00**

**A minimum of 25% Match Funding is required.** Indicate if the matching funds will be in-kind, indirect or cash. Please provide verification that these matching funds are available for your project. Note that effective as of July 1, 2015 no State General Fund dollars can be used for a match unless funding was legislatively appropriated for that purpose.

Amount of Match	Funding Source	Type of Match (Cash, In-kind or Indirect)
\$48,375.00	City of Belfield	Cash
\$		
\$		
\$		
\$		
\$		

**Certifications**

I certify that this application has been made with the support of the governing body and chief executive of my organization.

I certify that if awarded grant funding none of the funding will be used for any of the exemptions noted in the back of this application.

## Narrative

### **Organization Information – Briefly summarize your organization’s history, mission, current programs and activities.**

Include an overview of your organizational structure, including board, staff and volunteer involvement. (no more than 300 words)

Belfield Sportsman Club has been in existence since 1992 and has done many improvements to areas around the dam. They have put in a floating fishing pier, floating kayak launch, five fishing piers, trees and a walking path which was just recently renovated with new pavement. The drainpipe is currently under repair and the sportsman club is funding 1/3 of the total expenses. Belfield Sportsman’s Club wishes to continue to improve the Dam as it is a key resource to the community for fishing and other various leisure activities.

### **Purpose of Grant – Describe the proposed project identifying how the project will meet the specific directive(s) of the Outdoor Heritage Fund Program**

Identify project goals, strategies and benefits and your timetable for implementation. Include information about the need for the project and whether there is urgency for funding. Indicate if this is a new project or if it is replacing funding that is no longer available to your organization. Identify any innovative features or processes of your project. Note: if your proposal provides funding to an individual, the names of the recipients must be reported to the Industrial Commission/Outdoor Heritage Fund. These names will be disclosed upon request.

For tree/shrub/grass plantings: provide a planting plan describing the site design, planting methods, number of trees/shrubs by species and stock size, grass species and future maintenance. A statement certifying that the applicant will adhere to USDA-NRCS tree/shrub/grass planting specifications along with the name of the governmental entity designing the planting may be substituted for a planting plan.

For projects including Section 319 funding: provide in detail the specific best management practices that will be implemented and the specific projects for which you are seeking funding.

For projects including fencing: A minimum cost share of 40% by the recipient is preferred. Include detailed information on the type of fencing to be installed, whether funding is requested for boundary fencing, new or replacement of existing fencing, and/or cross fencing.

Currently the dam has experienced erosion on the banks due to wind and wave action. The plan is to revamp the dam in slopes and provide the proper protection with riprap to prevent any further erosion. From the erosion some of the normal fishing areas are not as deep as they used to be, this material would be removed and disposed of. With storm shelters the public will have a place to seek shelter if they were caught in a surprise storm at a location on the path furthest from the parking area. The beach area will give a space for kids to play and build sandcastles. Overall this project is to make improvements to the dam so it can be utilized to its fullest potential.

Is this project part of a Comprehensive Conservation Plan?  Yes  No

If yes, provide a copy with the application.

*Note: Projects involving buildings and infrastructure will only be considered if part of a Comprehensive Conservation Plan. Please refer to the “Definitions” section at the back of the form for more details.*



**Management of Project – Provide a description of how you will manage and oversee the project to ensure it is carried out on schedule and in a manner that best ensures its objectives will be met.**

Include a brief background and work experience for those managing the project.

Construction management services will be handled by Jeff Iverson of the City and Roger Decker of the Belfield Sportsman Club.

**Evaluation – Describe your plan to document progress and results.**

Please be specific on the methods you will utilize to measure success. Note that regular reporting, final evaluation and expenditure reports will be required for every grant awarded.

Through inspection, Daily diary reports will be filled out with description of work performed that day. These reports will also include equipment used, project personnel, weather, and timeframe of work.

**Financial Information**

**Project Budget – Use the table below to provide an itemized list of project expenses and describe the matching funds being utilized for this project.**

Indicate if the matching funds are in the form of cash, indirect costs or in-kind services. The budget should identify all other committed funding sources and the amount of funding from each source. **A minimum of 25% match funding is required.** An application will be scored higher the greater the amount of match funding provided. (See Scoring Form.)

Certain values have been identified for in-kind services as detailed under “Budget Information” at the back of this form. Refer to that section and utilize these values in identifying your matching funds.

**NOTE: No indirect costs will be funded. Supporting documentation for project expenses, including bids, must be included or application will be considered incomplete.**

Project Expense	OHF Request	Applicant's Match Share (Cash)	Applicant's Match Share (In-Kind)	Applicant's Match Share (Indirect)	Other Project Sponsor's Share	Total Each Project Expense
Belfield Dam Improvement	<b>\$145,125.00</b>	<b>\$48,375.00</b>	\$	\$	\$	\$193,500.00
	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$
<b>Total Costs</b>	<b>\$145,125.00</b>	<b>\$48,375.00</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$193,500.00</b>

Note: Costs for seeding, fencing, pipelines, wells, and cover crops cannot exceed NRCS Field Office Tech Guide without justification. Projects involving perimeter fencing must follow NRCS eligibility standards.

**Budget Narrative – Use the space below to provide additional detail regarding project expenses.**

A 5% engineering cost has been included in the budget in regard to administration and construction engineering purposes. This will be utilized as requested by the city if needed during construction phases of the project.

**Sustainability – Indicate how the project will be funded or sustained in future years.**

Include information on the sustainability of this project after OHF funds have been expended and whether the sustainability will be in the form of ongoing management or additional funding from a different source.

By placing riprap along the banks of the dam, the idea is the banks will not erode into the dam anymore. This will then be self-sustaining once the proper protection and riprap is installed.

**Partial Funding – Indicate how the project will be affected if less funding is available than that requested.**

**Less funding will cause the project to be downscaled, which will create less dredging. Less riprap will be installed potentially making further erosion and issue. Essentially the project may not be able resolve all the issues that have created this situation.**

**Partnership Recognition - If you are a successful recipient of Outdoor Heritage Fund dollars, how would you recognize the Outdoor Heritage Fund partnership? *\* There must be signage at the location of the project acknowledging OHF funding when appropriate.***

**Awarding of Grants - Review the appropriate sample contract for your organization on the website at <http://www.nd.gov/ndic/outdoor-infopage.htm>.**

Can you meet all the provisions of the sample contract?  Yes  No

If there are provisions in that contract that your organization is unable to meet, please indicate below what those provisions would be:

**ABOUT OHF:**

The purpose of the North Dakota Outdoor Heritage Fund is to provide funding to state agencies, tribal governments, political subdivisions, and nonprofit organizations, with higher priority given to projects that enhance **conservation** practices in this state by:

**Directive A.** Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat and provide access for sportsmen;

**Directive B.** Improving, maintaining and restoring water quality, soil conditions, plant diversity, animal systems and by supporting other practices of stewardship to enhance farming and ranching;

**Directive C.** Developing, enhancing, conserving and restoring wildlife and fish habitat on private and public lands; and

**Directive D.** Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.

## **EXEMPTIONS**

Outdoor Heritage Fund grants may not be used to finance the following:

- Litigation;
- Lobbying activities;
- Any activity that would interfere, disrupt, or prevent activities associated with surface coal mining operations; sand, gravel, or scoria extraction activities; oil and gas operations; or other energy facility or infrastructure development;
- The acquisition of land or to encumber any land for a term longer than twenty years; or
- Projects outside this state or projects that are beyond the scope of defined activities that fulfill the purposes of Chapter 54-17.8 of the North Dakota Century Code.

OHF funds may not be used, except after a finding of exceptional circumstances by the Industrial Commission, to finance:

- A completed project or project commenced before the grant application is submitted;
- A feasibility or research study;
- Maintenance costs;
- A paving project for a road or parking lot;
- A swimming pool or aquatic park;
- Personal property that is not affixed to the land;
- Playground equipment, except that grant funds may be provided for up to 25% of the cost of the equipment not exceeding \$10,000 per project and all playground equipment grants may not exceed 5% of the total grants per year (see Definitions/Clarifications for how this will be calculated);
- Staffing or outside consultants except for costs for staffing or an outside consultant to design and implement an approved project based on the documented need of the applicant and the expenditures may not exceed 5% of the grant to a grantee if the grant exceeds \$250,000 and expenditures may not exceed 10% of the grant to a grantee if the grant is \$250,000 or less (see Definitions/Clarifications for how this will be calculated);
- A building except for a building that is included as part of a comprehensive conservation plan for a new or expanded recreational project (see Definitions/Clarifications for definition of comprehensive conservation plan and new or expanded recreational project); or
- A project in which the applicant is not directly involved in the execution and completion of the project

The goal of the Industrial Commission is that at a minimum 15% of the funding received for a biennium will be given priority for recreation projects that meet Directive D.

The following projects are not eligible for funding, unless there is a finding of exceptional circumstances by the Industrial Commission include:

- Construction or refurbishment of indoor/outdoor ice rinks,
- Construction or refurbishment of indoor/outdoor athletic courts and sports fields,
- Other substantially similar facilities.
- Infrastructure that is not part of a comprehensive conservation plan.
- Projects not meeting a minimum funding request of \$2,500.

## Budget Information

In-kind services used to match the request for Outdoor Heritage Fund dollars shall be valued as follows:

- Labor costs \$15.00 an hour
- Land costs Average rent costs for the county as shown in the most recent publication of the USDA, National Agricultural Statistics Services, North Dakota Field Office
- Permanent Equipment Any equipment purchased must be listed separately with documentation showing actual cost. (For example: playground equipment)
- Equipment usage Actual documentation
- Seed & Seedlings Actual documentation
- Transportation Mileage at federal rate
- Supplies & materials Actual documentation

More categories will be added as we better understand the types of applications that will be submitted. We will use as our basis for these standards other State and Federal programs that have established rates. For example, the North Dakota Nonpoint Source Pollution Management Program has established rates. If your project includes work that has an established rate under another State Program, please use those rates and note your source.

## **Definitions/Clarifications:**

**Building** - Defined as "A structure with a roof either with walls or without walls and is attached to the ground in a permanent nature."

**Comprehensive Conservation Plan** - Defined as "A detailed plan that has been formally adopted by the governing board which includes goals and objectives--both short and long term, must show how this building will enhance the overall conservation goals of the project and the protection or preservation of wildlife and fish habitat or natural areas." This does not need to be a complex multi-page document. It could be included as a part of the application or be an attachment.

**New and Expanded Recreational Project** means that the proposed building cannot be a replacement of a current building. The proposed building must also be related to either a new or expanded recreational project--either an expansion in land or an expansion of an existing building or in the opportunities for recreation at the project site.

**Playground equipment calculation** - Only the actual costs of the playground equipment (a bid or invoice showing the amount of the equipment costs must be provided) - cannot include freight or installation or surface materials or removal of old equipment, etc.

**Staffing/Outside Consultants Costs** - If you are requesting OHF funding for staffing or for an outside consultant, you must provide information in your application on the need for OHF funding to cover these costs. For example, if you are an entity that has engineering staff you must explain why you don't have

sufficient staff to do the work or if specific expertise is needed or whatever the reason is for your entity to retain an outside consultant. If it is a request for reimbursement for staff time then a written explanation is required in the application of why OHF funding is needed to pay for the costs of that staff member(s) time. **The budget form must reflect on a separate line item the specific amount that is being requested for staffing and/or the hiring of an outside consultant.** This separate line item will then be used to make the calculation of 5% or 10% as outlined in the law. Note that the calculation will be made on the grant less the costs for the consultant or staff.

**Maintenance** – Activities that preserve or keep infrastructure in a given existing condition, including repairs. Repair means to restore to sound condition after damage, to renew or refresh; except repairs due to damage caused by Acts of God.

## Scoring of Grants

**Oral Presentation.** Please note that you will be given an opportunity to make a ten-minute Oral Presentation at a meeting of the Outdoor Heritage Fund Advisory Board. These presentations are strongly encouraged.

**Open Record.** Please note that your application and any attachments will be open records as defined by law and will be posted on the Industrial Commission/Outdoor Heritage Fund website.

All applications will be scored by the Outdoor Heritage Fund Advisory Board after your ten-minute oral presentation. The ranking form that will be used by the Board is available on the website at <http://www.nd.gov/ndic/outdoor-infopage.htm> .

## Awarding of Grants

All decisions on requests will be reported to applicants no later than 30 days after Industrial Commission consideration. The Commission can set a limit on duration of an offer on each application or if there isn't a specific date indicated in the application for implementation of the project, then the applicant has until the next Outdoor Heritage Fund Advisory Board regular meeting to sign the contract and get the project underway or the commitment for funding will be terminated and the applicant may resubmit for funding. Applicants whose proposals have been approved will receive a contract outlining the terms and conditions of the grant.

## Responsibility of Recipient

The recipient of any grant from the Industrial Commission must use the funds awarded for the specific purpose described in the grant application and in accordance with the contract. The recipient cannot use any of the funds for the purposes stated under Exemptions on the first page of this application.

If you have any questions about the application, the Commission can be reached at 701-328-3722 or [outdoorheritage@nd.gov](mailto:outdoorheritage@nd.gov).

Revised: November 4, 2019, April 12, 2023

DESIGNED BY: NB

DRAWN BY: KD

DATE PRINTED: 04/11/24

DATE

xx/xx/xx

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2

3

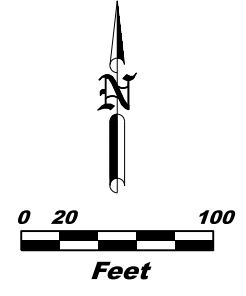
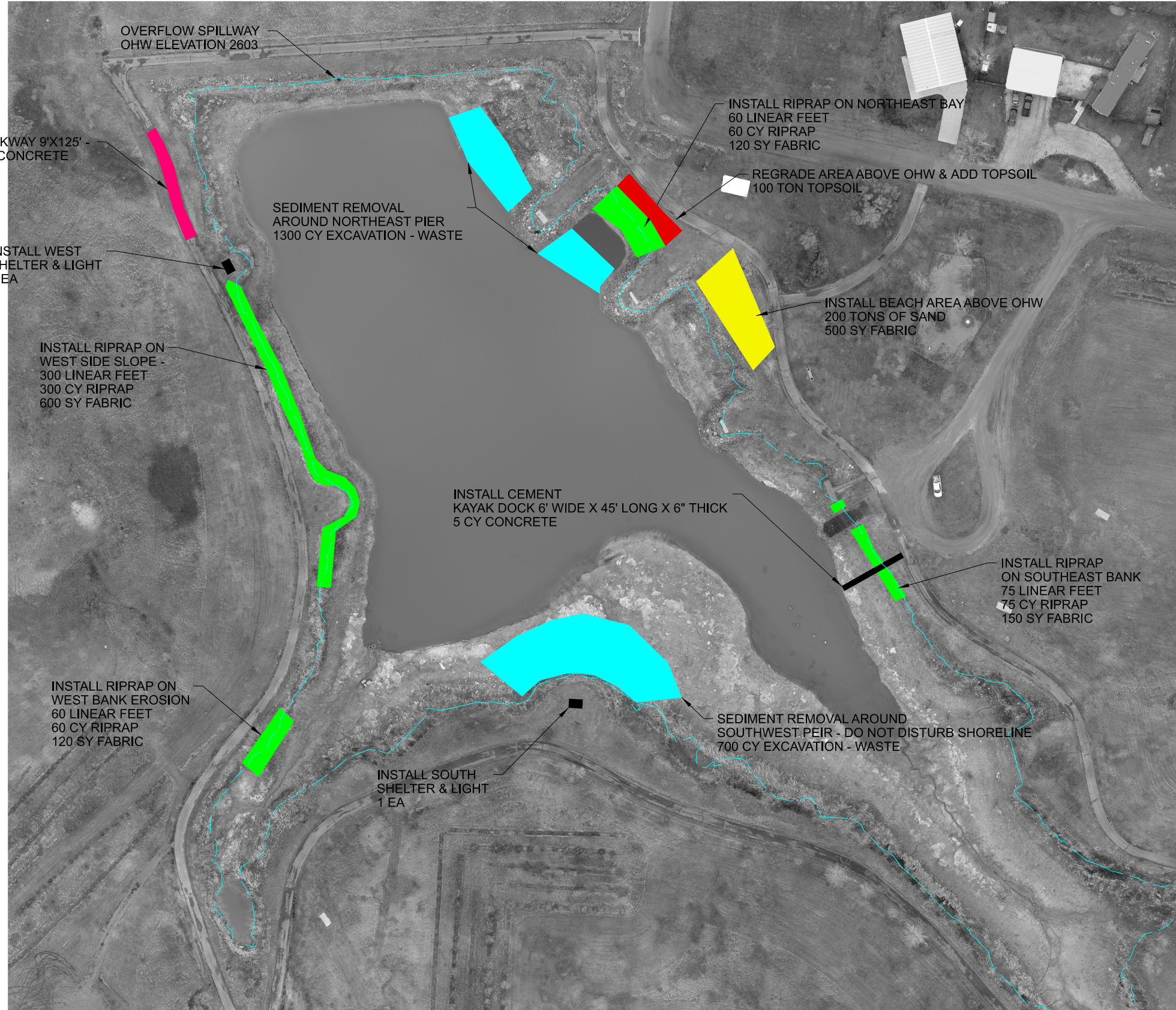
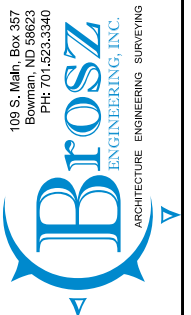
4

SHEET DESCRIPTION: BELFIELD DAM IMPROVEMENTS

PROJECT NAME: BELFIELD DAM

PROJECT NO.: 2401017

109 S. Main, Box 357  
Bowman, ND 58623  
PH: 701.523.3340



Outdoor Heritage Fund  
Grant Round 24  
Application Summary Page  
**GR 24-10**

Project Title: Bakken Development and Working Lands Program III  
Applicant: North Dakota Natural Resources Trust  
Primary Contact: Jessie Beckers  
Total Project Costs: \$5,462,400  
OHF Request: \$3,125,000

Match Amount	Funding Source	Match Type
\$50,000	Natural Resources Trust	Cash
\$25,000	Natural Resources Trust	In-Kind
\$200,000	ND Wildlife Federation	Cash
\$1,287,400	ND Dept. of Mineral Resources	Cash
\$375,000	Landowners	Cash
\$1,937,400.00	Total	

Percentage of Matching Funds: 43%

Project Duration: 2024 through 2029

Major Directive: A

Additional Directive: B

Summary of Project: Improve water quality and soil health on tillable and non-tillable lands, while reducing impacts to wildlife. Participation in PLOTS is not required to receive 75% cost share, but for those that are eligible and agree to a minimum five-year PLOTS contract, the North Dakota Game and Fish Department (NDGF) will provide an additional 15% cost share on wildlife-friendly fencing and water development project-wide, while the North Dakota Wildlife Federation (NDWF) will provide 25% cost share in Dunn and McKenzie counties. Cost share will never exceed 100% of costs.

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Technical Committee Comments:

- Discussed historic brine ponds in north-central North Dakota

Technical questions from the OHF Advisory Board members:

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## Funded Projects

Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
2-20	\$400,000	Water Storage Piggyback	\$300,000	\$300,000	Completed
<sup>1</sup> 5-77	\$257,441	Beginning Farmer Enhancement	\$132,884	\$132,844	Completed
6-90	\$1,467,250	Working Grassland Partnership	\$1,097,250	\$1,094,637.30	Completed
<sup>2</sup> 8-97	\$438,681	Grasslands Enhancement Pilot Project	\$230,000	\$181,133.71 <sup>3</sup>	Completed
<sup>4</sup> 9-109	\$500,000	Water Storage and Grass Seeding	\$67,500	\$64,131.50	Completed
<sup>5</sup> 9-112	\$250,420	Grand Forks County Prairie Management Toolbox	\$121,200	\$97,353	Completed
<sup>6</sup> 10-115	\$1,773,750	Working Grassland Partnership (Phase II)	\$903,750	\$753,826.13	2017-2027
11-124	\$743,250	Working Grassland Partnership Phase III	\$396,850	\$396,850	Completed
11-128	\$3,855,000	Bakken Development & Working Lands Program	\$2,170,000	\$1,887,240.46	2018-2023
12-131	\$277,700	Livestock & Wildlife Dams - Creation & Enhancement	\$138,850	\$138,850	Completed
<sup>7</sup> 13-140	\$255,000	ND Grassland Restoration Project	\$104,500	\$104,396.81	Completed
14-154	\$2,235,000	Working Grassland Partnership IV	\$1,225,000	\$1,105,921.89	2019-2023
15-160	\$255,000	North Dakota Grassland Restoration Project 2	\$100,000	\$94,972.34	Completed
17-173	\$6,390,383	Bakken Development and Working Lands Program II	\$3,308,100	\$1,297,370.01	2020-2025
17-174	\$1,303,000	North Dakota Partners For Wildlife Project	\$716,500	\$585,405.40	2020-2024

<sup>1</sup> Returned commitment of \$40.

<sup>2</sup> Ducks Unlimited is co-applicant.

<sup>3</sup> Returned commitment of 48,886.30.

<sup>4</sup> Returned cash of \$3,368.50.

<sup>5</sup> Audubon Dakota is co-applicant and returned commitment of \$23,867.27.

<sup>6</sup> Co-applicants are ND Association of Soil Conservation Districts, Ducks Unlimited, and Pheasants Forever.

<sup>7</sup> Returned commitment of \$103.19.



18-178	\$495,000	Wildlife and Livestock Dams - Wetlands Creation, Restoration and Enhancement	\$240,000	\$122,989.62	2021-2025
18-179	\$2,150,000	Grazing Resiliency in the Bakken (GRB)	\$1,270,000	\$621,996.26	2021-2026
19-194	\$1,857,500	Working Grassland Partnership 5	\$985,000	\$690,604.06	2021-2026
20-197	\$1,734,800	North Dakota Partners For Wildlife Project 2	\$1,016,500	\$523,178.05	2022-2026
20-198	\$3,280,000	Grazing Resiliency in the Bakken (GRB) II	\$1,970,000	\$645,546.36	2022-2025
21-211	\$1,410,000	Working Grasslands Partnership 6	\$740,000	\$283,815.68	2022-2027
22-221	\$3,387,000	North Dakota Partners for Wildlife Project 3	\$1,957,500	\$121,012.98	2023-2028
23-230	\$520,500	Wildlife and Livestock Dams – Wetlands Creation, Restoration, and Enhancement II	\$267,750	\$0.00	2023-2027
<b>Totals</b>	<b>\$35,236,675.00</b>		<b>\$19,459,134.00</b>	<b>\$11,233,075.56</b>	

### Unsuccessful Applications

Round	Request	Total Project Cost	Title	Vote
1-DDD	\$3,750,000	\$4,405,000	Working Lands Partnership	5-7
3-22	\$3,525,000	\$4,700,000	Conservation Cover Program (Pilot)	1-10
11-17	\$897,250	\$1,847,250	Dakota Skipper Habitat Enhancement Project	4-8
13-9	\$897,250	\$1,847,250	Dakota Skipper Habitat Restoration/Enhancement Partnership	5-5
<b>Totals</b>	<b>\$9,069,500.00</b>	<b>\$12,799,500.00</b>		

# Outdoor Heritage Fund Grant Application



## Instructions

After completing the form, applications and supporting documentation may be submitted by e-mail to [ndicgrants@nd.gov](mailto:ndicgrants@nd.gov). It is preferred that only electronic copies are submitted.

You are not limited to the spacing provided, except in those instances where there is a limit on the number of words. If you need additional space, please indicate that on the application form, answer the question on a separate page, and include with your submission.

The application and all attachments must be received by the application deadline. You may submit your application at any time prior to the application deadline. **Applicants are strongly encouraged to submit applications prior to the deadline for staff review in order ensure that proposals will be complete when submitted on deadline date.** Incomplete applications may not be considered for funding.

**Please review the back of this form to determine project eligibility, definitions, budget criteria, and statutory requirements.**

Project Name: Bakken Development and Working Lands Program III

Name of Organization: North Dakota Natural Resources Trust

Federal Tax ID#: 36-3512179

Contact Person/Title: Jesse Beckers/Energy Program Manager

Address: 1605 East Capitol Ave., Ste. 101

City: Bismarck

State: North Dakota

Zip Code: 58501

E-mail Address: [jesse@naturalresourcestrust.com](mailto:jesse@naturalresourcestrust.com)

Web Site Address (If applicable): [www.ndnrt.com](http://www.ndnrt.com)

Phone: 701-223-8501

List names of co-applicants if this is a joint proposal

## MAJOR Directive:

Choose only one response

X **Directive A**. Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat and provide access for sportsmen;

**Directive B.** Improving, maintaining and restoring water quality, soil conditions, plant diversity, animal systems and by supporting other practices of stewardship to enhance farming and ranching;

**Directive C.** Developing, enhancing, conserving and restoring wildlife and fish habitat on private and public lands; and

**Directive D.** Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.

**Additional Directive:**

Choose all that apply

**Directive A.**

**Directive B.**

**Directive C.**

**Directive D.**

**Type of organization:**

State Agency

Political Subdivision

Tribal Entity

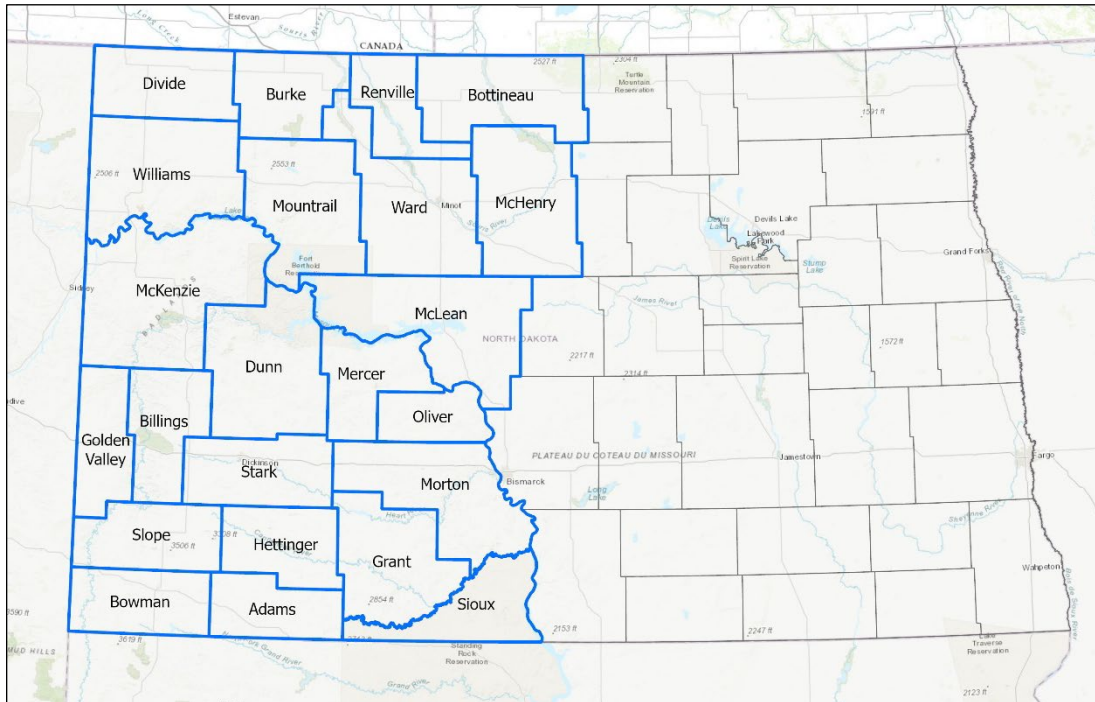
Tax-exempt, nonprofit corporation.

**Abstract/Executive Summary.**

Summarize the project, including its objectives, expected results, duration, total project costs and participants. (no more than 500 words)

Improvements to grazing operations, increased public access, and reclamation on public lands in western North Dakota continue to be in high demand. To address this, Bakken Development and Working Lands Program III (BDWLP III) provides innovative approaches along with high-demand practices to address these needs in west river and oil producing counties (see map below). BDWLP III will be limited in scope compared to previous iterations of the program because the Little Missouri National Grasslands (LMNG) projects have funding to complete their commitments, and other OHF-funded programs cover grass seeding and crop activities. BDWLP III projects will be designed to improve water quality and soil health on tillable and non-tillable lands, while reducing impacts to wildlife. To increase public access opportunities, Private Lands Open to Sportsmen (PLOTS) information will be provided to landowners interested in BDWLP III funds. Participation in PLOTS is not required to receive 75% cost share, but for those that are eligible and agree to a minimum five-year PLOTS contract, the North Dakota Game and Fish Department (NDGF) will provide an additional 15% cost share on wildlife-friendly fencing and water development project-wide,

while the North Dakota Wildlife Federation (NDWF) will provide 25% cost share in Dunn and McKenzie counties. Cost share will never exceed 100% of costs.



***BDWLP III Project Area***

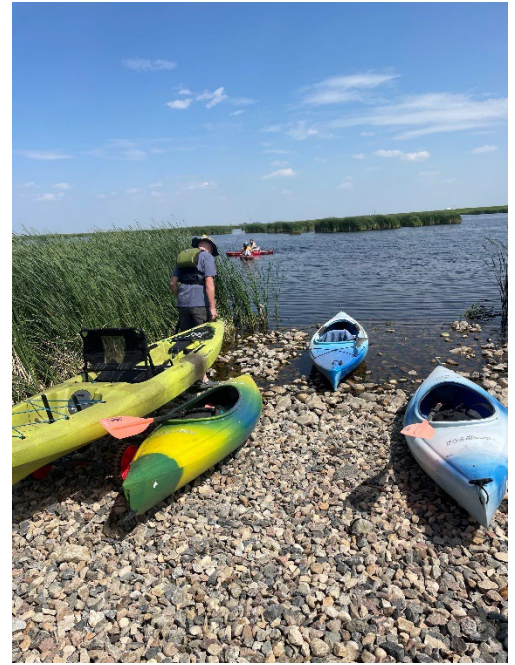
In western North Dakota, winter creates unique demands for animal survival. The winter of 2022-2023 was especially arduous for wildlife and livestock seeking shelter. Landowners witnessed livestock moving into riparian areas during storms and pushing out wildlife, creating extreme stress for big game in particular. By providing cost share on portable windbreaks, livestock will be sheltered from the elements while protecting sensitive winter habitat areas for wildlife.

A significant component of BDWLP III is the reclamation of public land where no responsible parties exist. Combining diverse partnerships leverages funding from the North Dakota Department of Mineral Resources (DMR) and provides opportunities for abandoned sites to be reclaimed, benefiting the producer through establishing additional livestock forage and providing public access for hunting, birding, or other recreational opportunities.

The first Bakken Development and Working Lands Program (BDWLP I) had all funding committed, with program completion in October 2023. A total of 64 agreements were signed for 32,513 acres of grassland improvement on private land. An additional 38,832 acres of grasslands were improved on the LMNG. Two community projects were completed (Watford City and Dunn Center). For reclamation work, contaminated sites were reclaimed on Beaver Lake Waterfowl Production Area in Burke County, which is now open to grazing and has improved public access.



*Beaver Lake exposed pipeline and salt contamination*



*New Beaver Lake boat launch*



*Contaminated soil removed and newly established vegetation on wetland near Beaver Lake*

BDWLP II funding has been fully committed. There are 84 signed agreements with landowners and work on the LMNG continues with Grazing Associations. All reclamation dollars provided by OHF and DMR have been committed, with BDWLP II program completion expected in 2025. The OHF has been critical in helping to achieve natural resource and associated farming/ranching improvements for these programs.

**Project Duration:** Five years

**Indicate the intended schedule for drawing down OHF funds.**

- 2024 – Landowner outreach with contractors, partners, and project planning. Begin preparing reclamation sites on Beaver Lake Waterfowl Production Area for work in 2025. Media outreach regarding projects and vital role of OHF. 30% of OHF funds spent.
- 2025 – Landowners complete projects and reclamation work (soil removal, re-grading, seeding, vegetation cover) underway. 45% of OHF funds spent.
- 2026 – Landowner projects completed or near completion. Heavy equipment work completed on reclamation projects. Vegetation monitoring on reclaimed lands. Media outreach regarding projects and vital role of OHF. 20% OHF funds spent.
- 2027 – 2029 – All projects and reporting requirements completed. Final 5% OHF funds spent.

**Amount of Grant request: \$3,125,000.00**

**Total Project Costs: \$5,462,400.00**

Note: in-kind and indirect costs can be used for matching funds.

**Amount of Matching Funds: \$1,937,400.00**

**A minimum of 25% Match Funding is required.** Indicate if the matching funds will be in-kind, indirect or cash. Please provide verification that these matching funds are available for your project. Note that effective as of July 1, 2015, no State General Fund dollars can be used for a match unless funding was legislatively appropriated for that purpose.

Amount of Match	Funding Source	Type of Match (Cash, In-kind or Indirect)
\$50,000	Natural Resources Trust	Cash
\$25,000	Natural Resources Trust	In-Kind
\$200,000	ND Wildlife Federation	Cash
\$1,287,400	ND Dept. Of Mineral Resources	Cash
\$375,000	Landowners	Cash
<b>\$1,937,400</b>	<b>Total Match</b>	

**Certifications**

X I certify that this application has been made with the support of the governing body and chief executive of my organization.

X I certify that if awarded grant funding none of the funding will be used for any of the exemptions noted in the back of this application.

## Narrative

### **Organization Information – Briefly summarize your organization’s history, mission, current programs and activities.**

Include an overview of your organizational structure, including board, staff and volunteer involvement. (no more than 300 words)

The North Dakota Natural Resources Trust was created in 1986 and was originally called the North Dakota Wetlands Trust. In 2000, with passage of the Dakota Water Resources Act, the Trust’s mission was broadened, and it was renamed the Natural Resources Trust. The Trust’s mission is to promote the retention, restoration, creation and wildlife friendly management of wetlands, grasslands, and riparian areas by presenting practical conservation opportunities throughout North Dakota. The Trust achieves this mission by partnering with agricultural and conservation organizations 1) to promote productive use of private agricultural lands that result in enhancement and protection of private lands, 2) to effectively use North Dakota’s public lands both for agriculture and recreation, 3) to promote good land use along urban river corridors, and 4) to enhance the state’s significant water resources.

The Trust is managed by a six-member board of directors. Three of the directors are appointed by the governor of North Dakota, one by the National Audubon Society, one by the National Wildlife Federation, and one by the North Dakota Chapter of The Wildlife Society. The North Dakota Game and Fish Department Director is an ex-officio member. The Trust has an Executive Director and six staff members.

From its inception, the Trust has played a role as a facilitator between agricultural and conservation interests. In addition to facilitating and funding sound, on-the-ground conservation of natural resources, its goal is to identify common issues, create dialogue, and resolve conflicts.

### **Purpose of Grant – Describe the proposed project identifying how the project will meet the specific directive(s) of the Outdoor Heritage Fund Program**

Identify project goals, strategies and benefits and your timetable for implementation. Include information about the need for the project and whether there is urgency for funding. Indicate if this is a new project or if it is replacing funding that is no longer available to your organization. Identify any innovative features or processes of your project. Note: if your proposal provides funding to an individual, the names of the recipients must be reported to the Industrial Commission/Outdoor Heritage Fund. These names will be disclosed upon request.

For tree/shrub/grass plantings: provide a planting plan describing the site design, planting methods, number of trees/shrubs by species and stock size, grass species and future maintenance. A statement certifying that the applicant will adhere to USDA-NRCS tree/shrub/grass planting specifications along with the name of the governmental entity designing the planting may be substituted for a planting plan.

For projects including Section 319 funding: provide in detail the specific best management practices that will be implemented and the specific projects for which you are seeking funding.

For projects including fencing: A minimum cost share of 40% by the recipient is preferred. Include detailed information on the type of fencing to be installed, whether funding is requested for boundary fencing, new or replacement of existing fencing, and/or cross fencing.

Over the next five years, the goal of BDWLP III is to enhance private agricultural lands and public property through voluntary grazing and grassland conservation practices in the oil-producing counties of North Dakota. BDWLP III will provide landowners with a ten-year partnership agreement with buyback provisions, technical support, voluntary terms, and cost share.

**Grazing Systems:** BDWLP III will fund grazing system developments that include livestock water, fencing and wind break panels. The developments will be cost shared at a rate of 75% from the grant and 25% from landowners. Technical advice will be provided to applicants through the Trust and our contracted field representatives and developed in consultation with landowners. Landowners will select the fence type that will best meet their operation need. However, wildlife friendly fence must be used to receive additional cost share payments through PLOTS. Fencing cost share will be provided at a per foot rate and will be adjusted to accommodate the different fence types. The rate will be based on USDA Tech Guide Allowable costs with the full funding rate determined by current NRCS practice scenario amount. Boundary fence cost share will be provided if a landowner is currently a part of the PLOTS program or if they are willing to place that land in PLOTS and are accepted by NDGF. All associated PLOTS contracts must be for a minimum of five years. Water development cost sharing will be provided based on documented actual costs. Due to the nature of the geology in western North Dakota, we propose cost sharing wells at 75% up to 400 feet. If fresh water cannot be found in the first 400 feet, the rest of the cost would be the landowner's responsibility. On a case-by-case basis, the Trust will consider providing additional cost share for components of the grazing system that may not be considered under current OHF guidelines. The BDWLP III will give private landowners an opportunity to combine conservation practices in a way that helps them achieve their desired management outcomes. It will also provide an opportunity for landowners to receive additional cost share and/or access payments while providing recreational opportunities for the public through the PLOTS program.

**Reclamation:** BDWLP III includes a reclamation component to provide opportunities for sites to be restored and benefit the landowner, the renter, and habitat. The eligible non-general fund dollars provided through DMR and the partnership with OHF has been extraordinarily successful. As with previous iterations of BDWLP, this partnership has opened a large portion of Beaver Lake Waterfowl Production Area (WPA) in Burke County to grazing management, while reclaiming contaminated soils and materials. This also created a public access point for outdoor enthusiasts to enjoy the area. We propose to continue this work through establishing additional livestock forage and land management options, and grassland species habitat. Two additional project sites have been identified on Beaver Lake WPA and will be open to grazing as a management tool and provide livestock forage for participating landowners. Three additional private land sites have been identified and will provide additional grazing and wildlife habitat.



Because project practices will be selected by interested landowners, and certain practices may be more popular than others, funding may be moved between project expense categories, except Staffing. The OHF funds and match will remain at the same levels.

The BDWLP has created a network of individuals and agencies to promote the program to landowners. The program would be marketed to landowners through the Trust's contractors, the Meadowlark Initiative (MI), the North Dakota Soil Conservation District Employee Association's Dakota Legacy Initiative (DLI), and Soil Conservation Districts.

Is this project part of a Comprehensive Conservation Plan?  Yes  No

If yes, provide a copy with the application.

*Note: Projects involving buildings and infrastructure will only be considered if part of a Comprehensive Conservation Plan. Please refer to the "Definitions" section at the back of the form for more details.*

**Management of Project – Provide a description of how you will manage and oversee the project to ensure it is carried out on schedule and in a manner that best ensures its objectives will be met.**

Include a brief background and work experience for those managing the project.

The Trust will provide management, coordination, and administration to the BDWLP III grant and will work collectively with our partners and contractors to provide landowners with program information and to assist program participants.

The Trust will complete all program coordination from our office in Bismarck, ND. Jesse Beckers, Energy Program Manager, and Eric Rosenquist, Conservation Program Coordinator, will serve as the program coordinators. Additional Trust staff will assist as necessary. Trust staff have a combined 50 years of experience and a strong track record in delivering similar conservation projects. The Trust will provide tracking and reporting for all project agreements following grant guidelines.

Most direct contact with landowners will be made through the MI and DLI. Soil Conservation District staff, NDGF private lands biologists, USFWS Partners Program biologists and the ND Grazing Lands Coalition will also promote projects and work directly with landowners.

As these professionals' work with landowners and communities, agricultural infrastructure development options, grassland management, and PLOTS agreements will be promoted. All grant funds will be paid as agreements and development activities are completed and proper documentation is supplied to the Trust. BDWLP III funding will be provided through continuous enrollment, meaning there will be no batching period and funding stops when the funds are committed. Through our past work and existing partnerships, numerous projects have already been identified.

**Evaluation – Describe your plan to document progress and results.**

Please be specific on the methods you will utilize to measure success. Note that regular reporting, final evaluation and expenditure reports will be required for every grant awarded.

We worked diligently to create a diverse partnership for implementation and evaluation and correspond daily with producers. Our partners and contractors enable “boots on the ground” contact with landowners, and the focus on developing strong local relationships sets the tone for positive results in how the program can benefit their operation and wildlife habitat. Our contractor partners help with contract facilitation and the implementation aspects, verifying that fence and water resources are completed as prescribed and following up on grazing plans. Our administration ensures timely payments and support lines for both participating landowners and partners. More specifically, success will be measured on the level of agreements completed with landowners and the number of acres benefited by the lease and development activities resulting in increased conservation habitat for grassland birds, satisfied landowners, and increased access for public enjoyment.

## Financial Information

### Project Budget – Use the table below to provide an itemized list of project expenses and describe the matching funds being utilized for this project.

Indicate if the matching funds are in the form of cash, indirect costs or in-kind services. The budget should identify all other committed funding sources and the amount of funding from each source. **A minimum of 25% match funding is required.** An application will be scored higher the greater the amount of match funding provided. (See Scoring Form.)

Certain values have been identified for in-kind services as detailed under “Budget Information” at the back of this form. Refer to that section and utilize these values in identifying your matching funds. **NOTE: No indirect costs will be funded. Supporting documentation for project expenses, including bids, must be included or application will be considered incomplete.**

Project Expense	OHF Request	Applicant’s Match Share (Cash and in-Kind)	NDGF (Non-Match)	Other Project Sponsor’s Share	Total Each Project Expense
Grazing Systems	\$1,500,000	\$20,000	\$400,000	\$575,000	\$2,195,000
Energy Site Reclamation	\$1,500,000			\$1,287,400	\$2,787,400
Contracted Services	\$100,000	\$30,000			\$130,000
Staffing	\$25,000	\$25,000			\$50,000
<b>Total Costs</b>	<b>\$3,125,000</b>	<b>\$75,000</b>	<b>\$400,000</b>	<b>\$1,862,400</b>	<b>\$5,462,400</b>

Note: Costs for seeding, fencing, pipelines, wells, and cover crops cannot exceed NRCS Field Office Tech Guide without justification. Projects involving perimeter fencing must follow NRCS eligibility standards.

### Budget Narrative – Use the space below to provide additional detail regarding project expenses. Working Lands Grazing Systems

- OHF will provide 75% cost-share for water developments, portable wind breaks and fencing (primarily cross fencing but will include boundary fence and wildlife friendly fence).

- Cost share will include:
  - \$200,000 from NDWF (Dunn and McKenzie counties only)
  - \$20,000 from the Trust
  - \$375,000 from Landowners
  - \$400,000 from NDGF for grazing infrastructure and access payments
  - Infrastructure cost-share will be available to landowners who choose not to participate in, or do not have land that qualifies for PLOTS

### Energy Site Reclamation

- Reclamation will be completed following industry standards.
- \$1,500,000 OHF Funds for energy site reclamation
  - \$1,287,000 from DMR (eligible non-general fund dollars)
  - Total reclamation costs for five sites (two on Beaver Lake WPA) \$2,787,000

Contracted Services/Support – This grant proposal requests \$100,000 for required contracted services for items such as cultural resources, surveys, and for any additional delivery and/or program monitoring. If contracted services request is not utilized during the grant period for these services, the funds would be used for additional conservation practices identified in the proposal. The Trust will provide a cash match of \$30,000 to assist in landowner technical support.

Staffing – This grant proposal requests \$25,000 of staffing funding for the Trust from OHF. Additional staffing costs will be provided by the Trust (\$25,000) and be considered an in-kind match based on actual costs of Trust staff salary, benefits, and travel. Staffing activities includes Trust time to complete program promotion and outreach, meeting with landowners, providing technical assistance, completing landowner agreements, partnering with state, federal, local, and nongovernmental organizations, processing payments, providing agreement monitoring, and completing all grant administration.

With this grant proposal offering a suite of grazing system activities to interested landowners, we are asking that this grant provide the flexibility to adjust acreage goals and transfer funding to the activities based on practice demand. The OHF funds and match will remain at the same levels.

### **Sustainability – Indicate how the project will be funded or sustained in future years.**

Include information on the sustainability of this project after OHF funds have been expended and whether the sustainability will be in the form of ongoing management or additional funding from a different source.

BDWLP III is an expansion of the previous BDWLP iterations, and the landowner interest in the program has continued to increase. We continue to seek innovative methods for delivering needed programs in western North Dakota by working with our contractors, participating landowners, and the OHF Board. Partnership levels from DMR, the NDWF, and the NDGF have increased as we take a strategic approach to delivering projects and implementing new ideas to already successful programs.

**Partial Funding – Indicate how the project will be affected if less funding is available than that requested.**

The Trust and Partners are very thankful for the OHF Advisory Board’s consideration of the BDWLP III proposal. The request of \$3,125,000 in OHF funds, with an additional \$1,937,400 in match and another \$400,000 as NDGF contribution, is important for reclamation improvements, public access, grazing management, and nutrient management for North Dakota. By partially funding the BDWLP III proposal, the full amount of match from DMR, landowners, partners, and Trust would not be utilized. If the OHF Advisory Board recommends a reduction in funding from the original proposal, this will result in a lower number of all aspects of the proposal.

**Partnership Recognition - If you are a successful recipient of Outdoor Heritage Fund dollars, how would you recognize the Outdoor Heritage Fund partnership? \* There must be signage at the location of the project acknowledging OHF funding when appropriate.**

BDWLP II will provide OHF recognition where possible on all reclamation projects and landowner agreements, especially those enrolled in PLOTS. If any signs are placed at project locations, it will include the OHF logo. All BDWLP III distributed information for outreach and/or media will identify OHF as a funding source. Additionally, all presentations or discussions with partners and/or other organizations will acknowledge OHF as a funding source.



*Outdoor Heritage Fund grant BDWLP #011-128 signage at Beaver Lake WPA where reclamation work was completed. OHF logo in bottom right corner. Similar signage and recognition will be placed as part of BDWLP III. Additionally, landowner agreements in PLOTS can have a small metal sign with OHF logo placed on same post as PLOTS sign.*

**Awarding of Grants - Review the appropriate sample contract for your organization on the website at <http://www.nd.gov/ndic/outdoor-infopage.htm>.**

Can you meet all the provisions of the sample contract?  Yes     No  
If there are provisions in that contract that your organization is unable to meet, please indicate below what those provisions would be:

Outdoor Heritage Fund  
Grant Round 24  
Application Summary Page  
**GR 24-12**

Project Title: Badlands Restoration Project  
Applicant: North Dakota Natural Resources Trust  
Primary Contact: Eric Rosenquist  
Total Project Costs: \$615,470  
OHF Request: \$77,000

Match Amount	Funding Source	Match Type
\$20,000	ND Natural Resources Trust	Cash
\$10,000	Northern Great Plains Joint Venture	Cash
\$10,000	The Mule Deer Federation	Cash
\$40,000.00	Total	

Percentage of Matching Funds: 87%

Project Duration: 2024-2027

Major Directive: B

Additional Directive: C

Summary of Project: Treat 1,000 acres of rangeland infested with Rocky Mountain Juniper over a period of three years.

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Technical Committee Comments:

- Impressed with private match
- Complements USDA Joint Chiefs' projects
- Missing is prescribed fire to manage undesirable vegetation after junipers are managed

Technical questions from the OHF Advisory Board members:

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## Funded Projects

Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
2-20	\$400,000	Water Storage Piggyback	\$300,000	\$300,000	Completed
<sup>1</sup> 5-77	\$257,441	Beginning Farmer Enhancement	\$132,884	\$132,844	Completed
6-90	\$1,467,250	Working Grassland Partnership	\$1,097,250	\$1,079,015.16	2016-2026
<sup>2</sup> 8-97	\$438,681	Grasslands Enhancement Pilot Project	\$230,000	\$170,133.71	2017-2023
<sup>3</sup> 9-109	\$500,000	Water Storage and Grass Seeding	\$67,500	\$67,500	Completed
<sup>4</sup> 9-112	\$250,420	Grand Forks County Prairie Management Toolbox	\$121,200	\$97,353	Completed
<sup>5</sup> 10-115	\$1,773,750	Working Grassland Partnership (Phase II)	\$903,750	\$708,023.79	2017-2027
11-124	\$743,250	Working Grassland Partnership Phase III	\$396,850	\$320,648.57	2018-2028
11-128	\$3,855,000	Bakken Development & Working Lands Program	\$2,170,000	\$1,655,279.37	2018-2023
12-131	\$277,700	Livestock & Wildlife Dams - Creation & Enhancement	\$138,850	\$138,850	Completed
<sup>6</sup> 13-140	\$255,000	ND Grassland Restoration Project	\$104,500	\$104,396.81	Completed
14-154	\$2,235,000	Working Grassland Partnership IV	\$1,225,000	\$751,185.78	2019-2023
15-160	\$255,000	North Dakota Grassland Restoration Project 2	\$100,000	\$79,905.08	2019-2023
17-173	\$6,390,383	Bakken Development and Working Lands Program II	\$3,308,100	\$915,272.74	2020-2025
17-174	\$1,303,000	North Dakota Partners For Wildlife Project	\$716,500	\$558,433.92	2020-2024

<sup>1</sup> Returned commitment of \$40.

<sup>2</sup> Ducks Unlimited is co-applicant.

<sup>3</sup> Returned cash of \$3,368.50.

<sup>4</sup> Audubon Dakota is co-applicant and returned commitment of \$23,867.27.

<sup>5</sup> Co-applicants are ND Association of Soil Conservation Districts, Ducks Unlimited, and Pheasants Forever.

<sup>6</sup> Returned commitment of \$103.19.

18-178	\$495,000	Wildlife and Livestock Dams - Wetlands Creation, Restoration and Enhancement	\$240,000	\$106,285.27	2021-2025
18-179	\$2,150,000	Grazing Resiliency in the Bakken (GRB)	\$1,270,000	\$270,168.02	2021-2026
19-194	\$1,857,500	Working Grassland Partnership 5	\$985,000	\$517,472.35	2021-2026
20-197	\$1,734,800	North Dakota Partners For Wildlife Project 2	\$1,016,500	\$129,851.99	2022-2026
20-198	\$3,280,000	Grazing Resiliency in the Bakken (GRB) II	\$1,970,000	\$145,394.85	2022-2025
21-211	\$1,410,000	Working Grasslands Partnership 6	\$740,000	\$0	2022-2027
<b>Totals</b>	<b>\$31,329,175.00</b>		<b>\$17,233,884.00</b>	<b>\$8,248,014.41</b>	

### Unsuccessful Applications

Round	Request	Total Project Cost	Title	Vote
1-DDD	\$3,750,000	\$4,405,000	Working Lands Partnership	5-7
3-22	\$3,525,000	\$4,700,000	Conservation Cover Program (Pilot)	1-10
11-17	\$897,250	\$1,847,250	Dakota Skipper Habitat Enhancement Project	4-8
13-9	\$897,250	\$1,847,250	Dakota Skipper Habitat Restoration/Enhancement Partnership	5-5
<b>Totals</b>	<b>\$9,069,500.00</b>	<b>\$12,799,500.00</b>		

# Outdoor Heritage Fund Grant Application



## Instructions

After completing the form, applications and supporting documentation may be submitted by e-mail to [ndicgrants@nd.gov](mailto:ndicgrants@nd.gov). It is preferred that only electronic copies are submitted.

You are not limited to the spacing provided, except in those instances where there is a limit on the number of words. If you need additional space, please indicate that on the application form, answer the question on a separate page, and include with your submission.

The application and all attachments must be received by the application deadline. You may submit your application at any time prior to the application deadline. **Applicants are strongly encouraged to submit applications prior to the deadline for staff review in order ensure that proposals will be complete when submitted on deadline date.** Incomplete applications may not be considered for funding.

**Please review the back of this form to determine project eligibility, definitions, budget criteria, and statutory requirements.**

Project Name: Badlands Restoration Project

Name of Organization: North Dakota Natural Resources Trust

Federal Tax ID# :36-3512179

Contact Person/Title : Eric Rosenquist, Conservation Coordinator

Address : 1605 E. Capitol Ave. Suite 101

City : Bismarck

State : North Dakota

Zip Code : 58501

E-mail Address: [eric@naturalresourcestrust.com](mailto:eric@naturalresourcestrust.com)

Web Site Address (If applicable)

Phone 701-223-8501

List names of co-applicants if this is a joint proposal



**MAJOR Directive:**

Choose only one response

**Directive A.** Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat and provide access for sportsmen;

**Directive B.** Improving, maintaining and restoring water quality, soil conditions, plant diversity, animal systems and by supporting other practices of stewardship to enhance farming and ranching;

**Directive C.** Developing, enhancing, conserving and restoring wildlife and fish habitat on private and public lands; and

**Directive D.** Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.

**Additional Directive:**

Choose all that apply

**Directive A.**

**Directive B.**

**Directive C.**

**Directive D.**

**Type of organization:**

State Agency

Political Subdivision

Tribal Entity

Tax-exempt, nonprofit corporation.

**Abstract/Executive Summary.**

Summarize the project, including its objectives, expected results, duration, total project costs and participants. (no more than 500 words)

The encroachment of woody vegetation on the landscape is a slow process that is often not identified as a problem until it is too late, resulting in expensive and time-consuming management options. The consequence of inaction is particularly evident in many of our neighboring states to the south. Identified as a top threat to native grasslands by the USDA-Natural Resources Conservation Service (NRCS), encroachment of woody species like Rocky Mountain juniper reduces available forage for livestock, increases the impact of wildfires, negatively affects hydrology, and alters wildlife populations.

The Badlands Restoration Project will aim to proactively address this issue by building on the success of previous projects originating from the USDA Joint Chiefs Landscape Restoration Project (JCLRP), The JCLRP is a cooperative project between the US Forest Service, ND Forest Service, NRCS, NGO's and private partners focused on treating the expansion of

Rocky Mountain juniper throughout grazing lands in the North Dakota badlands. Since its start in 2020, well over 6,000 acres of public and private lands have been treated. Using the same model proposed here, 500 acres of private lands were treated in 2023.

The Badlands Restoration Project seeks assistance from the North Dakota Outdoor Heritage Fund to treat 1000 acres of rangeland infested with Rocky Mountain Juniper over a period of three years. OHF and partner funding will be used to incentivize and reduce the high cost incurred by landowners wishing to treat their grazing lands by the removal of encroaching woody species, specifically Rocky Mountain juniper. Proposed project areas will be evaluated based on NRCS Ecological Site Descriptions and require the landowner enter an NRCS cost-share agreement to receive the incentive payment.

In 2022, the Trust and our partners joined together to test the concept of incentivizing private landowners to perform this hard work. Over the past 1 ½ years, we have worked with landowners to complete management on 500 acres, with another 128 acres under contract waiting to be completed. From this work, we are aware of at least another 600 acres of opportunity should we be able to secure funding.

The OHF request for this work is \$77,000. Another \$40,000 in private match funding has been secured and \$474,860 in other project sponsor funding will be made available from NRCS cost-share and private contributions. OHF commitment to this project is 13% of the total project cost.

**Project Duration: 3 years, CY 2024-2027**

**Indicate the intended schedule for drawing down OHF funds.**

2024- Engagement with landowners, project planning, applications to NRCS. Estimate about 50% of funding to be used. Public tour to highlight past projects scheduled for June 25.

2025- Continued engagement with landowners, project planning and applications to NRCS. Estimate 80% cumulative use of funding

2026- Enrollment of final projects to fit funding availability.

2027- Wrap up of final projects. Estimate 100% of funding utilized.

**Amount of Grant request: \$77,000**

**Total Project Costs: \$615,470**

Note: in-kind and indirect costs can be used for matching funds.

**Amount of Matching Funds: \$40,000 (52%)**

**A minimum of 25% Match Funding is required.** Indicate if the matching funds will be in-kind, indirect or cash. Please provide verification that these matching funds are available for your project. Note that effective as of July 1, 2015 no State General Fund dollars can be used for a match unless funding was legislatively appropriated for that purpose.

Amount of Match	Funding Source	Type of Match (Cash, In-kind or Indirect)
\$20,000	ND Natural Resources Trust	Cash
\$10,000	Northern Great Plains Joint Venture	Cash
\$10,000	The Mule Deer Federation	Cash

**Certifications**

X I certify that this application has been made with the support of the governing body and chief executive of my organization.

X I certify that if awarded grant funding none of the funding will be used for any of the exemptions noted in the back of this application.

**Narrative**

**Organization Information – Briefly summarize your organization’s history, mission, current programs and activities.**

Include an overview of your organizational structure, including board, staff and volunteer involvement. (no more than 300 words)

The North Dakota Natural Resources Trust was created in 1986 and was originally called the North Dakota Wetlands Trust until 2000. The Trust’s mission is to promote the retention, restoration, creation and wildlife-friendly management of wetlands, grasslands and riparian areas by presenting practical conservation opportunities throughout North Dakota.

The Trust achieves this mission by partnering with agricultural and conservation organizations to promote productive use of private agricultural lands that result in enhancement and protection of private lands, to effectively use North Dakota's public lands both for agriculture and recreation, to promote good land use along urban river corridors, and to enhance the state's significant water resources.

The Trust is managed by a six-member board of directors. Three of the directors are appointed by the governor of North Dakota, one by the National Audubon Society, one by the National Wildlife Federation, and one by the North Dakota Chapter of The Wildlife Society. The North Dakota Game and Fish Department Director is an ex-officio member. The Trust has an Executive Director and six staff members.

From its inception, the Trust has played a role as facilitator between agricultural and conservation interests. In addition to facilitating and funding sound, on-the-ground conservation of natural resources, its goal is to identify common issues, create dialogue, and resolve conflicts.

### **Purpose of Grant – Describe the proposed project identifying how the project will meet the specific directive(s) of the Outdoor Heritage Fund Program**

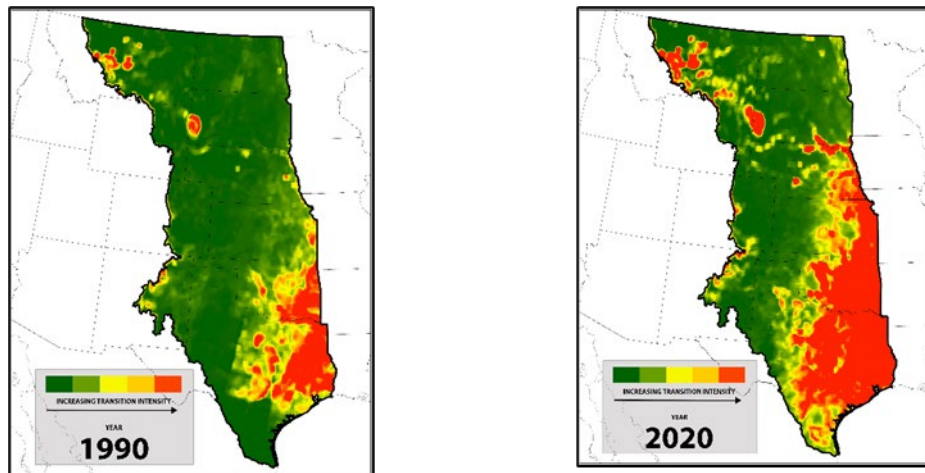
Identify project goals, strategies and benefits and your timetable for implementation. Include information about the need for the project and whether there is urgency for funding. Indicate if this is a new project or if it is replacing funding that is no longer available to your organization. Identify any innovative features or processes of your project. Note: if your proposal provides funding to an individual, the names of the recipients must be reported to the Industrial Commission/Outdoor Heritage Fund. These names will be disclosed upon request.

For tree/shrub/grass plantings: provide a planting plan describing the site design, planting methods, number of trees/shrubs by species and stock size, grass species and future maintenance. A statement certifying that the applicant will adhere to USDA-NRCS tree/shrub/grass planting specifications along with the name of the governmental entity designing the planting may be substituted for a planting plan.

For projects including Section 319 funding: provide in detail the specific best management practices that will be implemented and the specific projects for which you are seeking funding.

For projects including fencing: A minimum cost share of 40% by the recipient is preferred. Include detailed information on the type of fencing to be installed, whether funding is requested for boundary fencing, new or replacement of existing fencing, and/or cross fencing.

The Natural Resource Conservation Service (NRCS) Working Lands for Wildlife Initiative has identified the encroachment of woody vegetation as a top threat leading to the loss of productive grasslands.<sup>1</sup> This is particularly evident in the southern states and research shows the problem slowly moving north, suggesting the need for a proactive management approach.<sup>2</sup>



*Figure 1. Expansion of woody species in the Great Plains, 1990-2020.*

<sup>1</sup> NRCS, 2021. A Framework for Conservation Action in the Great Plains Grassland Biome. Working Lands for Wildlife, USDA-NRCS. Washington, D.C. Available at <https://wlfw.rangelands.app>

<sup>2</sup> <https://centerforresilience.unl.edu/Woody-Plant-Encroachment>

In the Framework for Conservation Action, NRCS identifies the consequences of woody invasion as well as management strategies. The expansion of woody vegetation, in this case Rocky Mountain junipers, out of natural ecological sites and onto rangeland negatively alters hydrology, contributes to soil erosion, loss of range productivity, increased wildfire severity and altered wildlife composition.

With increasing interest in programs to offset the high cost of woody shrub removal needed to keep working grasslands healthy and livestock operations economically viable, the Badlands Restoration Project was developed to further enhance efforts made during the collaborative USDA Joint Chiefs Landscape Restoration Project in western North Dakota. Since its start in 2020 well over 6000 acres of public and private lands have been treated. Using the same model proposed here, 500 acres of private lands were treated in 2023. In cooperation with the North Dakota Outdoor Heritage Fund, we seek to facilitate and incentivize the treatment of an additional 1,000 acres of private lands (Directive B). The need for this work is supported in both the ND Forest Service Forest Action Plan<sup>3</sup> and the ND Game and Fish State Wildlife Action Plan<sup>4</sup>.

We propose the targeted removal of encroaching Rocky Mountain juniper in areas of Slope, Billings, McKenzie, Golden Valley, Bowman, and Dunn counties within the Badlands Major Land Use Area (MLRA) of western North Dakota. Rocky Mountain juniper is native to certain ecological sites in western ND. However, over time the exclusion of fire has led to the colonization of rangeland by juniper and stand densities which are practically unusable to both wildlife and livestock.

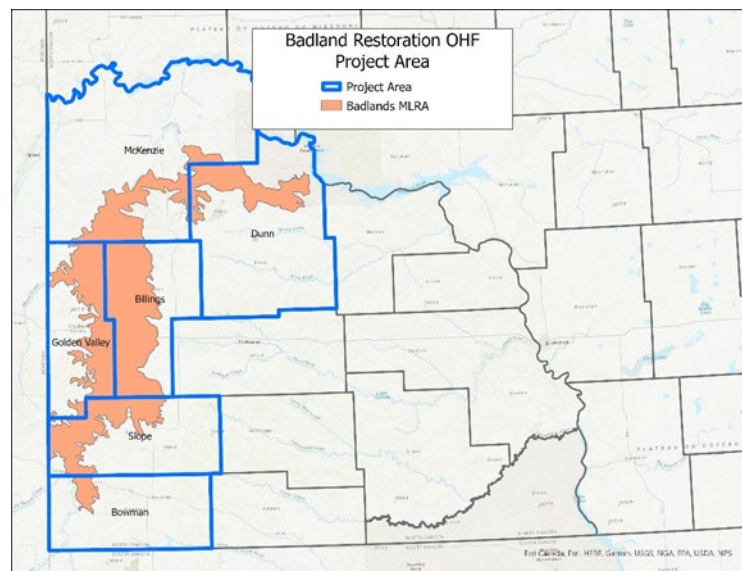


Figure 2. Proposed Project Area.

<sup>3</sup> [2020-north-dakota-forest-action-plan-final.pdf \(ndsu.edu\)](#)

<sup>4</sup> [swap-2015\\_0.pdf \(nd.gov\)](#)

This funding proposal is focused on private landowners' grazing areas and select, privately managed USFS allotments. It is important to recognize that similar treatments conducted by the U.S. Forest Service in nearby locations are adding to the private land treatments, showing the value of a coordinated approach, and enhancing the habitat at a landscape scale.

We anticipate the restoration of these areas to a more natural ecological state will support a variety of species including wild turkeys, mule deer, grouse, big horn sheep and many other native flora and fauna. Additionally, this will benefit local ranchers and other user groups by improving rangeland resiliency by increasing forage and water availability and reducing wildfire severity (Directive B and C).

Treatments of infested areas can be particularly challenging for private landowners to take on. The labor and mechanization costs, as well as the technical expertise required, are all limiting factors. NRCS estimates treatments to cost \$498/acre. This is often far beyond what most private landowners are willing or able to spend.

This project will provide a \$100/acre incentive for landowners who enroll in NRCS cost-share practice #314. While current NRCS cost-share allows for \$373.86/acre to support private landowners, the actual cost of this type of treatment is often near \$500/acre.<sup>5</sup> This still leaves a significant financial burden for the landowner. Funds received from the Outdoor Heritage Fund, coupled with private sources, will be used to offset the cost to the landowner. We seek to assemble \$77,000 in OHF funding in addition to private funds to offset the cost of mechanical treatments by \$100/acre on 1,000 acres, as well as provide project coordination.

There are currently landowners with projects totaling about 600 acres waiting to apply. However, the full extent of exact project locations is not known at this time and will be determined by landowner interest and NRCS contract acceptance. Project review and sign-off by NRCS will be required for landowners to receive incentive payments.

The Trust has developed a network of individuals and agencies to promote the program to landowners. The program would be marketed to landowners through the Trust's contractors, the North Dakota Conservation District Employee Association's Dakota Prairie Legacy Initiative (DPLI), local NRCS offices and the Meadowlark Initiative (MI).

Is this project part of a Comprehensive Conservation Plan?  Yes  No

If yes, provide a copy with the application.

*Note: Projects involving buildings and infrastructure will only be considered if part of a Comprehensive Conservation Plan. Please refer to the "Definitions" section at the back of the form for more details.*

**Management of Project – Provide a description of how you will manage and oversee the project to ensure it is carried out on schedule and in a manner that best ensures its objectives will be met.**

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<sup>5</sup> <https://www.nrcs.usda.gov/getting-assistance/payment-schedules>

Include a brief background and work experience for those managing the project.

The Trust will complete all program coordination from our office located in Bismarck, ND. Staff members include Brenda Newton, Administrative Assistant/Conservation Specialist, Terry Allbee, Biologist/Business Manager, Eric Rosenquist, Conservation Program Coordinator, and Jesse Beckers, Energy Program Manager, and Heather Husband, Meadowlark Initiative Coordinator. Eric Rosenquist will serve as the program coordinator. Trust staff have decades of experience and a strong track record in delivering similar conservation projects. The Trust will provide tracking and reporting for all project agreements following grant guidelines.

**Evaluation – Describe your plan to document progress and results.**

Please be specific on the methods you will utilize to measure success. Note that regular reporting, final evaluation and expenditure reports will be required for every grant awarded.

Projects will be evaluated based on NRCS standards and must meet NRCS completion standards to receive payment. All projects will be photo documented with before/after treatment photos.

**Financial Information**

**Project Budget – Use the table below to provide an itemized list of project expenses and describe the matching funds being utilized for this project.**

Indicate if the matching funds are in the form of cash, indirect costs or in-kind services. The budget should identify all other committed funding sources and the amount of funding from each source. **A minimum of 25% match funding is required.** An application will be scored higher the greater the amount of match funding provided. (See Scoring Form.)

Certain values have been identified for in-kind services as detailed under “Budget Information” at the back of this form. Refer to that section and utilize these values in identifying your matching funds. **NOTE: No indirect costs will be funded. Supporting documentation for project expenses, including bids, must be included or application will be considered incomplete.**

Project Expense	OHF Request	Applicant's Match Share (Cash)	Other Project Sponsor's Share (non-match)	Total Each Project Expense
Project cost	\$70,000	\$30,000	\$473,860	\$573,860
Contractual	\$7,000	\$10,000	\$0	\$17,000
Landowner	\$0	\$0	\$24,610	\$24,610
Total Costs	\$77,000	\$40,000	\$498,470	\$615,470

Note: Costs for seeding, fencing, pipelines, wells, and cover crops cannot exceed NRCS Field Office Tech Guide without justification. Projects involving perimeter fencing must follow NRCS eligibility standards.

**Budget Narrative – Use the space below to provide additional detail regarding project expenses.**

We are requesting \$77,000 from the OHF and have identified \$498,470 in other contributions, making the OHF contribution 13% of the total project cost. \$373,860 of the other contributions will come from NRCS cost-share provided directly to the private landowners upon completion of their contracts. Total landowner share would be 25% of project cost before incentive payments from OHF and private sources are applied. Due to NRCS confidentiality rules we may not be able to provide detailed information on NRCS

expenditures but will be able to reliably report that all projects with valid NRCS contracts and completed to NRCS specifications will receive the scheduled payments from NRCS. In cases where the landowner performs the work themselves the incentive will be provided using NRCS cost estimates to determine project cost. In no situation will the total of NRCS cost share and incentive payment exceed the total cost of the project.

Funding from matching partners will be used for incentive payments and contractual costs. Partner funds may also be used to support qualifying projects in which NRCS funding is not available. The North Dakota Wildlife Federation has committed \$100,000 (other project sponsor column) to the project. However, this funding must be spent in only Dunn or McKenzie counties.

Table illustrating how project cost totals were developed using 2023 NRCS rates.

	<b>NRCS Estimated Total Cost</b>	<b>NRCS Cost Share to Landowner</b>	<b>Gross Landowner obligation</b>	<b>Incentive Payment</b>	<b>Net Landowner obligation after Incentive (estimated)</b>
<b>Per acre</b>	<b>\$498.47</b>	<b>\$373.86</b>	<b>\$124.61</b>	<b>\$100.00</b>	<b>\$24.61</b>
<b>Project (x1000)</b>	<b>\$498,470</b>	<b>\$373,860</b>	<b>\$124,610</b>	<b>\$100,000</b>	<b>\$24,610</b>

Funding for contractual work is needed to provide local technical support for services provided to landowners related to project management and other technical assistance, as well as some promotion and outreach services. If contracting services are not needed or under-utilized, this funding will be moved to the Project Cost category to support additional project work.

**Sustainability – Indicate how the project will be funded or sustained in future years.**

Include information on the sustainability of this project after OHF funds have been expended and whether the sustainability will be in the form of ongoing management or additional funding from a different source.

This project will have a noticeable impact on the landscape but will, over time, require active management to maintain the state of the grassland. We are currently working with our partners to develop future projects which will expand on this work. For treated acres periodic treatments by hand lopping new seedlings or control using prescribed fire will be needed to prevent additional encroachment.

**Partial Funding – Indicate how the project will be affected if less funding is available than that requested.**

Depending on how much less funding was available, we would assess whether the project is viable as planned. If still considered viable it would mean either fewer acres impacted or a reduced incentive resulting in increased cost to landowners.

**Partnership Recognition - If you are a successful recipient of Outdoor Heritage Fund dollars, how would you recognize the Outdoor Heritage Fund partnership? \* There must be signage at the location of the project acknowledging OHF funding when appropriate.**



The Badlands Restoration Project will recognize the OHF partnership in as many opportunities as possible. Those will include, but not be limited to, all interactions with landowners and coordination meetings. The OHF funding will also be recognized in any outreach material including the Dakota Legacy and Meadowlark Initiatives. We will use social media to both advertise the program's availability and tout its successes, noting the key role played by OHF funding. The OHF logo will also be included on all agreement materials. If the grant is awarded, the OHF will be recognized at a free public tour planned for June 25<sup>th</sup>, 2024 in Medora ND.

**Awarding of Grants - Review the appropriate sample contract for your organization on the website at <http://www.nd.gov/ndic/outdoor-infopage.htm>.**

Can you meet all the provisions of the sample contract?  Yes  No

If there are provisions in that contract that your organization is unable to meet, please indicate below what those provisions would be:

## **ABOUT OHF:**

The purpose of the North Dakota Outdoor Heritage Fund is to provide funding to state agencies, tribal governments, political subdivisions, and nonprofit organizations, with higher priority given to projects that enhance **conservation** practices in this state by:

**Directive A.** Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat and provide access for sportsmen;

**Directive B.** Improving, maintaining and restoring water quality, soil conditions, plant diversity, animal systems and by supporting other practices of stewardship to enhance farming and ranching;

**Directive C.** Developing, enhancing, conserving and restoring wildlife and fish habitat on private and public lands; and

**Directive D.** Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.

## **EXEMPTIONS**

Outdoor Heritage Fund grants may not be used to finance the following:

- Litigation;
- Lobbying activities;
- Any activity that would interfere, disrupt, or prevent activities associated with surface coal mining operations; sand, gravel, or scoria extraction activities; oil and gas operations; or other energy facility or infrastructure development;
- The acquisition of land or to encumber any land for a term longer than twenty years; or
- Projects outside this state or projects that are beyond the scope of defined activities that fulfill the purposes of Chapter 54-17.8 of the North Dakota Century Code.

OHF funds may not be used, except after a finding of exceptional circumstances by the Industrial Commission, to finance:

- A completed project or project commenced before the grant application is submitted;
- A feasibility or research study;
- Maintenance costs;
- A paving project for a road or parking lot;
- A swimming pool or aquatic park;
- Personal property that is not affixed to the land;
- Playground equipment, except that grant funds may be provided for up to 25% of the cost of the equipment not exceeding \$10,000 per project and all playground equipment grants may not exceed 5% of the total grants per year (see Definitions/Clarifications for how this will be calculated);
- Staffing or outside consultants except for costs for staffing or an outside consultant to design and implement an approved project based on the documented need of the applicant and the expenditures may not exceed 5% of the grant to a grantee if the grant exceeds \$250,000 and expenditures may not exceed 10% of the grant to a grantee if the grant is \$250,000 or less (see Definitions/Clarifications for how this will be calculated);

- A building except for a building that is included as part of a comprehensive conservation plan for a new or expanded recreational project (see Definitions/Clarifications for definition of comprehensive conservation plan and new or expanded recreational project); or
- A project in which the applicant is not directly involved in the execution and completion of the project.

The goal of the Industrial Commission is that at a minimum 15% of the funding received for a biennium will be given priority for recreation projects that meet Directive D.

The following projects are not eligible for funding, unless there is a finding of exceptional circumstances by the Industrial Commission include:

- Construction or refurbishment of indoor/outdoor ice rinks,
- Construction or refurbishment of indoor/outdoor athletic courts and sports fields,
- Other substantially similar facilities.
- Infrastructure that is not part of a comprehensive conservation plan.
- Projects not meeting a minimum funding request of \$2,500.

## **Budget Information**

In-kind services used to match the request for Outdoor Heritage Fund dollars shall be valued as follows:

- Labor costs \$15.00 an hour
- Land costs Average rent costs for the county as shown in the most recent publication of the USDA, National Agricultural Statistics Services, North Dakota Field Office
- Permanent Equipment Any equipment purchased must be listed separately with documentation showing actual cost. (For example: playground equipment)
- Equipment usage Actual documentation
- Seed & Seedlings Actual documentation
- Transportation Mileage at federal rate
- Supplies & materials Actual documentation

More categories will be added as we better understand the types of applications that will be submitted. We will use as our basis for these standards other State and Federal programs that have established rates. For example, the North Dakota Nonpoint Source Pollution Management Program has established rates. If your project includes work that has an established rate under another State Program, please use those rates and note your source.

## **Definitions/Clarifications:**

Building - Defined as "A structure with a roof either with walls or without walls and is attached to the ground in a permanent nature."

Comprehensive Conservation Plan - Defined as "A detailed plan that has been formally adopted by the governing board which includes goals and objectives--both short and long term, must show how this building will enhance the overall conservation goals of the project and the protection or preservation of wildlife and fish habitat or natural areas." This does not need to be a complex multi-page document. It could be included as a part of the application or be an attachment.

New and Expanded Recreational Project means that the proposed building cannot be a replacement of a current building. The proposed building must also be related to either a new or expanded

recreational project--either an expansion in land or an expansion of an existing building or in the opportunities for recreation at the project site.

Playground equipment calculation - Only the actual costs of the playground equipment (a bid or invoice showing the amount of the equipment costs must be provided) - cannot include freight or installation or surface materials or removal of old equipment, etc.

Staffing/Outside Consultants Costs - If you are requesting OHF funding for staffing or for an outside consultant, you must provide information in your application on the need for OHF funding to cover these costs. For example, if you are an entity that has engineering staff you must explain why you don't have sufficient staff to do the work or if specific expertise is needed or whatever the reason is for your entity to retain an outside consultant. If it is a request for reimbursement for staff time then a written explanation is required in the application of why OHF funding is needed to pay for the costs of that staff member(s)' time. **The budget form must reflect on a separate line item the specific amount that is being requested for staffing and/or the hiring of an outside consultant.** This separate line item will then be used to make the calculation of 5% or 10% as outlined in the law. Note that the calculation will be made on the grant less the costs for the consultant or staff.

Maintenance – Activities that preserve or keep infrastructure in a given existing condition, including repairs. Repair means to restore to sound condition after damage, to renew or refresh; except repairs due to damage caused by Acts of God.

## Scoring of Grants

**Oral Presentation.** Please note that you will be given an opportunity to make a ten-minute Oral Presentation at a meeting of the Outdoor Heritage Fund Advisory Board. These presentations are strongly encouraged.

**Open Record.** Please note that your application and any attachments will be open records as defined by law and will be posted on the Industrial Commission/Outdoor Heritage Fund website.

All applications will be scored by the Outdoor Heritage Fund Advisory Board after your ten-minute oral presentation. The ranking form that will be used by the Board is available on the website at <http://www.nd.gov/ndic/outdoor-infopage.htm> .

## Awarding of Grants

All decisions on requests will be reported to applicants no later than 30 days after Industrial Commission consideration. The Commission can set a limit on duration of an offer on each application or if there isn't a specific date indicated in the application for implementation of the project, then the applicant has until the next Outdoor Heritage Fund Advisory Board regular meeting to sign the contract and get the project underway or the commitment for funding will be terminated and the applicant may resubmit for funding. Applicants whose proposals have been approved will receive a contract outlining the terms and conditions of the grant.

## Responsibility of Recipient

The recipient of any grant from the Industrial Commission must use the funds awarded for the specific purpose described in the grant application and in accordance with the contract. The

recipient cannot use any of the funds for the purposes stated under Exemptions on the first page of this application.

If you have any questions about the application, the Commission can be reached at 701-328-3722 or [outdoorheritage@nd.gov](mailto:outdoorheritage@nd.gov).

Revised: November 4, 2019, April 12, 2023

Outdoor Heritage Fund  
Grant Round 24  
Application Summary Page  
**GR 24-13**

Project Title: North Dakota Prescribed Fire Program for Ranchland Enhancement  
Applicant: North Dakota Wildlife Federation  
Primary Contact: Cara Greger & John Bradley  
Total Project Costs: \$275,000  
OHF Request: \$200,000

Match Amount	Funding Source	Match Type
\$40,000	Landowners Time & Equipment	In-Kind & Cash
\$10,000	NDWF Staff Time	In-Kind
\$10,000	Pheasants Forever	In-Kind
\$10,000	Volunteer Fire Departments	In-Kind
\$5,000	NDWF	Cash
\$75,000.00	Total	

Percentage of Matching Funds: 27%

Project Duration: 2024-2029

Major Directive: C

Additional Directive: B

Summary of Project: Design, prepare, and execute effective prescribed burns on private lands with an acreage goal based on landowner interest of 1,500 acres. All burn activities are cost-shared at 100 percent. The landowner will be required to not convert the land from grasslands or their current state for the "term" of five years.

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Technical Committee Comments:

- Supportive of project, agencies are usually limited due to liability concerns
- Applicant is encouraged to incorporate educational component into project

Technical questions from the OHF Advisory Board members:

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<b>Funded Projects</b>					
<b>Contract</b>	<b>Total Project Cost</b>	<b>Title</b>	<b>Award Amount</b>	<b>Amount Expended</b>	<b>Project Timeframe</b>
22-220	\$45,000	The Conservation Capacity Program	\$30,000	\$0	2023-2025
<b>Totals</b>	<b>\$45,000.00</b>		<b>\$30,000.00</b>	<b>\$0.00</b>	

North Dakota Wildlife Federation has not submitted any unsuccessful applications.

# Outdoor Heritage Fund Grant Application



## Instructions

After completing the form, applications and supporting documentation may be submitted by e-mail to [ndicgrants@nd.gov](mailto:ndicgrants@nd.gov). It is preferred that only electronic copies are submitted.

You are not limited to the spacing provided, except in those instances where there is a limit on the number of words. If you need additional space, please indicate that on the application form, answer the question on a separate page, and include with your submission.

The application and all attachments must be received by the application deadline. You may submit your application at any time prior to the application deadline. **Applicants are strongly encouraged to submit applications prior to the deadline for staff review in order ensure that proposals will be complete when submitted on deadline date.** Incomplete applications may not be considered for funding.

**Please review the back of this form to determine project eligibility, definitions, budget criteria, and statutory requirements.**

**Project Name:** North Dakota Prescribed Fire Program for Ranchland Enhancement

**Name of Organization:** North Dakota Wildlife Federation

**Federal Tax ID#** [23-7071000](#)

**Contact Person/Title:**

Cara Greger, Western ND Conservation Coordinator,  
John Bradley, Executive Director

**Address:**

PO Box 1091, Bismarck, ND 58502  
1605 E. Capitol Ave, Suite 102, Bismarck, ND 58501

**E-mail Address:**

[cgreger.ndwf@gmail.com](mailto:cgreger.ndwf@gmail.com),  
[jbradley.ndwf@gmail.com](mailto:jbradley.ndwf@gmail.com)

**Web Site Address:**

<https://www.northdakotawildlife.org/>

**Phone:**

Cara Greger: 320-808-4897  
John Bradley: 701-390-7196

List names of co-applicants if this is a joint proposal: North Dakota Pheasants Forever



**Major Directive:**

Choose only one response

- Directive A.** Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat and provide access for sportsmen;
- Directive B.** Improving, maintaining and restoring water quality, soil conditions, plant diversity, animal systems and by supporting other practices of stewardship to enhance farming and ranching;
- Directive C.** Developing, enhancing, conserving and restoring wildlife and fish habitat on private and public lands; and
- Directive D.** Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.

**Additional Directive:**

Choose all that apply

- Directive A.**
- Directive B.**
- Directive C.**
- Directive D.**

**Type of organization:**

- State Agency
- Political Subdivision
- Tribal Entity
- Tax-exempt, nonprofit corporation.

**Abstract/Executive Summary.**

*Summarize the project, including its objectives, expected results, duration, total project costs and participants. (no more than 500 words)*

The North Dakota Prescribed Fire Program for Rangeland Enhancement (NDPFP) aims to partner with North Dakota private landowners to conduct prescribed burns to manage fuel loadings, improve rangeland forage, and demonstrate the positive impacts of prescribed fire on the landscape.

After a large wildfire in the Medora area in April 2021, many landowners see a need for managing fuel loads to prevent the next large-scale wildfire. Ranchers also saw how the forage was rejuvenated because creeping cedars and the encroaching Rocky Mountain junipers were set back. Grasses and wildflowers, high value forage, were able to thrive. Many landowners and Volunteer Fire Departments (VFDs) have not used fire as a tool to manage their land and now have a desire do so, but lack the appropriate training.

It is widely accepted among grassland ecologists that the interactions between climate, fire and grazing, were the primary processes which shaped the highly diverse and resilient native prairies of the Great Plains. As settlement advanced into the Great Plains, massive areas were cultivated, bison were extirpated, and fire was suppressed from the landscape.

Modern day native grasslands in the Northern Great Plains are threatened by invasive grasses and unchecked expansion of woody brush. Over time this invasion leads to a loss of diversity impacting the grasslands function and reducing opportunities for pollinators and other native species. This loss of diversity, resiliency, and ecological functions impacts ranchers forage quantity and quality.

New companies located in North Dakota are helping to change that by training, planning and conducting prescribed burns. With the help of their labor and eagerness to participate, landowners can be better prepared and have more defensible space when large-scale wildfires hit, while improving their rangeland. With an increased awareness of the threats of Kentucky bluegrass, high level fire research by North Dakota State University, and well attended fire workshops and symposiums the demand for prescribed fire within landowner circles has risen.

The NDPFP will utilize the knowledge and practical experience of partner organizations, who have been running prescribed burn programs for over 30 years, as well as the advice of the North Dakota Prescribed Fire Cooperative, and knowledgeable individuals, to design, prep and execute effective prescribed burns on private lands. The NDPFP acreage goal is based on landowner interest of 1500 acres. This grant proposal meets two major directives. NDPFP offers landowners a way to accomplish high complexity burns and train VFDs to do effective and safe prescribed burns to create defensible space. Landowners willing to have prescribed burns conducted on their land will be brought into the program. Agreements will be made to allow fire management activities to be conducted and to execute a successful burn on their land. Monitoring will be done on the site to show the results of the prescribed burn. All burn activities are cost-shared at 100 percent. The landowner will be required to not convert the land from grasslands or their current state for the "Term" of 5 years.

**Liability:** The participating landowner is liable for the burn. The participating landowner will start the test fire as the crew and burn boss assist and then take over after the fire has started. Special event insurance or specific prescribed burn insurance can be purchased by the landowner to insure them against any unexpected events.

**Project participants:** North Dakota Wildlife Federation, North Dakota Landowners, North Dakota Pheasants Forever, ND Natural Resources Trust, NDSU Extension Service, ND Game and Fish Department, The Nature Conservancy, Ducks Unlimited.

**Project Duration: 5 years**

**Indicate the intended schedule for drawing down OHF funds.**

The project dollars will be spent over the next five years ending in June 2029. In years one and two, NDWF and ND Pheasants Forever (PF) will work with partners (landowners, VFDs, contractors, agencies, and conservation groups) to develop plans, and prep units. In years three through five most prescribed burns will be executed. NDWF and PF will guide and monitor this process. When projects are completed, NDWF will complete final documentation and submission to OHF.

**Amount of Grant request: \$200,000**

**Total Project Costs: \$275,000**

Note: in-kind and indirect costs can be used for matching funds.

**Amount of Matching Funds: \$75,000**

***A minimum of 25% Match Funding is required. Indicate if the matching funds will be in-kind, indirect or cash. Please provide verification that these matching funds are available for your project. Note that effective as of July 1, 2015 no State General Fund dollars can be used for a match unless funding was legislatively appropriated for that purpose.***

Amount of Match	Funding Source	Type of Match (Cash, In-kind or Indirect)
\$40,000	Landowners time and equipment	In-Kind and Cash
\$10,000	NDWF staff time	In-Kind
\$10,000	Pheasants Forever	In-Kind
\$10,000	Volunteer Fire Departments	In-Kind
\$5,000	NDWF	Cash

### **Certifications**

I certify that this application has been made with the support of the governing body and chief executive of my organization.

I certify that if awarded grant funding none of the funding will be used for any of the exemptions noted in the back of this application.

### **Narrative**

**Organization Information – Briefly summarize your organization’s history, mission, current programs and activities.**

*Include an overview of your organizational structure, including board, staff and volunteer involvement. (no more than 300 words)*

The North Dakota Wildlife Federation (NDWF) is a grassroots organization, which protects and enhances North Dakota’s wildlife, habitat, access, and sporting heritage. Since 1935, NDWF has advocated for the conservation of wildlife, habitat, and access for North Dakota’s hunters, anglers, and other outdoor users. NDWF has a storied history of uniting local wildlife clubs, hunters and

anglers, farmers and ranchers, and other outdoor enthusiasts on conservation issues around the state.

NDWF is governed by a board of directors and has two full-time staff members, John Bradley and Cara Greger who will deliver this grant. NDWF has traditionally depended on memberships, donations, grants, and a variety of other fundraising activities for its annual operating expenses and on the ground projects. NDWF has been the recipient of three large bequests to fund wildlife and habitat conservation in North Dakota. These estates, in addition to the in-kind donations from the landowner and our partners, are the primary source of match to this grant proposal.

**Purpose of Grant – Describe the proposed project identifying how the project will meet the specific directive(s) of the Outdoor Heritage Fund Program**

*Identify project goals, strategies and benefits and your timetable for implementation. Include information about the need for the project and whether there is urgency for funding. Indicate if this is a new project or if it is replacing funding that is no longer available to your organization. Identify any innovative features or processes of your project. Note: if your proposal provides funding to an individual, the names of the recipients must be reported to the Industrial Commission/Outdoor Heritage Fund. These names will be disclosed upon request.*

The North Dakota Prescribed Fire Program (NDPFP) looks to provide funding and technical support to private landowners in North Dakota who want to implement prescribed fire into their management toolbox. The project will utilize Outdoor Heritage Fund (OHF) dollars to increase the landowners conservation impact on the ground. Over the five years of the NDPFP, NDWF will promote the benefits of the Outdoor Heritage Fund by helping private landowner’s plan, administer and implement projects that fit two of the directives of OHF. The money will be distributed on a first come, first served basis for projects that fit the OHF directives. NDPFP will prioritize landowners who are signed up with NRCS in Practice 314 for woody encroachment removal. The goal of the program is to create a funding pool that allows landowners who cannot achieve their prescribed burning goals on their own the ability to hire professionals to plan, prepare, and execute complex prescribed burns. Funding from OHF will allow a greater complexity of projects to be completed and will be an introduction of numerous landowners across the state to the Outdoor Heritage Fund. If successful, the NDPFP will have a broader spectrum of projects and participants for future grant rounds.

**Is this project part of a Comprehensive Conservation Plan?**  Yes  No

If yes, provide a copy with the application.

*Note: Projects involving buildings and infrastructure will only be considered if part of a Comprehensive Conservation Plan. Please refer to the “Definitions” section at the back of the form for more details.*

**Management of Project – Provide a description of how you will manage and oversee the project to ensure it is carried out on schedule and in a manner that best ensures its objectives will be met.**

*Include a brief background and work experience for those managing the project.*

The North Dakota Wildlife Federation will provide management, coordination, and administration to the North Dakota Prescribed Fire Program. NDWF staff will work collectively to provide landowners in the western half of the state (west of Missouri River) and outside organizations with the needed information to assist program participants. Pheasants Forever will work with landowners East of the Missouri River to sign them up and help find contractors to plan and execute the burns. Pheasants Forever will also work to involve Volunteer Fire Departments in the prescribed burns.

The North Dakota Wildlife Federation will complete all program coordination from our office located in Bismarck, ND. John Bradley, Executive Director and Cara Greger, Western North Dakota Conservation Coordinator, will serve as the program coordinators. NDWF staff have years of experience administering and executing grants, including youth shooting sports grants and affiliate program grants. NDWF will provide tracking and reporting for all project agreements following grant guidelines.

All OHF grant funds will be paid as agreements once development activities are completed and proper documentation of the completed project is supplied to NDWF. Funding will be provided through continuous enrollment, meaning there will be no batching period and funding stops when the funds are spent. If any prioritization is required to determine the best projects, NDWF staff and grant partners will provide that oversight, utilizing input from outside experts as needed.

### **Evaluation – Describe your plan to document progress and results.**

Please be specific on the methods you will utilize to measure success. Note that regular reporting, final evaluation and expenditure reports will be required for every grant awarded.

Planning -- The essential element of the North Dakota Prescribed Fire Program will be planning. NDWF and Pheasants Forever will work closely with landowners and conservation organizations on a contract that clearly formulate objectives and deliverables with a corresponding budget.

Administration and Monitoring – NDWF and Pheasants Forever will check in frequently with landowners, contractors, and the conservation organization to ensure that projects are completed on time and within the contracted budget. Photos and site visits will take place to ensure that projects have been completed to the contracted standards.

Communication – NDWF will have clear lines of communication with the partners executing the contract. In addition, NDWF will provide a final evaluation and expenditure report to the Outdoor Heritage Fund Board. NDWF will also share successful projects with the media, interested partners, and landowners.

## **Financial Information**

### **Project Budget – Use the table below to provide an itemized list of project expenses and describe the matching funds being utilized for this project.**

*Indicate if the matching funds are in the form of cash, indirect costs or in-kind services. The budget should identify all other committed funding sources and the amount of funding from each source. **A minimum of 25% match funding is required.** An application will be scored higher the greater the amount of match funding provided. (See Scoring Form.)*

*Certain values have been identified for in-kind services as detailed under “Budget Information” at the back of this form. Refer to that section and utilize these values in identifying your matching funds.*

***NOTE: No indirect costs will be funded. Supporting documentation for project expenses, including bids, must be included or application will be considered incomplete.***

Project Expense	OHF Request	Applicant's Match Share (Cash)	Applicant's Match Share (In-Kind)	Applicant's Match Share (Indirect)	Other Project Sponsor's Share	Total Each Project Expense
Burn Plan writing	\$10,000	\$	\$	\$	\$5,000	\$15,000
Burn Break Preparation	\$	\$	\$	\$	\$40,000	\$40,000
Execution of the prescribed burn	\$142,500	\$	\$	\$	\$	\$142,500
Monitoring	\$20,000	\$5,000	\$	\$	\$	\$25,000
Education & Outreach	\$7,500	\$	\$20,000	\$	\$5,000	\$32,500
Staffing	\$20,000					\$20,000
Total Costs	\$200,000	\$5,000	\$20,000	\$	\$50,000	\$275,000

*Note: Costs for seeding, fencing, pipelines, wells, and cover crops cannot exceed NRCS Field Office Tech Guide without justification. Projects involving perimeter fencing must follow NRCS eligibility standards.*

**Budget Narrative – Use the space below to provide additional detail regarding project expenses.**

Burn Plan writing: Site visit is \$40/hour, mileage \$.67/mile; Office hours \$40/hour for 1500 acres depending on the size of the burn units could be 10-15 burn units.

Burn Break Preparation: To contract the work costs are \$2400/ acre in some cases. We are having private landowners provide the preparation work for the burn breaks by mowing, cutting, or moving vegetation from the edge of the prescribed burn boundaries that are determined in the burn plan writing phase.

Execution of the prescribed burn: The rates from contractors vary, but the estimated rate is \$75/ acre for prescribed burns or pile burns. Using this estimate, the cost comes to \$112, 500. Volunteer Fire Departments that participate will also be compensated for their equipment and staff time. \$30,000.

Monitoring the prescribed burn work:

Contracted Services/Support – This grant proposal is requesting \$20,000 for any additionally required contracted services for items such as engineering, cultural resources, surveys, specialized equipment rentals, soil testing, habitat assessments, partnership coordination meetings, and for any additional delivery and/or program monitoring. If contracted services request is not utilized during the grant period for these services, the funds would be used for additional prescribed burn acres. The NDWF and Pheasants Forever will provide a cash match of \$5,000 toward contracted services and/or outreach, education, support, and workshops that help landowners receive information about technical assistance and the availability of the grant proposal activities.

Staffing – This grant proposal requests \$20,000 of staffing funding for the NDWF and ND Pheasants Forever from OHF. Additional staffing costs will be provided by NDWF and ND Pheasants Forever and be considered in-kind match based on actual costs of NDWF and ND Pheasants Forever staff salary and travel. Staffing activities includes NDWF and ND Pheasants Forever time to complete program promotion and outreach, meeting with landowners, providing technical assistance,

completing landowner agreements, partnering with state, federal, local, and nongovernmental organizations, processing payments, providing agreement monitoring, and completing all grant administration.

With this grant proposal offering a suite of three different activities to interested landowners, we are asking that this grant provide the flexibility to adjust acreage goals and transfer funding to the activities based on practice demand. The OHF funds and match will remain at the same levels.

**Sustainability – Indicate how the project will be funded or sustained in future years.**

*Include information on the sustainability of this project after OHF funds have been expended and whether the sustainability will be in the form of ongoing management or additional funding from a different source.*

This program has great interest from local landowners who want to use prescribed burning to improve their rangeland. If the projects from this grant round prove successful, NDWF expects greater interest from additional organizations to implement similar projects that utilize the Outdoor Heritage Fund. NDWF will look for further opportunities to connect landowners to funding opportunities to help with costs and technical details of prescribed burning.

**Partial Funding – Indicate how the project will be affected if less funding is available than requested.**

Portions of the project could proceed with limited OHF funding. The opportunities identified by the North Dakota Wildlife Federation's cooperators have exceeded the funds that the North Dakota Wildlife Federation has allocated for these types of projects. The North Dakota Wildlife Federation is also limited to what counties we can pay for habitat improvement projects with our restricted estate dollars. Full funding would allow us to work outside of Dunn and McKenzie counties. Additionally, one of the goals of this project is to increase awareness of the Outdoor Heritage Fund with landowners in western North Dakota. If funds are limited, the Federation would be forced to reduce the number of landowners we could engage with.

**Partnership Recognition - If you are a successful recipient of Outdoor Heritage Fund dollars, how would you recognize the Outdoor Heritage Fund partnership? \* There must be signage at the location of the project acknowledging OHF funding when appropriate.**

The North Dakota Wildlife Federation will recognize the Outdoor Heritage Fund in the project negotiation phase with landowners, NDWF would also publicize OHF projects in our quarterly newsletter, Flickertales.

Additionally, the Federation will use their Facebook and Instagram platforms to both advertise the program's availability and tout its successes, noting the key role played by OHF.

**Awarding of Grants - Review the appropriate sample contract for your organization on the website at <http://www.nd.gov/ndic/outdoor-infopage.htm>.**

Can you meet all the provisions of the sample contract?  Yes  No

If there are provisions in that contract that your organization is unable to meet, please indicate below what those provisions would be:

## References for Juniper Encroachment and Prescribed Burning:

<https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/north-dakota/nrcs-helps-slow-green-wave-of-encroaching>

[Resiliency of Native Mixed-Grass Rangelands and Crested Wheatgrass Pasture Lands to Spring Wildfire - ScienceDirect](#)

[Patch Burn Grazing Shows Benefits | Vice President for NDSU Agriculture | NDSU](#)

[Patch-Burn Grazing in Southwestern North Dakota - Assessing Above- and Belowground Rangeland Ecosystem Responses.pdf \(ndsu.edu\)](#)

[Patch-Burning Buffers Forage Resources and Livestock Performance to Mitigate Drought in the Northern Great Plains \(sciencedirectassets.com\)](#)

[Dirac Twidwell–INTVU Working Lands for Wildlife <https://www.youtube.com/watch?v=oHmgPsmkSc8>](#)

<https://gpfirescience.org/resources/benefits-of-rangeland-prescribed-burning/>

<https://www.nrcs.usda.gov/sites/default/files/2022-06/greatPlainsFramework.pdf>

<https://gf.nd.gov/publications/548>

[https://library.ndsu.edu/ir/bitstream/handle/10365/33222/Beckers%2C%20Jesse%20Miles\\_Natural%20Resources%20Management%20MS\\_2007.pdf?sequence=1&isAllowed=y](https://library.ndsu.edu/ir/bitstream/handle/10365/33222/Beckers%2C%20Jesse%20Miles_Natural%20Resources%20Management%20MS_2007.pdf?sequence=1&isAllowed=y)



March 22, 2024

To: North Dakota Heritage Fund Advisory Board

Subject: North Dakota Prescribed Fire Program for rangeland enhancement (NDPFP)

North Dakota Heritage Fund Advisory Board,

We are writing to support the grant being applied for by North Dakota Wildlife Federation and North Dakota Pheasants Forever. After ranching in the badlands for over 50 years we have realized that the Rocky Mountain junipers and Creeping Cedars are really encroaching on the rangeland. After reviewing the proposal, we feel prescribed burns would reduce fire hazards, create training opportunities for local fire departments, and most of all would improve the rangeland for cattle and wildlife. With this grant the North Dakota Prescribed Fire Program would partner with North Dakota private landowners and local fire departments to conduct prescribed burns that would help manage fuel loadings, improve the rangeland and demonstrate how fire can help the range.

Sincerely,



Ted and Kay Tescher

Medora, ND

March 22, 2024

To: North Dakota Heritage Fund Advisory Board

Subject: North Dakota Prescribed Fire Program for rangeland enhancement (NDPFP)

North Dakota Heritage Fund Advisory Board,

I am writing regarding the ND Outdoor Heritage Fund grant being applied for by North Dakota Wildlife Federation (NDWF) with the co-applicants of North Dakota Pheasants Forever (NDPF).

Upon reviewing and being briefed on the proposal, we support the mission and core technical values which provide private landowners and Volunteer Fire Departments with support and funding to use prescribed burning to reduce fire hazards, create training opportunities, and allow departments and landowners the opportunity to improve their rangeland for cattle and wildlife. The North Dakota Prescribed Fire Program for Rangeland Enhancement (NDPFP) aims to partner with North Dakota private landowners to conduct prescribed burns to manage fuel loadings, improve rangeland forage, and demonstrate the positive impacts of prescribed fire on the landscape.

I have been working with NRCS, Forest Service, and NDWF on Rocky Mountain Juniper removal projects and see a need to also use prescribed burning as a tool to improve my ranch for my cattle operation.

My ranching operation supports this proposal.

Sincerely,

A handwritten signature in cursive script that reads "Allan Richard". The signature is written in black ink and is positioned below the word "Sincerely,".

Allan Richard, Richard Ranch and owner of Dryland Enterprises, LLC of Belfield, ND

Pete Kronberg

Rancher, Forbes ND

April 17, 2024

To: North Dakota Heritage Fund Advisory Board

Subject: North Dakota Prescribed Fire Program for rangeland enhancement (NDPFP)

North Dakota Heritage Fund Advisory Board,

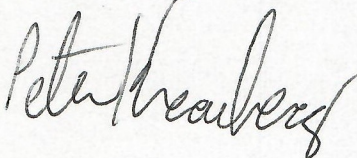
I am writing regarding the ND Outdoor Heritage Fund grant being applied for by North Dakota Wildlife Federation (NDWF) with the co-applicant of North Dakota Pheasants Forever (NDPF).

My experience with prescribed fire is limited to the last couple years. That said, the results have been extraordinary, and the lessons learned have been surprising. Invasive Kentucky Blue was suppressed and no Kentucky Blue in the burns managed to set seed during the year. The native grasses grew tall enough to lose a horse in. The tallest grasses found measured 8 ft 9 in. From an ecological perspective this response is excellent. From a ranching perspective, production at that scale is impossible to beat. Working with controlled fire has also taught me a great deal about how fire behaves. I now have a substantially better understanding of how to fight and protect against grassland fires.

This proposal can help create an ecologically functional and wildly productive North Dakota landscape. Educating ranchers and fire departments with field experience will improve North Dakota's ability to both fight and mitigate wildfires in the future. For these reasons, I support this grant proposal.

Sincerely,

Pete Kronberg

A handwritten signature in cursive script that reads "Pete Kronberg". The signature is written in dark ink and is positioned below the typed name.

April 21, 2024

**NDSU**

HETTINGER  
RESEARCH EXTENSION CENTER

To: North Dakota Heritage Fund Advisory Board

Subject: North Dakota Prescribed Fire Program for rangeland enhancement (NDPFP)

North Dakota Outdoor Heritage Fund Advisory Board,

I am writing regarding the ND Outdoor Heritage Fund grant concerning The North Dakota Prescribed Fire Program for Rangeland Enhancement (NDPFP) being prepared by North Dakota Wildlife Federation (NDWF) with the co-applicant of North Dakota Pheasants Forever (NDPF). Given the objectives of the proposal, I am writing to provide my support for the activities associated with the grant proposal. For roughly the past eight years we have been conducting research concerning patch-burn grazing in southwest North Dakota. This practice combines two critical disturbances essential for the long-term maintenance of grasslands, prescribed fire and grazing, which when combined are intended to mimic historic patterns where fires would rejuvenate grassland stands and the bison herds would graze recently burned areas to take advantage of the highly nutritious regrowth. Our research has shown this practice can benefit producers by providing highly nutritious forage for livestock and a forage bank that is available for times of drought. Furthermore, our work has found that PBG can benefit pollinators, provide cover for ducks, gamebirds, and grassland birds including the upland sandpiper.

Many of our remaining grasslands be it native or planted are heavily invaded by non-native grasses including Kentucky bluegrass and smooth brome. Previous research in North Dakota and elsewhere has suggested the importance of prescribed fire and grazing as a means to help limit invasion. Despite the potential benefits associated with prescribed fire, many landowners are reluctant to try prescribed fire for one reason or another. Furthermore, landowners and managers often lack the knowledge, equipment, or skill set needed to safely conduct prescribed fire, and that is where this program can work to improve this disconnect. By including and working along side local fire departments, this work will help expand statewide efforts to once again reintroduce prescribed fire onto our grassland landscape.

It is with stakeholders, grasslands, and wildlife populations in mind that I cast my support for this project and feel it would make a valuable contribution to the long-term wellbeing of our remaining grassland acres. Thank you for your time and I look forward to seeing this program in action in western North Dakota.

Sincerely,



Dr. Ben Geaumont, PhD, Rangeland Ecologist, Hettinger Research Extension Center

BEACH VOLUNTEER

# *Fire Department*

BOX 607  
BEACH, NORTH DAKOTA 58621

April 23, 2024

To: North Dakota Heritage Fund Advisory Board

Subject: North Dakota Prescribed Fire Program for Rangeland Enhancement (NDPFP)

North Dakota Heritage Fund Advisory Board,

I am writing regarding the ND Outdoor Heritage Fund grant being applied for by North Dakota Wildlife Federation (NDWF) with the co-applicants of North Dakota Pheasants Forever (NDPF).

Upon reviewing and being briefed on the proposal, we support the mission and core values which provide private landowners and Volunteer Fire Departments, with support and funding, to use prescribed burning to reduce fire hazards, create training opportunities and allow departments and landowners the opportunity to improve their rangeland for cattle and wildlife.

The ND Prescribed Fire Program for Rangeland Enhancement (NDPFP) aims to partner with ND private landowners to conduct prescribed burns to manage fuel loadings, improve rangeland forage and demonstrate the positive impacts of prescribed fire on the landscape.

Our department, Beach Volunteer Fire Department, supports this proposal.

Sincerely,

 chief

WE ARE "SONS - O - BEACH"  
ORGANIZED IN 1912



Billings County Rural Fire Protection District  
Po Box 597, Belfield ND, 58622  
Chief Shockley 701-690-0041

April 17, 2024

To: North Dakota Heritage Fund Advisory Board

Subject: North Dakota Prescribed Fire Program for rangeland enhancement (NDPFP)

North Dakota Heritage Fund Advisory Board,

I am writing regarding the ND Outdoor Heritage Fund grant being applied for by North Dakota Wildlife Federation (NDWF) with the co-applicants of North Dakota Pheasants Forever (NDPF). Upon reviewing and being briefed on the proposal, we support the mission and core technical values which provide private landowners and Volunteer Fire Departments with support and funding to use prescribed burning to reduce fire hazards, create training opportunities, and allow departments and landowners the opportunity to improve their rangeland for cattle and wildlife. The North Dakota Prescribed Fire Program for Rangeland Enhancement (NDPFP) aims to partner with North Dakota private landowners to conduct prescribed burns to manage fuel loadings, improve rangeland forage, and demonstrate the positive impacts of prescribed fire on the landscape. Our department supports this proposal.

Sincerely,

Kyle Shockley, Fire Chief



**Emily C. Spolyar**  
ND State Coordinator

espolyar@pheasantsforever.org (517)250-2440

PO Box 7403  
Bismarck, ND 58507

April 11, 2024

To: North Dakota Heritage Fund Advisory Board

Subject: North Dakota Prescribed Fire Program for rangeland enhancement (NDPFP)

North Dakota Heritage Fund Advisory Board,

I am writing regarding the ND Outdoor Heritage Fund grant being applied for by North Dakota Wildlife Federation (NDWF) with the co-applicants of North Dakota Pheasants Forever (NDPF).

Upon reviewing and being briefed on the proposal, we support the mission and core technical values which provide private landowners and Volunteer Fire Departments with support and funding to use prescribed burning to reduce fire hazards, create training opportunities, and allow departments and landowners the opportunity to improve their rangeland for cattle and wildlife. The North Dakota Prescribed Fire Program for Rangeland Enhancement (NDPFP) aims to partner with North Dakota private landowners to conduct prescribed burns to manage fuel loadings, improve rangeland forage, and demonstrate the positive impacts of prescribed fire on the landscape.

In an [NDSU article](#) from Kevin Sedivec, the following benefits of Rx fire were noted:

“Fire not only can be used to manipulate the grazing patterns of livestock, but it also can be used to control invasive grasses,” he says. “Introduced cool-season grasses are North and South Dakota’s No. 1 problem in negatively impacting the forage value, wildlife habitat quality, hydrology, nutrient cycling and the scenic beauty of our rangelands.

“Fire, in combination with grazing, is the best tool we have available to combat the invasion of exotic cool-season grasses and undesirable woody encroachment,” he notes. “We will not stop the invasion of Kentucky bluegrass (better known as our lawn grass), smooth brome grass, crested wheatgrass or woody encroachment onto native range without fire.”

As an organization dedicated to helping implement sound conservation practices on the landscape, Pheasants Forever would like to express our support for NDWF’s Rx Fire funding program through the Outdoor Heritage Fund.

Respectfully,

Emily Spolyar  
Pheasants Forever ND State Coordinator

*Pheasants Forever is dedicated to the conservation of pheasants, quail and other wildlife through habitat improvements, public awareness, education, and land management policies and programs.*

April 26th, 2024

To: North Dakota Outdoor Heritage Fund Advisory Board  
Subject: North Dakota Prescribed Fire Program for rangeland enhancement (NDPFP)

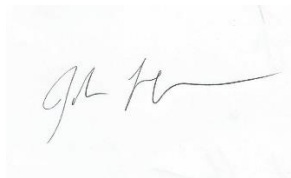
Dear Advisory Board,

Audubon Great Plains supports the North Dakota Wildlife Federation (NDWF) and North Dakota Pheasants Forever (NDPF) grant application entitled North Dakota Prescribed Fire Program for Rangeland Enhancement.

We wholeheartedly support the goals of this proposed program to provide landowners and volunteer fire departments with support—both technical and financial—to broaden the use of prescribed fire for the benefit of rangelands, wildlife, and the humans who depend on those rangelands for their livelihood and enjoyment.

Audubon Great Plains, a regional office of the National Audubon Society, works to conserve birds and the habitats that birds need for today and tomorrow. In the Great Plains, one of our key concerns is the degradation of habitats and how this impacts wildlife populations. Our grasslands are already highly threatened by conversion to row crop agriculture. We must use the most effective tools possible to keep the grasslands we still have healthy. Prescribed fire is necessary to this end. As a founding member of the North Dakota Prescribed Fire Coop, Audubon Great Plains is pleased to see the continuation of this work on private land expanded across the state to tackle urgent issues that impact forage quality and quantity such as encroaching trees and invasive grasses.

Sincerely,



Josh Lefers  
Director of Conservation, Audubon Great Plains



Outdoor Heritage Fund  
Grant Round 24  
Application Summary Page  
**GR 24-15**

Project Title: PreK Park Enhancement – Sunset Park  
Applicant: Sunset Park District 1  
Primary Contact: Jamie Bolduc & Jennifer McNamara  
Total Project Costs: \$80,687  
OHF Request: \$10,000

Match Amount	Funding Source	Match Type
\$500	RFDC	Cash
\$1,000	STAR Fund Williston	Cash
\$5,000	Garrison Diversion	Cash
Unknown- Request Has Been Sent To The Board	Grenora Economic Development	Unknown
\$6,500.00	Total	

Percentage of Matching Funds: 88%

Project Duration: Spring of 2025

Major Directive: D

Additional Directive: None

Summary of Project: Provide play equipment for children under 5 years of age through a child's train set and a play system with borders, wood fiber, and installation included.

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Technical Committee Comments:

- Acknowledged goal to spend more on Directive D
- Committee expressed disappointment in lack of photos, maps or design plans

Technical questions from the OHF Advisory Board members:

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Sunset Park District 1 has not previously received funds.

**\*Total OHF funds awarded to date: \$0.00. Total OHF funds spent to date: \$0.00.**

Sunset Park District 1 has not submitted any unsuccessful applications.



**MAJOR Directive:**

Choose only one response

- **Directive D.** Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.

**Additional Directive:** N/A

Choose all that apply

**Type of organization:**

- Political Subdivision

**Abstract/Executive Summary.**

Summarize the project, including its objectives, expected results, duration, total project costs and participants. (no more than 500 words)

As you may know Sunset Park has been working on grants to provide a PreK Enhancement area to the park. The Grenora Community is Growing! With the growing young population of the area, the Sunset Park would like to provide play equipment for children under 5 years of age for play, physical activity and other peer to peer activities, there will also be an area for parents to meet other parents as well. There is no 26 month-5 year old play equipment at the school or daycare, so many families and children will use the new play area.

Grenora takes pride in their community and would like to continue the growth and continue to bring up to date enhancement activities to the area. The Park also offers picnic areas, Zip Line, Slides, Swings, and Spinner, a kickball/tball field that is able to support a softball/baseball size team if needed. There are nearby camper hookups to allow overnight visitors a place to hangout and visit. The Summer Program uses the park in June and July for their activities of the summer.

The board is tentatively planning to host a movie night in the park with a possible potluck picnic, to "Kick-Off Park Season" in later May.

The total PreK Enhancement project is \$80,687. At this time Sunset Park has secured: \$500.00 from RDFC; \$1,000.00 from STAR Fund (City of Williston); and \$5,000.00 from Garrison Diversion Matching Grant Program. The complete project would be of a child's train set and a play system with borders and wood fiber and installation included. Costs can be adjusted with volunteer laborers as well. *The train set would be beneficial to the park as Grenora was founded from the Great Northern Railroad.*

Sunset Park is asking the Outdoor Heritage Fund for a Grant to help make the dreams come alive for the PreK children in the area. Any amount is appreciated towards our PreK Enhancement Project.

The Sunset Park board would like to Thank you in advance for your consideration and sponsorship of this endeavor to help Grow our community.

**Project Duration:**

**Indicate the intended schedule for drawing down OHF funds.** The ideal schedule is to have the installation complete by the end of July. The probability with area help would be the spring of 2025 with funding that is needed.

**Amount of Grant request:** \$ 10,000

**Total Project Costs:** \$ 80,687 approximately

Note: in-Kind donations are to be given in Labor during installation.

**Amount of Matching Funds:** \$ 13,500 (committed at this time)

**A minimum of 25% Match Funding is required.** Indicate if the matching funds will be in-kind, indirect or cash. Please provide verification that these matching funds are available for your project. Note that effective as of July 1, 2015 no State General Fund dollars can be used for a match unless funding was legislatively appropriated for that purpose.

Amount of Match	Funding Source	Type of Match (Cash, In-kind or Indirect)
\$500.00	RFDC	Cash
\$1,000	STAR Fund Williston	Cash
\$5,000	Garrison Diversion	Matching in Cash
\$ Unknown Request has been sent to the Board	Grenora Economic Development	Unknown
\$		
\$		

**Certifications**

- I certify that this application has been made with the support of the governing body and chief executive of my organization.

- I certify that if awarded grant funding none of the funding will be used for any of the exemptions noted in the back of this application.

## Narrative

### **Organization Information – Briefly summarize your organization’s history, mission, current programs and activities.**

Include an overview of your organizational structure, including board, staff and volunteer involvement. (no more than 300 words)

The Sunset Park on the west side of town has been a staple in the community as the school playground is on the east side of town. The board is active as much as we can be, and has hired summer employees.

### **Purpose of Grant – Describe the proposed project identifying how the project will meet the specific directive(s) of the Outdoor Heritage Fund Program**

The Grenora Community is Growing! With the growing young population of the area, the Sunset Park would like to provide play equipment for children under 5 years of age for play, physical activity and other peer to peer activities, there will also be an area for parents to meet other parents as well. There is no 26 month-5 year old play equipment at the school or daycare, so many families and children will use the new play area.

Is this project part of a Comprehensive Conservation Plan?  Yes  No

If yes, provide a copy with the application.

*Note: Projects involving buildings and infrastructure will only be considered if part of a Comprehensive Conservation Plan. Please refer to the “Definitions” section at the back of the form for more details.*

### **Management of Project – Provide a description of how you will manage and oversee the project to ensure it is carried out on schedule and in a manner that best ensures its objectives will be met.**

There are many on the board whom have built their own projects and such to oversee. I have worked with an Architect firm in the past on keeping projects on schedule. We will also work closely with Grondahl Recreation Inc.

### **Evaluation – Describe your plan to document progress and results.**

Please be specific on the methods you will utilize to measure success. Note that regular reporting, final evaluation and expenditure reports will be required for every grant awarded.

We will keep track of all expenditures and documents in Quickbooks and through board meetings.

## Financial Information

### **Project Budget – Use the table below to provide an itemized list of project expenses and describe the matching funds being utilized for this project.**

Indicate if the matching funds are in the form of cash, indirect costs or in-kind services. The budget should identify all other committed funding sources and the amount of funding from each source. **A minimum of 25% match funding is required.** An application will be scored higher the greater the amount of match funding provided. (See Scoring Form.)

Certain values have been identified for in-kind services as detailed under "Budget Information" at the back of this form. Refer to that section and utilize these values in identifying your matching funds. **NOTE: No indirect costs will be funded. Supporting documentation for project expenses, including bids, must be included or application will be considered incomplete.**

Project Expense	OHF Request	Applicant's Match Share (Cash)	Applicant's Match Share (In-Kind)	Applicant's Match Share (Indirect)	Other Project Sponsor's Share	Total Each Project Expense
Express Train	\$ 0	\$ 3500	\$ 16000	\$ 2900	\$ 27667	\$ 50067
Play System	\$ 10000	\$ 10000	\$ 10000	\$ 620	\$ 0	\$ 30620
	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$
	\$	\$	\$	\$	\$	\$
<b>Total Costs</b>	\$	\$	\$	\$	\$	\$

Note: Costs for seeding, fencing, pipelines, wells, and cover crops cannot exceed NRCS Field Office Tech Guide without justification. Projects involving perimeter fencing must follow NRCS eligibility standards.

**Budget Narrative – Use the space below to provide additional detail regarding project expenses.**

The total PreK Enhancement project is \$80,687. At this time Sunset Park has secured: \$500.00 from RDFC; \$1,000.00 from STAR Fund (City of Williston); and \$5,000.00 from Garrison Diversion Matching Grant Program. The complete project would be of a child's train set and a play system with borders and wood fiber and installation included. Costs can be adjusted with volunteer laborers as well. The train set would be beneficial to the park as Grenora was founded from the Great Northern Railroad.

**Sustainability – Indicate how the project will be funded or sustained in future years.**

Include information on the sustainability of this project after OHF funds have been expended and whether the sustainability will be in the form of ongoing management or additional funding from a different source.

As a park we maintain all of the equipment and upkeep and in the event we need to get a repair beyond our capabilities we will contact the Recreation Equipment Distributor in our area.

**Partial Funding – Indicate how the project will be affected if less funding is available than that requested.**

The project will be sized down in the event there is not enough funding received.

**Partnership Recognition - If you are a successful recipient of Outdoor Heritage Fund dollars, how would you recognize the Outdoor Heritage Fund partnership? \* There must be signage at the location of the project acknowledging OHF funding when appropriate.**

Yes

**Awarding of Grants - Review the appropriate sample contract for your organization on the website at <http://www.nd.gov/ndic/outdoor-infopage.htm>.**

Can you meet all the provisions of the sample contract?  Yes  No

If there are provisions in that contract that your organization is unable to meet, please indicate below what those provisions would be: I believe the board will be able to meet the contract provisions.

## **ABOUT OHF:**

The purpose of the North Dakota Outdoor Heritage Fund is to provide funding to state agencies, tribal governments, political subdivisions, and nonprofit organizations, with higher priority given to projects that enhance **conservation** practices in this state by:

**Directive A.** Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat and provide access for sportsmen;

**Directive B.** Improving, maintaining and restoring water quality, soil conditions, plant diversity, animal systems and by supporting other practices of stewardship to enhance farming and ranching;

**Directive C.** Developing, enhancing, conserving and restoring wildlife and fish habitat on private and public lands; and

**Directive D.** Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.

## **EXEMPTIONS**

Outdoor Heritage Fund grants may not be used to finance the following:

- Litigation;
- Lobbying activities;
- Any activity that would interfere, disrupt, or prevent activities associated with surface coal mining operations; sand, gravel, or scoria extraction activities; oil and gas operations; or other energy facility or infrastructure development;
- The acquisition of land or to encumber any land for a term longer than twenty years; or
- Projects outside this state or projects that are beyond the scope of defined activities that fulfill the purposes of Chapter 54-17.8 of the North Dakota Century Code.

OHF funds may not be used, except after a finding of exceptional circumstances by the Industrial Commission, to finance:

- A completed project or project commenced before the grant application is submitted;
- A feasibility or research study;
- Maintenance costs;
- A paving project for a road or parking lot;
- A swimming pool or aquatic park;
- Personal property that is not affixed to the land;
- Playground equipment, except that grant funds may be provided for up to 25% of the cost of the equipment not exceeding \$10,000 per project and all playground equipment grants may not exceed 5% of the total grants per year (see Definitions/Clarifications for how this will be calculated);
- Staffing or outside consultants except for costs for staffing or an outside consultant to design and implement an approved project based on the documented need of the

applicant and the expenditures may not exceed 5% of the grant to a grantee if the grant exceeds \$250,000 and expenditures may not exceed 10% of the grant to a grantee if the grant is \$250,000 or less (see Definitions/Clarifications for how this will be calculated);

- A building except for a building that is included as part of a comprehensive conservation plan for a new or expanded recreational project (see Definitions/Clarifications for definition of comprehensive conservation plan and new or expanded recreational project); or
- A project in which the applicant is not directly involved in the execution and completion of the project.

The goal of the Industrial Commission is that at a minimum 15% of the funding received for a biennium will be given priority for recreation projects that meet Directive D.

The following projects are not eligible for funding, unless there is a finding of exceptional circumstances by the Industrial Commission include:

- Construction or refurbishment of indoor/outdoor ice rinks,
- Construction or refurbishment of indoor/outdoor athletic courts and sports fields,
- Other substantially similar facilities.
- Infrastructure that is not part of a comprehensive conservation plan.
- Projects not meeting a minimum funding request of \$2,500.

## **Budget Information**

In-kind services used to match the request for Outdoor Heritage Fund dollars shall be valued as follows:

- Labor costs \$15.00 an hour
- Land costs Average rent costs for the county as shown in the most recent publication of the USDA, National Agricultural Statistics Services, North Dakota Field Office
- Permanent Equipment Any equipment purchased must be listed separately with documentation showing actual cost. (For example: playground equipment)
- Equipment usage Actual documentation
- Seed & Seedlings Actual documentation
- Transportation Mileage at federal rate
- Supplies & materials Actual documentation

More categories will be added as we better understand the types of applications that will be submitted. We will use as our basis for these standards other State and Federal programs that have established rates. For example, the North Dakota Nonpoint Source Pollution Management Program has established rates. If your project includes work that has an established rate under another State Program, please use those rates and note your source.

## **Definitions/Clarifications:**

Building - Defined as "A structure with a roof either with walls or without walls and is attached to the ground in a permanent nature."

Comprehensive Conservation Plan - Defined as "A detailed plan that has been formally adopted by the governing board which includes goals and objectives--both short and long term, must show how this building will enhance the overall conservation goals of the project and the protection or



preservation of wildlife and fish habitat or natural areas.” This does not need to be a complex multi-page document. It could be included as a part of the application or be an attachment.

New and Expanded Recreational Project means that the proposed building cannot be a replacement of a current building. The proposed building must also be related to either a new or expanded recreational project--either an expansion in land or an expansion of an existing building or in the opportunities for recreation at the project site.

Playground equipment calculation - Only the actual costs of the playground equipment (a bid or invoice showing the amount of the equipment costs must be provided) - cannot include freight or installation or surface materials or removal of old equipment, etc.

Staffing/Outside Consultants Costs - If you are requesting OHF funding for staffing or for an outside consultant, you must provide information in your application on the need for OHF funding to cover these costs. For example, if you are an entity that has engineering staff you must explain why you don't have sufficient staff to do the work or if specific expertise is needed or whatever the reason is for your entity to retain an outside consultant. If it is a request for reimbursement for staff time then a written explanation is required in the application of why OHF funding is needed to pay for the costs of that staff member(s)' time. **The budget form must reflect on a separate line item the specific amount that is being requested for staffing and/or the hiring of an outside consultant.** This separate line item will then be used to make the calculation of 5% or 10% as outlined in the law. Note that the calculation will be made on the grant less the costs for the consultant or staff.

Maintenance – Activities that preserve or keep infrastructure in a given existing condition, including repairs. Repair means to restore to sound condition after damage, to renew or refresh; except repairs due to damage caused by Acts of God.

## Scoring of Grants

**Oral Presentation.** Please note that you will be given an opportunity to make a ten-minute Oral Presentation at a meeting of the Outdoor Heritage Fund Advisory Board. These presentations are strongly encouraged.

**Open Record.** Please note that your application and any attachments will be open records as defined by law and will be posted on the Industrial Commission/Outdoor Heritage Fund website.

All applications will be scored by the Outdoor Heritage Fund Advisory Board after your ten-minute oral presentation. The ranking form that will be used by the Board is available on the website at <http://www.nd.gov/ndic/outdoor-infopage.htm> .

## Awarding of Grants

All decisions on requests will be reported to applicants no later than 30 days after Industrial Commission consideration. The Commission can set a limit on duration of an offer on each application or if there isn't a specific date indicated in the application for implementation of the project, then the applicant has until the next Outdoor Heritage Fund Advisory Board regular meeting to sign the contract and get the project underway or the commitment for funding will be terminated and the applicant may resubmit for funding. Applicants whose proposals have been approved will receive a contract outlining the terms and conditions of the grant.

## **Responsibility of Recipient**

The recipient of any grant from the Industrial Commission must use the funds awarded for the specific purpose described in the grant application and in accordance with the contract. The recipient cannot use any of the funds for the purposes stated under Exemptions on the first page of this application.

If you have any questions about the application, the Commission can be reached at 701-328-3722 or [outdoorheritage@nd.gov](mailto:outdoorheritage@nd.gov).

Revised: November 4, 2019, April 12, 2023

Outdoor Heritage Fund  
Grant Round 24  
Application Summary Page  
**GR 24-16**

Project Title: Painted Woods Lake Flood Protection & Recreation Project  
 Applicant: McLean County Water Resource District  
 Primary Contact: Lynn Oberg  
 Total Project Costs: \$3,718,650  
 OHF Request: \$1,000,000

Match Amount	Funding Source	Match Type
\$70,000	Great Plains Fish Habitat Partnership Grant	Cash
\$860,000	National Fish Passage Program (USFWS)	Cash
\$930,000.00	Total	

Percentage of Matching Funds: 73%

Project Duration: Winter of 2024 through August of 2025

Major Directive: A

Additional Directive: B, C & D

Summary of Project: Construct a new dam that will establish backwater habitat, facilitate fish passage, and provide easy access for anglers. This dam will include an integrated fishing platform, a rock riffle structure for fish passage, and flat boulders for bank fishing on both sides of the dam. Finally, the Project will construct two box culverts to facilitate walk-in access across the creek channel and a gravel access path that leads to the dam.

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Technical Committee Comments:

- No comments

Technical questions from the OHF Advisory Board members:

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Funded Projects					
Contract	Total Project Cost	Title	Award Amount	Amount Expended	Project Timeframe
12-133	\$636,500	Painted Woods Lake Flood Damage Reduction Project	\$211,732	\$211,732	Completed
22-214	\$150,097	Katz Dam Fish Passage	\$112,572.75	\$16,386.69	6/2023-6/2024

23-228	\$88,980	Lost Lake Dam Fish Passage	\$66,735.53	\$0.00	December 2023-June 2025
23-229	\$4,900,000	Painted Woods Lake Flood Protection & Recreation Project	\$916,825	\$0.00	Summer of 2024
<b>Totals</b>	<b>\$5,775,577.00</b>		<b>\$1,307,865.28</b>	<b>\$228,118.69</b>	

**Unsuccessful Applications**

<b>Round</b>	<b>Request</b>	<b>Total Project Cost</b>	<b>Title</b>	<b>Vote</b>
8-3	\$508,227.87	\$1,263,926.20	Painted Woods Lake Area Habitat Enhancement and Flood Damage Reduction Project	3-8
16-9	\$211,504.67	\$578,761.68	Fort Mandan and North Dakota 4-H Camp Access Road Improvement Project	2-10
<b>Totals</b>	<b>\$719,732.54</b>	<b>\$1,842,687.88</b>		

# Outdoor Heritage Fund Grant Application



## Instructions

After completing the form, applications and supporting documentation may be submitted by e-mail to [ndicgrants@nd.gov](mailto:ndicgrants@nd.gov). It is preferred that only electronic copies are submitted.

You are not limited to the spacing provided, except in those instances where there is a limit on the number of words. If you need additional space, please indicate that on the application form, answer the question on a separate page, and include with your submission.

The application and all attachments must be received by the application deadline. You may submit your application at any time prior to the application deadline. **Applicants are strongly encouraged to submit applications prior to the deadline for staff review in order ensure that proposals will be complete when submitted on deadline date.** Incomplete applications may not be considered for funding.

**Please review the back of this form to determine project eligibility, definitions, budget criteria, and statutory requirements.**

Project Name – Painted Woods Lake Flood Protection & Recreation Project

Name of Organization – McLean County Water Resource District

Federal Tax ID#

Contact Person/Title – Lynn Oberg, Chairman

Address – 1237 Riverside Lane

City – Washburn

State – North Dakota

Zip Code – 58577

E-mail Address – [obergm@westriv.com](mailto:obergm@westriv.com)

Web Site Address (If applicable)

Phone – 701.400.7793

List names of co-applicants if this is a joint proposal

**MAJOR Directive:**

Choose only one response

- Directive A.** Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat and provide access for sportsmen;
- Directive B.** Improving, maintaining and restoring water quality, soil conditions, plant diversity, animal systems and by supporting other practices of stewardship to enhance farming and ranching;
- Directive C.** Developing, enhancing, conserving and restoring wildlife and fish habitat on private and public lands; and
- Directive D.** Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.

**Additional Directive:**

Choose all that apply

- Directive A.**
- Directive B.**
- Directive C.**
- Directive D.**

**Type of organization:**

- State Agency
- Political Subdivision
- Tribal Entity
- Tax-exempt, nonprofit corporation.

**Abstract/Executive Summary.**

Summarize the project, including its objectives, expected results, duration, total project costs and participants. (no more than 500 words)

The Painted Woods Lake Flood Protection & Recreation Project (Project) will restore water quality and soil conditions, improve in-stream and riparian habitat for fish and wildlife, and enhance recreational access to public lands and waters within the Painted Woods Lake Wildlife Development Area (WDA). The habitat improvements will benefit stocked populations of rainbow trout, bluegill, perch, channel catfish, and other species that depend on healthy streams and riparian corridors. The recreation access enhancements will provide particular benefits to anglers, canoers, and kayakers.

Painted Woods Lake is located approximately 7 miles southeast of Washburn in McLean County. Importantly, this recreation destination is just 30 miles north of Bismarck along Highway 83. The lake drains 305 square miles across McLean and Burleigh counties. The 200-acre lake and the surrounding land make up a 1,200-acre WDA that is managed by North Dakota Game and Fish (NDGF) and the U.S. Fish and Wildlife Service (USFWS). Painted Woods Creek runs through this WDA, entering the lake from the north and exiting the lake to the west, where it joins the Missouri River.

Because of its convenient location along Highway 83 and the Missouri River, the Painted Woods Lake WDA constitutes a critical recreation area for Washburn's 1,300 residents and the 130,000 people who reside in the Bismarck-Mandan metropolitan area. In fact, Painted Woods Lake is the only large (1,000 acres or more) recreation area along the Missouri River between Bismarck and Washburn.

Through this Project, the McLean County Water Resource Board (Board) will construct diverse habitat improvements and recreation access enhancements within the WDA. On the north side of the lake along Highway 83, the Board recently constructed a parking lot and kayak/canoe launch that provides sportsmen with ready access to the upstream portion of Painted Woods Creek. These improvements were funded by a 2023 Outdoor Heritage Fund award.

The present application is seeking support for critical enhancements on the downstream side of the lake. Specifically, the Board is seeking \$1,000,000 to support construction of a new dam that will establish backwater habitat, facilitate fish passage, and provide easy access for anglers. This dam will include an integrated fishing platform, a rock riffle structure for fish passage, and flat boulders for bank fishing on both sides of the dam. Finally, the Project will construct two box culverts to facilitate walk-in access across the creek channel and a gravel access path that leads to the dam.

As described below, this effort will improve the Painted Woods Lake recreation area by reducing flood damage, improving water quality and soil conditions, developing fish habitat, and enhancing recreation access. The total project cost is \$3,718,650. The Board commits to providing \$930,000 (25%) of project funding. This funding will be derived from a combination of federal grants (Great Plains Fish Habitat Partnership, National Fish Passage Program) and local funding. The remainder of project funds (\$1,788,650) will be provided via the Department of Water Resources' Cost-Share Program. The Board applied to DWR for pre-construction phase costs in Spring 2024, and will re-apply for construction phase costs in Fall 2024.

Overall, the project has received broad support from numerous public agencies and other stakeholders. The Board received a Letter of Support from the USBR, with concurrence from USFWS and NDGF. The Board also obtained a Letter of Support from the Garrison Diversion Conservancy District, which operates the existing weir structure on behalf of the USBR.

**Project Duration:**

**Indicate the intended schedule for drawing down OHF funds.**

Project design will be completed in winter of 2024. Bidding is scheduled for spring of 2025. The Board anticipates constructing the Project during the summer of 2025. The intended schedule for drawing down funds is as follows: For May through August 2025 (i.e., over a four-month period), the Board intends to draw \$250,000 per month to support construction costs.

**Amount of Grant request: \$1,000,000**

**Total Project Costs: \$3,718,650**

Note: in-kind and indirect costs can be used for matching funds.

**Amount of Matching Funds: \$930,000**

**A minimum of 25% Match Funding is required.** Indicate if the matching funds will be in-kind, indirect or cash. Please provide verification that these matching funds are available for your project. Note that effective as of July 1, 2015 no State General Fund dollars can be used for a match unless funding was legislatively appropriated for that purpose.

Amount of Match	Funding Source	Type of Match (Cash, In-kind or Indirect)
\$70,000	Great Plains Fish Habitat Partnership Grant	Cash
\$860,000	National Fish Passage Program (USFWS)	Cash
\$		
\$		
\$		
\$		

**Certifications**

I certify that this application has been made with the support of the governing body and chief executive of my organization.

I certify that if awarded grant funding none of the funding will be used for any of the exemptions noted in the back of this application.



## Narrative

### **Organization Information – Briefly summarize your organization’s history, mission, current programs and activities.**

Include an overview of your organizational structure, including board, staff and volunteer involvement. (no more than 300 words)

The McLean County Water Resource District (District) is a political subdivision of the State. The District is governed by a three-member board of managers. It includes Lynn Oberg (Chair), Shannon Jeffers, and Gerard Goven. The Board is appointed by the McLean County Commission and tasked with the responsibility of managing, conserving, protecting, and developing waters of the State for the benefit of the public. The Board is devoted to fulfilling this mandate in collaboration with other agencies in order to protect and promote the health, safety, and general welfare of the people of North Dakota. Today the Board manages a variety of programs related to drainage permits, flood mitigation, protection of water bodies, maintenance of water quality, and promotion of biodiversity.

McLean County has approximately 9,800 residents that rely on and contribute to North Dakota’s agriculture, mining, and energy industries. The District has limited resources to conduct legislatively mandated duties. Management activities are supported by a \$1.74M levy which generated a budget of \$147,000 in 2021. One significant and ongoing project is the Katz Dam Safety Improvement Project, which is supported by the Outdoor Heritage Fund. Other current and recent projects include the Fort Mandan Flood Control Project, Turtle Creek Watershed Plan, management of the Yanktonai Dam, and control of cattail drainage obstruction at numerous locations.

The Water Resource Board is voluntary and has no staff. The District does obtain financial management services from the McLean County Auditor and retains professional engineering services as needed to accomplish program goals.

### **Purpose of Grant – Describe the proposed project identifying how the project will meet the specific directive(s) of the Outdoor Heritage Fund Program**

Identify project goals, strategies and benefits and your timetable for implementation. Include information about the need for the project and whether there is urgency for funding. Indicate if this is a new project or if it is replacing funding that is no longer available to your organization. Identify any innovative features or processes of your project. Note: if your proposal provides funding to an individual, the names of the recipients must be reported to the Industrial Commission/Outdoor Heritage Fund. These names will be disclosed upon request.

For tree/shrub/grass plantings: provide a planting plan describing the site design, planting methods, number of trees/shrubs by species and stock size, grass species and future maintenance. A statement certifying that the applicant will adhere to USDA-NRCS tree/shrub/grass planting specifications along with the name of the governmental entity designing the planting may be substituted for a planting plan.

For projects including Section 319 funding: provide in detail the specific best management practices that will be implemented and the specific projects for which you are seeking funding.

For projects including fencing: A minimum cost share of 40% by the recipient is preferred. Include detailed information on the type of fencing to be installed, whether funding is requested for boundary fencing, new or replacement of existing fencing, and/or cross fencing.

## **Purpose of Grant**

High flows within Painted Woods Creek have caused widespread erosion of the channel's banks, severe damage to the dam located downstream of Painted Woods Lake, and associated water quality impairments. Moreover, overland breakout flows have yielded costly damage to agricultural fields to the west of the creek. The flood mitigation component of this Project is urgent because of the severity and costliness of flood damage to local habitat, private property, and public infrastructure. This Project will mitigate flood damage primarily through the two major design components described below. An innovative feature of this Project is the integration of vital fish and wildlife habitat improvements and recreation access enhancements with flood reduction practices that will restore water quality and soil conditions.

First, the Project will construct a high flow channel to the east of the existing creek. While the creek will continue to convey low flows, the high flow channel will bypass the reach that holds back flood waters. Phase 1 of this effort constructed the downstream 2,000 feet of the high flow channel, along with a 16-foot access road that crosses the channel to provide walk-in recreation opportunities. Phase 2 of this effort will construct the upstream 2,500 feet of the high flow channel and its intake control structure. The District is also providing recreation access to sportsmen by constructing a parking lot off Highway 83 and a kayak/canoe launch just upstream of the high flow channel. These recreational enhancements were supported by a 2023 OHF award.

Second, and specifically relevant to present application's request, the Project will replace the failing weir dam and control structures on the downstream side of Painted Woods Lake. Urgent action is required because operators currently access the failing dam via a rusty steel structure that is frequently filled with ice and debris. The District will thus install new box culverts, a sheet pile headwall structure, and a sluice gate. As described above, in addition to maintaining water levels for flood reduction, the new dam and associated structures will improve in-stream habitat conditions by forming backwater habitat and enabling fish passage. The Project will simultaneously provide sportsmen with access to this public resource via a gravel pathway, integrated fishing platform, and flat boulders for bank fishing.

Ultimately, this Project offers a unique opportunity to coordinate high-impact habitat improvements and recreation enhancements with flood mitigation and safety improvements. The Project's design will be completed in winter of 2024. The District plans to bid the project in spring of 2025 and to complete construction before winter of 2025. This is a new project, i.e., this request is not replacing funding from another organization.

Is this project part of a Comprehensive Conservation Plan?  Yes  No

If yes, provide a copy with the application.

*Note: Projects involving buildings and infrastructure will only be considered if part of a Comprehensive Conservation Plan. Please refer to the "Definitions" section at the back of the form for more details.*

## **Management of Project – Provide a description of how you will manage and oversee the project to ensure it is carried out on schedule and in a manner that best ensures its objectives will be met.**

Include a brief background and work experience for those managing the project.

The Board has retained Moore Engineering Inc. (Moore) to perform design, construction oversight, and permitting for the Project. Moore is also assisting with public and stakeholder engagement. Moore has decades of experience providing water resource engineering services for communities throughout

North Dakota. The firm regularly provides concept development, environmental review, design, permitting, and construction oversight for large watershed management and flood protection infrastructure projects that incorporate fish passage and other habitat enhancements for wildlife. Moore will provide bid preparation and construction engineering services for the proposed Project. This will include preparation of contract documents, regular meetings with contractors, observation of construction, schedule management, compliance reviews, and other services to ensure that the Project progresses on time, within budget, and in keeping with the highest quality standards.

**Evaluation – Describe your plan to document progress and results.**

Please be specific on the methods you will utilize to measure success. Note that regular reporting, final evaluation and expenditure reports will be required for every grant awarded.

The Board will partner with Moore Engineering Inc. to develop a formal construction management plan that includes record keeping and invoice management practices. The Board will submit a monthly progress report to the Outdoor Heritage Fund that includes copies of invoices accrued and proposed activities for the subsequent reporting period.

**Financial Information**

**Project Budget – Use the table below to provide an itemized list of project expenses and describe the matching funds being utilized for this project.**

Indicate if the matching funds are in the form of cash, indirect costs or in-kind services. The budget should identify all other committed funding sources and the amount of funding from each source. **A minimum of 25% match funding is required.** An application will be scored higher the greater the amount of match funding provided. (See Scoring Form.)

Certain values have been identified for in-kind services as detailed under “Budget Information” at the back of this form. Refer to that section and utilize these values in identifying your matching funds.

**NOTE: No indirect costs will be funded. Supporting documentation for project expenses, including bids, must be included or application will be considered incomplete.**

Project Expense	OHF Request	Applicant's Match Share (Cash)	Applicant's Match Share (In-Kind)	Applicant's Match Share (Indirect)	Other Project Sponsor's Share	Total Each Project Expense
Design and study		\$88,250			\$132,400	\$220,650
Construction engineering and permits		\$84,000			\$126,000	\$210,000
Construction	\$1,000,000	\$463,000			\$1,200,000	\$2,663,000
Contingency		\$294,750			\$330,250	\$625,000
<b>Total Costs</b>	<b>\$1,000,000</b>	<b>\$930,000</b>			<b>\$1,788,650</b>	<b>\$3,718,650</b>

Note: Costs for seeding, fencing, pipelines, wells, and cover crops cannot exceed NRCS Field Office Tech Guide without justification. Projects involving perimeter fencing must follow NRCS eligibility standards.

**Budget Narrative – Use the space below to provide additional detail regarding project expenses.**

The present application requests that OHF provide \$1,000,000 for construction costs. This project is also eligible as a “Dam Deficiencies and Repairs” project under the DWR’s Cost-Share Program. The Project Team plans to obtain 75% of total project costs (\$2,788,650) from a combination of an OHF grant for \$1,000,000 and multiple DWR Cost-Share grants totaling \$1,788,650.

The remaining 25% of project costs (\$930,000) will be obtained from federal grants and or local funds. Specifically, in January 2024, the District applied for a \$70,000 grant from the Great Plains Fish Habitat Partnership. Additionally, in December 2024, the District applied for a grant from the National Fish Passage Program (U.S. Fish & Wildlife Service). While the District’s application for the latter program received very favorable scores, the agency ultimately decided not to fund the project because the state match had not yet been secured. The District is therefore confident that, upon receiving state funding from OHF and DWR, a subsequent application for \$860,000 from the National Fish Passage Program will be successful.

The District recently applied to DWR for 60% of pre-construction costs (i.e., \$220,650 for design and the geotechnical study). The District will provide the remaining \$88,250 of this expense. In the fall of 2024, the District will again apply to the DWR for \$1,656,250 in construction costs and related expenses. This includes \$126,000 for construction engineering and permits, \$1,200,000 for construction, and \$330,250 for contingency. The District will use grant funds and/or local funding to cover the remaining \$84,000 for construction engineering and permits, \$463,000 for construction, and \$294,750 for contingency.

**Sustainability – Indicate how the project will be funded or sustained in future years.**

Include information on the sustainability of this project after OHF funds have been expended and whether the sustainability will be in the form of ongoing management or additional funding from a different source.

As described above, the Painted Woods Lake WDA is managed by the USFWS and NDGF. The Garrison Conservancy District operates the dam structure on behalf of the USBR. The Board has obtained letters of support from each of these agencies. The WDA will continue to be managed through this robust interagency partnership, which will ensure the sustainability of investments made by all contributing partners.

**Partial Funding – Indicate how the project will be affected if less funding is available than that requested.**

The District has access to limited financial resources for implementing vital projects that protect public waters, improve associated habitat, and facilitate recreational access. If an Outdoor Heritage Fund grant is not awarded, the Project may be delayed until sufficient funding is obtained.

**Partnership Recognition - If you are a successful recipient of Outdoor Heritage Fund dollars, how would you recognize the Outdoor Heritage Fund partnership? *\* There must be signage at the location of the project acknowledging OHF funding when appropriate.***

As with other projects, the Board will post signage at entrance locations to acknowledge all project sponsors. Signage with the Outdoor Heritage Fund listed as a project sponsor will be posted at prominent locations to ensure that sportsmen and other users are able to view these signs and appreciate the State's commitment to improving fish and wildlife habitat and enhancing recreation opportunities. Moreover, both the Board and its engineering consultant will use social media and digital marketing campaigns to advertise the Project, promote its benefits, and recognize its contributing partners.

**Awarding of Grants - Review the appropriate sample contract for your organization on the website at <http://www.nd.gov/ndic/outdoor-infopage.htm>.**

Can you meet all the provisions of the sample contract?  Yes  No

If there are provisions in that contract that your organization is unable to meet, please indicate below what those provisions would be:

## **ABOUT OHF:**

The purpose of the North Dakota Outdoor Heritage Fund is to provide funding to state agencies, tribal governments, political subdivisions, and nonprofit organizations, with higher priority given to projects that enhance **conservation** practices in this state by:

**Directive A.** Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat and provide access for sportsmen;

**Directive B.** Improving, maintaining and restoring water quality, soil conditions, plant diversity, animal systems and by supporting other practices of stewardship to enhance farming and ranching;

**Directive C.** Developing, enhancing, conserving and restoring wildlife and fish habitat on private and public lands; and

**Directive D.** Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.

## **EXEMPTIONS**

Outdoor Heritage Fund grants may not be used to finance the following:

- Litigation;
- Lobbying activities;
- Any activity that would interfere, disrupt, or prevent activities associated with surface coal mining operations; sand, gravel, or scoria extraction activities; oil and gas operations; or other energy facility or infrastructure development;
- The acquisition of land or to encumber any land for a term longer than twenty years; or
- Projects outside this state or projects that are beyond the scope of defined activities that fulfill the purposes of Chapter 54-17.8 of the North Dakota Century Code.

OHF funds may not be used, except after a finding of exceptional circumstances by the Industrial Commission, to finance:

- A completed project or project commenced before the grant application is submitted;
- A feasibility or research study;
- Maintenance costs;
- A paving project for a road or parking lot;
- A swimming pool or aquatic park;
- Personal property that is not affixed to the land;
- Playground equipment, except that grant funds may be provided for up to 25% of the cost of the equipment not exceeding \$10,000 per project and all playground equipment grants may not exceed 5% of the total grants per year (see Definitions/Clarifications for how this will be calculated);
- Staffing or outside consultants except for costs for staffing or an outside consultant to design and implement an approved project based on the documented need of the applicant and the expenditures may not exceed 5% of the grant to a grantee if the grant exceeds \$250,000 and expenditures may not exceed 10% of the grant to a grantee if the grant is \$250,000 or less (see Definitions/Clarifications for how this will be calculated);
- A building except for a building that is included as part of a comprehensive conservation plan for a new or expanded recreational project (see Definitions/Clarifications for definition of comprehensive conservation plan and new or expanded recreational project); or
- A project in which the applicant is not directly involved in the execution and completion of the project.

The goal of the Industrial Commission is that at a minimum 15% of the funding received for a biennium will be given priority for recreation projects that meet Directive D.

The following projects are not eligible for funding, unless there is a finding of exceptional circumstances by the Industrial Commission include:

- Construction or refurbishment of indoor/outdoor ice rinks,
- Construction or refurbishment of indoor/outdoor athletic courts and sports fields,
- Other substantially similar facilities.
- Infrastructure that is not part of a comprehensive conservation plan.
- Projects not meeting a minimum funding request of \$2,500.

## Budget Information

In-kind services used to match the request for Outdoor Heritage Fund dollars shall be valued as follows:

- |                        |   |
|------------------------|---|
| • Labor costs          | \$15.00 an hour   |
| • Land costs           | Average rent costs for the county as shown in the most recent publication of the USDA, National Agricultural Statistics Services, North Dakota Field Office |
| • Permanent Equipment  | Any equipment purchased must be listed separately with documentation showing actual cost. (For example: playground equipment)                               |
| • Equipment usage      | Actual documentation  |
| • Seed & Seedlings     | Actual documentation  |
| • Transportation       | Mileage at federal rate   |
| • Supplies & materials | Actual documentation  |

More categories will be added as we better understand the types of applications that will be submitted. We will use as our basis for these standards other State and Federal programs that have established rates. For example, the North Dakota Nonpoint Source Pollution Management Program has established rates. If your project includes work that has an established rate under another State Program, please use those rates and note your source.

### **Definitions/Clarifications:**

Building - Defined as "A structure with a roof either with walls or without walls and is attached to the ground in a permanent nature."

Comprehensive Conservation Plan - Defined as "A detailed plan that has been formally adopted by the governing board which includes goals and objectives--both short and long term, must show how this building will enhance the overall conservation goals of the project and the protection or preservation of wildlife and fish habitat or natural areas." This does not need to be a complex multi-page document. It could be included as a part of the application or be an attachment.

New and Expanded Recreational Project means that the proposed building cannot be a replacement of a current building. The proposed building must also be related to either a new or expanded recreational project--either an expansion in land or an expansion of an existing building or in the opportunities for recreation at the project site.

Playground equipment calculation - Only the actual costs of the playground equipment (a bid or invoice showing the amount of the equipment costs must be provided) - cannot include freight or installation or surface materials or removal of old equipment, etc.

Staffing/Outside Consultants Costs - If you are requesting OHF funding for staffing or for an outside consultant, you must provide information in your application on the need for OHF funding to cover these costs. For example, if you are an entity that has engineering staff you must explain why you don't have sufficient staff to do the work or if specific expertise is needed or whatever the reason is for your entity to retain an outside consultant. If it is a request for reimbursement for staff time then a written explanation is required in the application of why OHF funding is needed to pay for the costs of that staff member(s)' time. **The budget form must reflect on a separate line item the specific amount that is being requested for staffing and/or the hiring of an outside consultant.** This separate line item will then be used to make the calculation of 5% or 10% as outlined in the law. Note that the calculation will be made on the grant less the costs for the consultant or staff.

Maintenance – Activities that preserve or keep infrastructure in a given existing condition, including repairs. Repair means to restore to sound condition after damage, to renew or refresh; except repairs due to damage caused by Acts of God.

## **Scoring of Grants**

**Oral Presentation.** Please note that you will be given an opportunity to make a ten-minute Oral Presentation at a meeting of the Outdoor Heritage Fund Advisory Board. These presentations are strongly encouraged.

**Open Record.** Please note that your application and any attachments will be open records as defined by law and will be posted on the Industrial Commission/Outdoor Heritage Fund website.

All applications will be scored by the Outdoor Heritage Fund Advisory Board after your ten-minute oral presentation. The ranking form that will be used by the Board is available on the website at <http://www.nd.gov/ndic/outdoor-infopage.htm> .

## **Awarding of Grants**

All decisions on requests will be reported to applicants no later than 30 days after Industrial Commission consideration. The Commission can set a limit on duration of an offer on each application or if there isn't a specific date indicated in the application for implementation of the project, then the applicant has until the next Outdoor Heritage Fund Advisory Board regular meeting to sign the contract and get the project underway or the commitment for funding will be terminated and the applicant may resubmit for funding. Applicants whose proposals have been approved will receive a contract outlining the terms and conditions of the grant.

## **Responsibility of Recipient**

The recipient of any grant from the Industrial Commission must use the funds awarded for the specific purpose described in the grant application and in accordance with the contract. The recipient cannot use any of the funds for the purposes stated under Exemptions on the first page of this application.

If you have any questions about the application, the Commission can be reached at 701-328-3722 or [outdoorheritage@nd.gov](mailto:outdoorheritage@nd.gov).

Revised: November 4, 2019, April 12, 2023

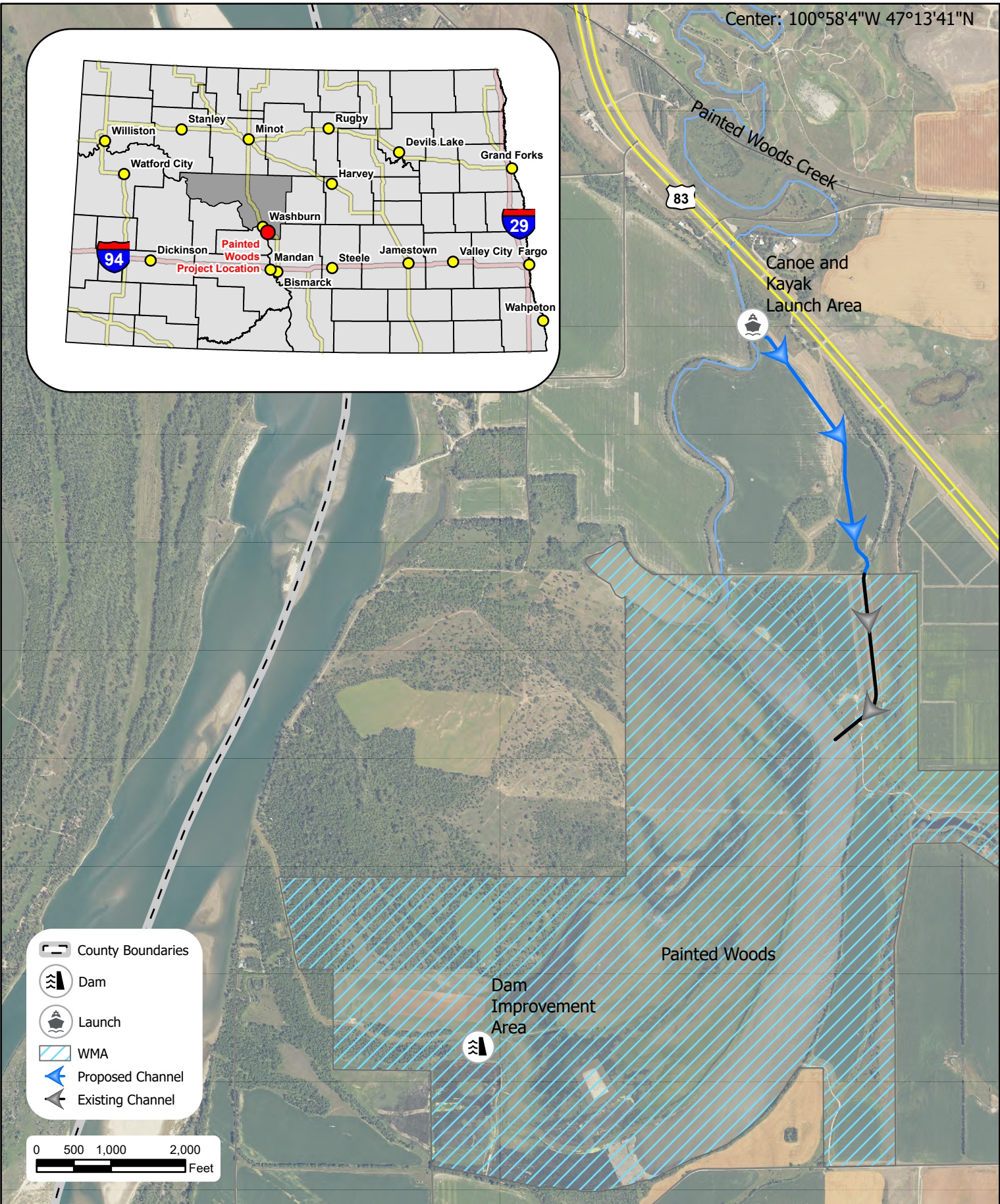
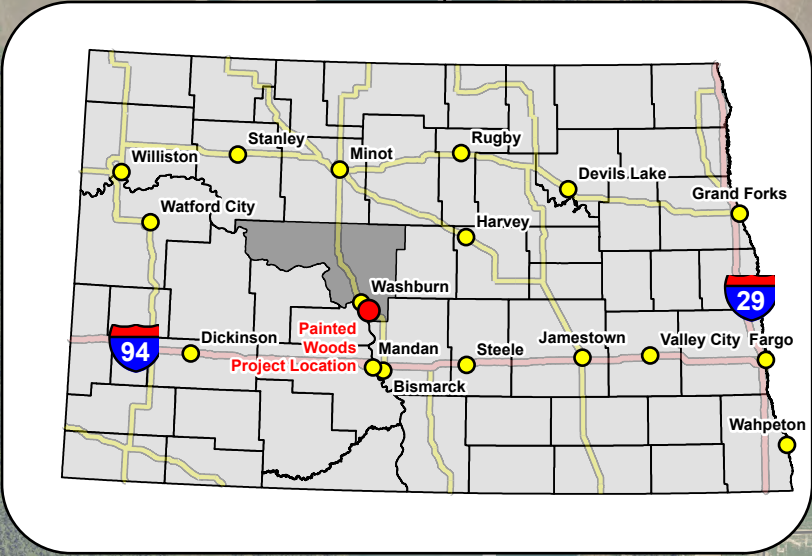


**Painted Woods Outlet  
McLean County Water Resource District  
McLean County, North Dakota**

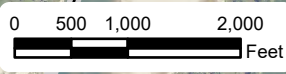
*Engineer's Preliminary Opinion of Probable Cost*

<i>BID ITEM NO. &amp; DESCRIPTION</i>	<i>UNIT</i>	<i>QUANTITY</i>	<i>UNIT PRICE</i>	<i>TOTAL</i>
<b><u>Outlet and Fishing Platform</u></b>				
General				
Mobilization	LS	1	\$40,000.00	\$40,000.00
Clearing & Grubbing	LS	1	\$5,000.00	\$5,000.00
Dewatering/Control of Water	LS	1	\$40,000.00	\$40,000.00
Storm Water Management	LS	1	\$10,500.00	\$10,500.00
Removals				
Remove Bridge	EA	2	\$15,000.00	\$30,000.00
Remove Dam Structure	EA	1	\$25,000.00	\$25,000.00
Remove and Salvage Existing Riprap	CY	100	\$40.00	\$4,000.00
Construction				
Common Excavation	CY	2,400	\$3.00	\$7,200.00
Boulders - Fishing	EA	10	\$250.00	\$2,500.00
Embankment	CY	2,400	\$3.00	\$7,200.00
Box Culvert	EA	2	\$200,000.00	\$400,000.00
Steel Sheet Piling	SF	44,500	\$40.00	\$1,780,000.00
Fish Passage	LS	1	\$75,000.00	\$75,000.00
Riprap	CY	840	\$85.00	\$71,400.00
Fishing Platform	LS	1	\$40,000.00	\$40,000.00
Class 5 Aggregate - Walking Path	CY	330	\$40.00	\$13,200.00
Seperation Fabric	SF	1,200	\$5.00	\$6,000.00
Sluice Gate Structure	EA	1	\$100,000.00	\$100,000.00
Riprap Filter Fabric	SF	1,200	\$5.00	\$6,000.00
<b><u>Phase II Control Structure and Launch</u></b>				
General				
Mobilization	LS	1	\$25,000.00	\$25,000.00
Clearing & Grubbing	LS	1	\$10,000.00	\$10,000.00
Dewatering/Control of Water	LS	1	\$15,000.00	\$15,000.00
Storm Water Management	LS	1	\$10,000.00	\$10,000.00
Construction				
Common Excavation	CY	50,000	\$3.00	\$150,000.00
Embankment	CY	50,000	\$3.00	\$150,000.00
Class 5 Aggregate - Parking Lot	CY	125	\$40.00	\$5,000.00
Class 5 Aggregate - Canoe Launch	CY	550	\$40.00	\$22,000.00
Control Structure	EA	1	\$200,000.00	\$200,000.00
			Construction Subtotal	\$3,250,000.00
			Contingencies (30%)	\$975,000.00
			Design & Construction Engineering (18%)	\$585,000.00
			Permits	\$45,000.00
			Soil Borings & Geotechnical Report	\$45,000.00
			<b>TOTAL PROJECT COST</b>	<b>\$4,900,000.00</b>

Center: 100°58'4"W 47°13'41"N

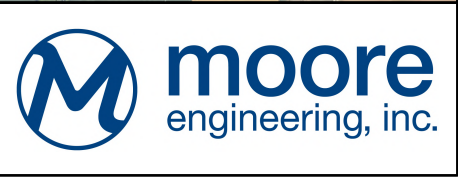
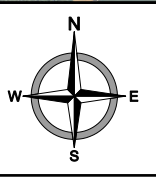


- County Boundaries
- Dam
- Launch
- WMA
- Proposed Channel
- Existing Channel



**22649 - PAINTED WOODS LAKE FLOOD PROTECTION - PHASE 2**  
**EXHIBIT - PROJECT LOCATION**  
**MCLEAN COUNTY, NORTH DAKOTA**

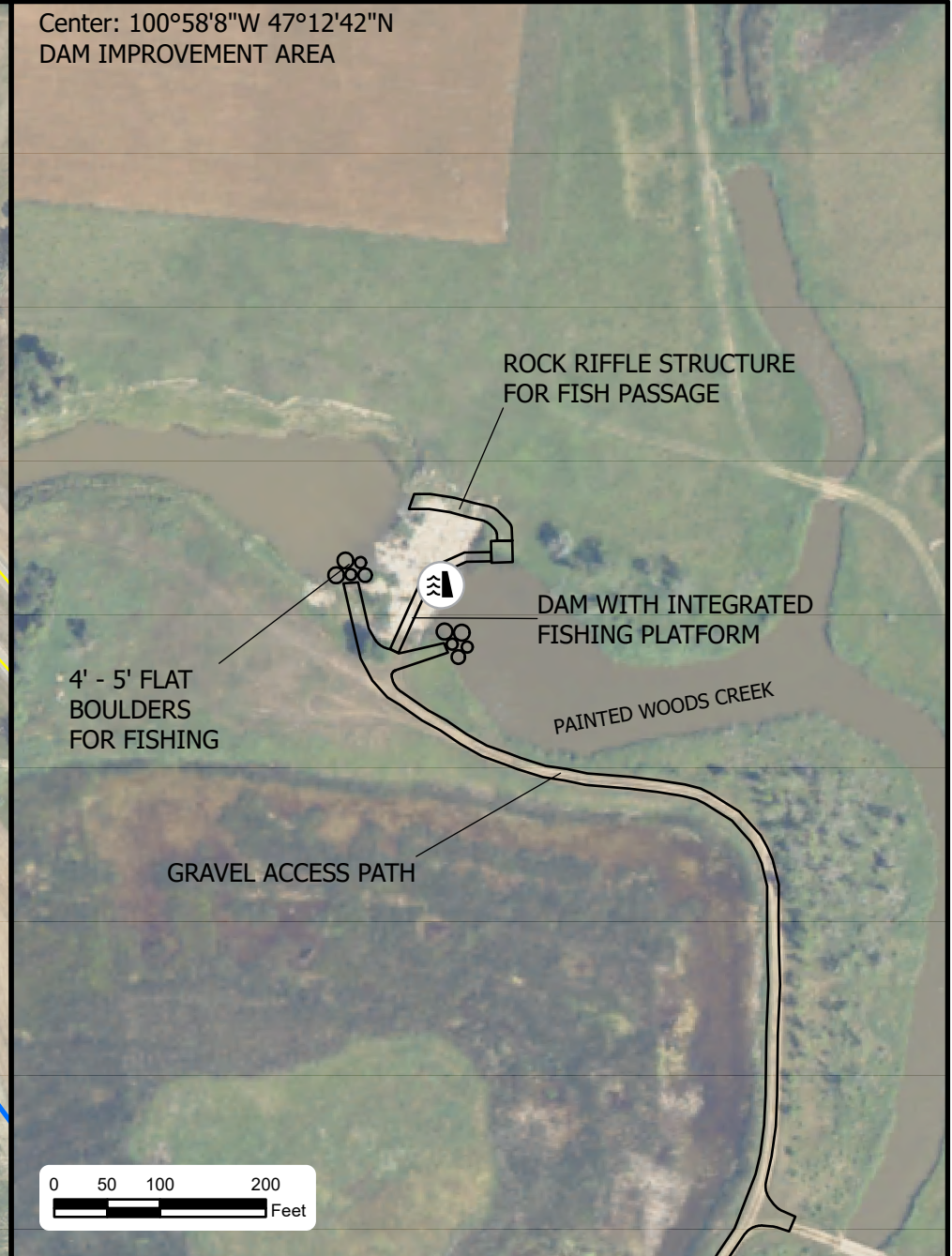
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Center: 100°57'16"W 47°14'18"N  
CANOE AND KAYAK LAUNCH AREA

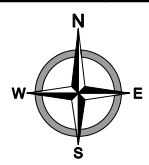


Center: 100°58'8"W 47°12'42"N  
DAM IMPROVEMENT AREA



**22649 - PAINTED WOODS LAKE FLOOD PROTECTION - PHASE 2  
EXHIBIT - LANDING AND DAM SITE MAPS  
MCLEAN COUNTY, NORTH DAKOTA**

Created By: ZAC Date Created: 08/27/2023 Date Saved: 08/27/23 Date Plotted: N/A Date Exported: 08/27/23  
Plotted By: Parcel Date: XXXX/20 Aerial Image: 2019 County NAIP SIDS Elevation Data: Lidar  
Horizontal Datum: N/A Vertical Datum: NAVD1988  
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# United States Department of the Interior



BUREAU OF RECLAMATION  
Dakotas Area Office  
304 East Broadway Avenue  
Bismarck, ND 58501

IN REPLY REFER TO:

DK-4000  
2.2.4.21

Mr. Lynn Oberg  
Chairman  
McLean County Water Resource District  
1237 Riverside Lane  
Washburn, ND 58577  
[obergm@westriv.com](mailto:obergm@westriv.com)

Subject: Painted Woods Lake Water Control Weir, Garrison Diversion Unit, Pick-Sloan  
Missouri Basin Program

Dear Mr. Oberg:

I am writing in response to your consulting engineer's request for a letter of support for McLean County Water Resource District Board's (Board) proposed project in the Painted Woods Lake Area. The Board's proposal includes replacing the existing control weir constructed to restore Painted Woods Lake to its historic elevation. Reclamation supports the Board's weir replacement project with concurrence from the U.S. Fish and Wildlife Service (Service) and North Dakota Game and Fish Department (Department).

All maintenance of the existing weir structure is included as part of the overall management of the Painted Woods Lake Wildlife Development Area managed by the Service and the Department. All plans for construction, operations and maintenance of a replacement weir structure should be discussed with the Service and the Department.

Please contact Mr. Nathan Kraft, Civil Engineer, at (701) 221-1254 or at [NKraft@usbr.gov](mailto:NKraft@usbr.gov) and/or Mr. Darrin Goetzfried, Facilities and Engineering Division Manager, at (701) 221-1272 or at [DGoetzfried@usbr.gov](mailto:DGoetzfried@usbr.gov) if you have any questions. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

Sincerely,

**JOSEPH HALL** Digitally signed by JOSEPH HALL  
Date: 2023.06.07 10:48:58 -05'00'

Joseph E. Hall  
Area Manager

cc: See next page

INTERIOR REGION 5 • MISSOURI BASIN

KANSAS, MONTANA\*, NEBRASKA, NORTH DAKOTA, SOUTH DAKOTA

\* PARTIAL

cc: Ms. Kathy Baer  
Supervisory Wildlife Refuge Specialist  
U.S. Fish and Wildlife Service  
3275 11th St NW  
Coleharbor, ND 58531  
[kathy\\_baer@fws.gov](mailto:kathy_baer@fws.gov)

Mr. Dan Halstad  
Wildlife Resource Management Supervisor  
North Dakota Game and Fish Department  
406 Dakota Avenue  
Riverdale, ND 58565-0506  
[dkhalstead@nd.gov](mailto:dkhalstead@nd.gov)

Mr. Duane DeKrey  
General Manager  
Garrison Diversion Conservancy District  
P.O. Box 140  
Carrington, ND 58421  
[duaned@gdcd.org](mailto:duaned@gdcd.org)  
[mri@gdcd.org](mailto:mri@gdcd.org)

Mr. Scott Peterson  
Deputy Director  
North Dakota Game and Fish Department  
100 North Bismarck Expressway  
Bismarck, ND 58501-5095  
[speterso@nd.gov](mailto:speterso@nd.gov)

Mr. AJ Tuck, P.E.  
Project Manager  
Moore Engineering, Inc.  
4503 Coleman Street, Suite 105  
Bismarck, ND 58503  
[aj.tuck@mooreengineeringinc.com](mailto:aj.tuck@mooreengineeringinc.com)



May 9, 2023

Mr. Lynn Oberg

GARRISON DIVERSION  
CONSERVANCY DISTRICT  
P.O. Box 140  
CARRINGTON, N.D. 58421  
(701) 652-3194  
FAX (701) 652-3195  
gdcdd@gdcdd.org  
www.garrisondiversion.org

Dear Mr. Oberg:

The Garrison Diversion Conservancy District (Garrison Diversion) has been involved with operating the Painted Woods weir for the Bureau of Reclamation (Reclamation) since the 1990s. Since undertaking those operations, Garrison Diversion has witnessed flooding in the Painted Woods Lake area. The high flows break out of the banks and lake causing significant property damage.

The McClusky Canal has one outlet structure which discharges through Painted Woods Creek, into Painted Woods Lake and ultimately returns to the Missouri River. To help with the Painted Woods area flooding issues, the McClusky Canal flows are off during flooding events.

The Painted Woods weir structure is badly in need of repairs or a full replacement of the structure with a more functional flow control structure which is safer to operate. Currently, to operate the weir in the center of the dam, our operations staff has to walk on an old, rusted steel structure. At times, the structure can be full of cattails or ice making the walk dangerous.

Garrison Diversion is fully supportive of a comprehensive flood solution in the Painted Woods Lake area. If you would like to further discuss the flood impacts to private property, please reach out to me at 701-652-3194.

Sincerely,

Kip Kovar  
District Engineer



# Contract 022-222 Howard Oppegard Landing Improvements Budget Modification Request

American Foundation for Wildlife

Kyle Vetter – President



# Howard Oppengard Proposed Project Map



Features			
	Concrete Picnic Table		Boat Parking
	Shrub Planting		Boat Ramp
	Pollinator Planting		Fishing Pier

**X REMOVE EARTHEN PIER**

**ADDITIONAL PROTECTION ON BOAT RAMP AREA AND PARKING AREA**



# Budget Modification Request



Project Expense	QHF Request	Applicant's Match Share (Cash)	Applicant's and Other Project Sponsor's Match Share (In-Kind)	Total Each Project Expense
Concrete Boat Ramp, Hard Substrate Material and Contractor	\$30,000	\$10,000	\$3,500	\$43,500
<b><u>BUDGET MODIFICATION REQUEST</u></b> Additional Hard Substrate Material and Contractor for boat ramp and parking area	\$12,000	\$4,000	\$0	\$16,000
Eathen Fishing Pier- Ramp Wind Protection and Contractor Excavating	\$18,000	\$6,000	\$3,500	\$27,500
Concrete Picnic Table	\$750	\$250	\$250	\$1,250
Pollinator and Shrub Planting	\$1,800	\$600	\$1,000	\$3,400
NDGFD - Boat Deck (non-match)	0	0	\$10,000	\$10,000
<b>Total Costs</b>	<b>\$50,550</b>	<b>\$16,850</b>	<b>\$18,250</b>	<b>\$85,650</b>
<b>NEW BUDGET MOD TOTAL</b>	<b>\$44,550</b>	<b>\$14,850</b>	<b>\$14,750</b>	<b>\$74,150</b>

- Requesting the removal of the earthen fishing pier from the original approved budget.
  - Difficulty in obtaining proper federal permits.
  - Difficulty of heavy equipment access to site. The slope of the shoreline creates issues for access.
  - Shoreline fishing will still be available to public.
- Requesting a portion of the original grant budget be used on the boat ramp and parking area.
  - Additional protection (rock and gravel) on the grade to the concrete ramp and additional material for the parking area above the ramp.
  - This is recommended by NDGFD to reduce water erosion and allow for proper drainage for boat trailers and live wells.

# North Dakota Industrial Commission



Doug Burgum  
Governor

Drew H. Wrigley  
Attorney General

Doug Goehring  
Agriculture Commissioner

## Resolution of Appreciation

- Whereas,** Robert “Bob” Kuylen has admirably served the State of North Dakota since his appointment to the Outdoor Heritage Fund Advisory Board on September 12<sup>th</sup>, 2013; and
- Whereas,** Bob has been dedicated to the Outdoor Heritage Fund’s mission to enhance conservation practices in this State by providing access for sportsmen and women, supporting agricultural stewardship, enhancing wildlife habitat, and creating outdoor recreation opportunities; and
- Whereas,** During Bob’s tenure with the Board, over \$85.5 million of Outdoor Heritage Fund dollars was invested in North Dakota, yielding private sector matches of over \$222.4 million toward this purpose; and
- Whereas,** Since his election as Chairman of the Outdoor Heritage Fund Advisory Board on June 7<sup>th</sup>, 2019, Bob has skillfully led the Board with a courteous and respectful spirit, leading to the resourceful investment of Outdoor Heritage Fund dollars in projects which benefit every county and numerous communities in the State; and
- Whereas,** Bob’s dedication to the Outdoor Heritage Fund Advisory Board and to the State of North Dakota will leave a lasting legacy for all citizens of our state and is deserving of recognition.

**Now, therefore,** the North Dakota Outdoor Heritage Fund Advisory Board hereby expresses deep gratitude to Bob Kuylen for his 11 years of service to the citizens of North Dakota.

Adopted this 26<sup>th</sup> day of June, 2024.

## INDUSTRIAL COMMISSION OF NORTH DAKOTA

Doug Burgum  
Governor

Drew H. Wrigley  
Attorney General

Doug Goehring  
Agriculture Commissioner

# GEOLOGICAL SURVEY QUARTERLY REPORT

*January 1, 2024 to March 31, 2024  
to the*

## NORTH DAKOTA INDUSTRIAL COMMISSION

Edward C. Murphy  
State Geologist  
Geological Survey  
Department of Mineral Resources  
North Dakota Industrial Commission

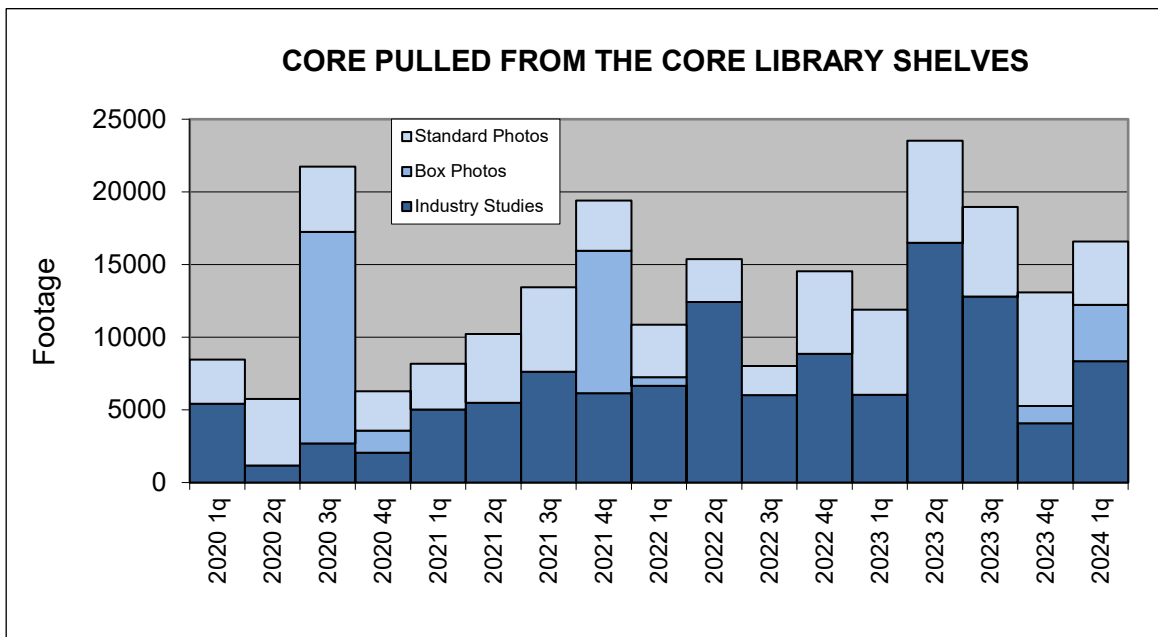
June 26, 2024

## Table of Contents

WILSON M. LAIRD CORE AND SAMPLE LIBRARY .....	1
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## Wilson M. Laird Core and Sample Library

During the first quarter of 2024, one oil company geologist, geologists from the Geological Survey, EERC, professors from NDSU and Moorhead State, and graduate students from UND and Colorado School of Mines studied 8,350 feet of core. A total of 4,359 feet of core was photographed generating 6,103 standard photographs and 3,932 feet of core was photographed with a tripod generating 311 photographs for the subscription site.



*Workers pulled 16,583 feet of core from library shelves during the first quarter of 2024.*



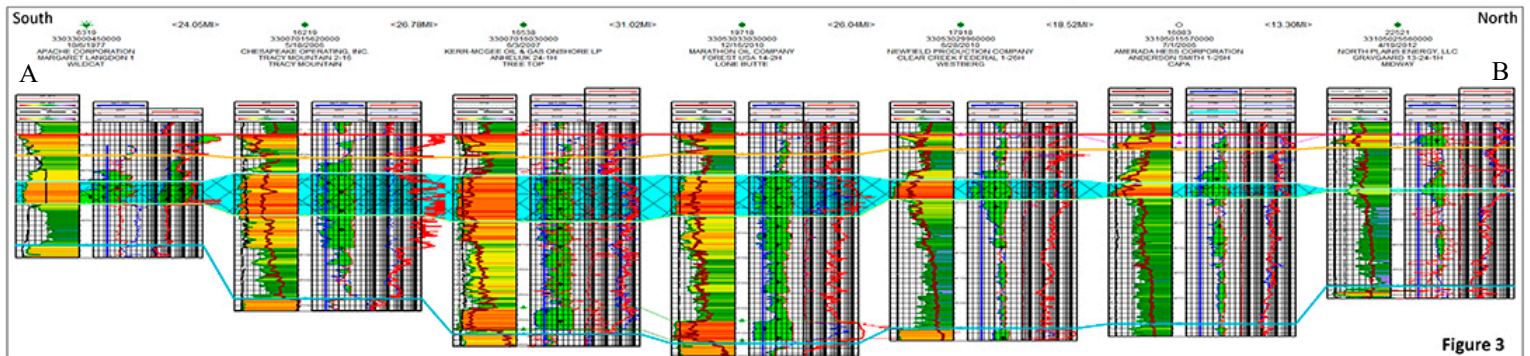
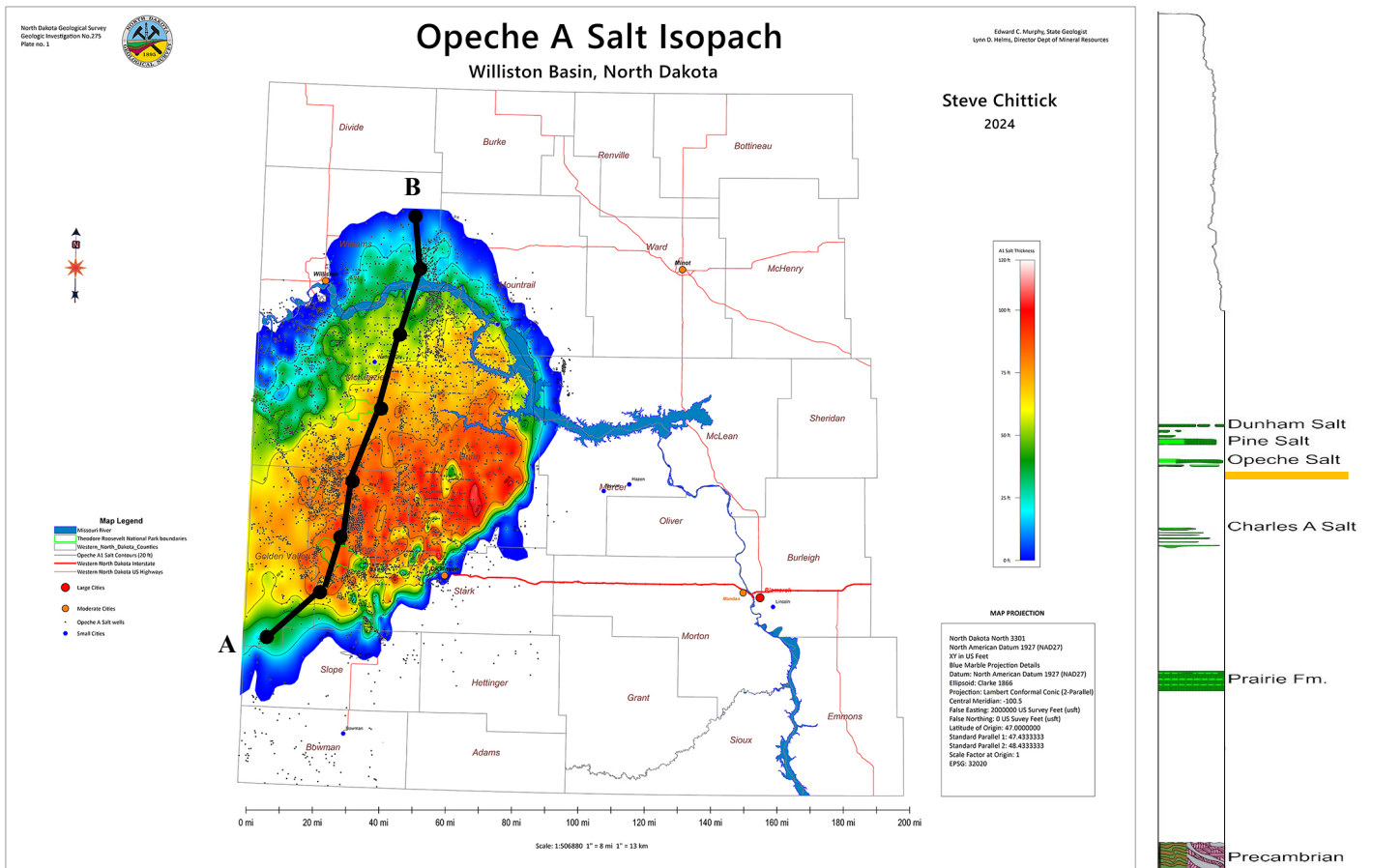
### Core Photographs as Sampling Guides

Since we began posting core photographs 20 years ago, companies have been using them to identify cores that they wanted to study and sample in the core library. Occasionally, companies that do not have the opportunity to travel to the core library have used those photographs to identify where they want rock samples taken for testing or for creating thin sections. That information is sent to one of our core library technicians who pulls the core, identifies the part of the core to sample, obtains the rock sample, and then sends it to the company. In exchange, the company provides us with a copy of the test results.

*Kent Hollands matching core to a core photograph sent in by a geology professor at MSU – Moorhead. Inset photo: As per this request, two billets were cut from this Broom Creek Formation core.*

## Opeche A and B Salt Maps

After examining more than 5,000 well logs, we recently published isopach and structure maps of the Opeche A and B Salts (Geologic Investigations nos. 275 and 278). These are the fifth and sixth salts that we have mapped in our salt project, ranging from the shallowest salts (the Dunham, Pine, Opeche A & B, and Charles A) to the deepest and thickest salt in the Williston Basin (Prairie Formation). The shallowest salts hold the most potential for cavern development and hydrocarbon storage while the Prairie Formation is of interest because of its potash content.



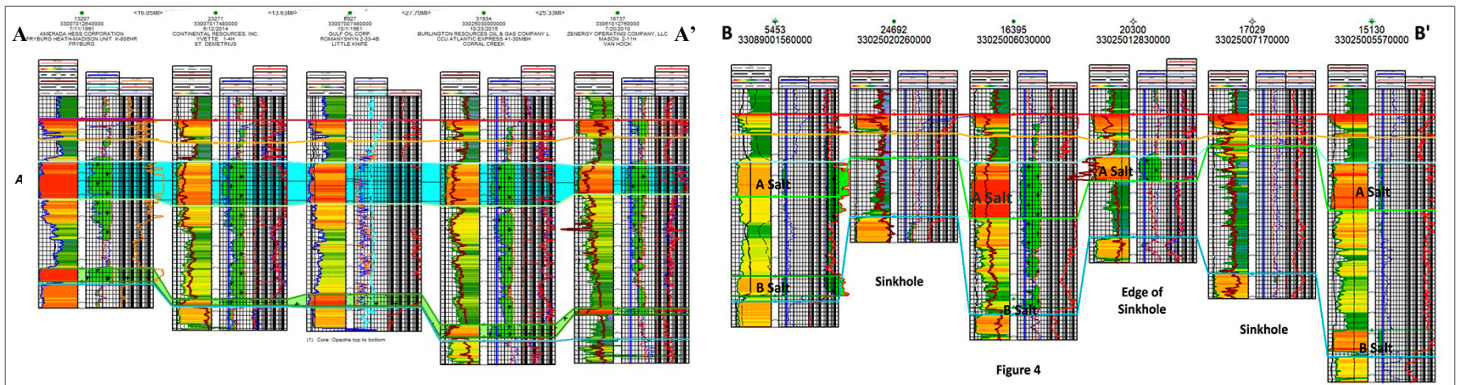
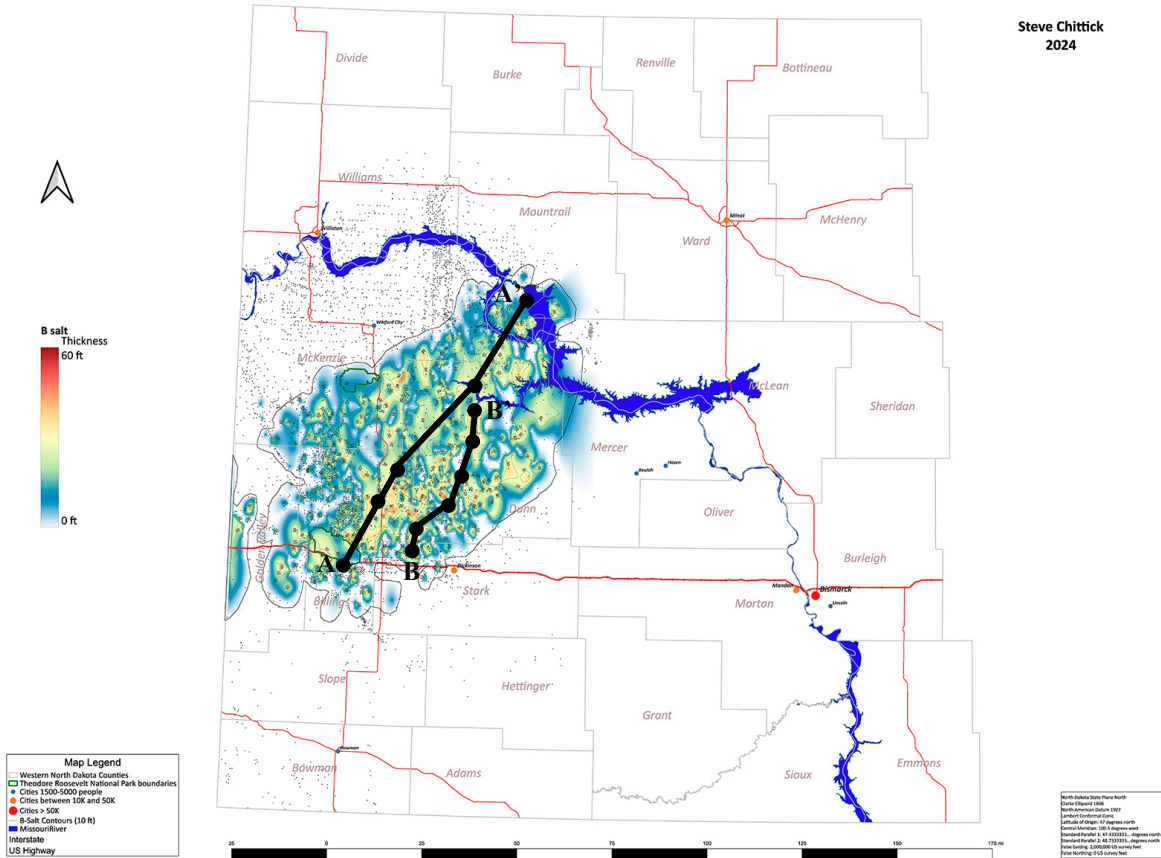
Top: An isopach of the Opeche A showing a maximum thickness of around 100 feet (dark red).  
Bottom: A north to south cross-section across the Opeche demonstrating the A salt is thickest in the southern half of the deposit.



# Opeche B Salt Thickness and Extent

Williston Basin, North Dakota

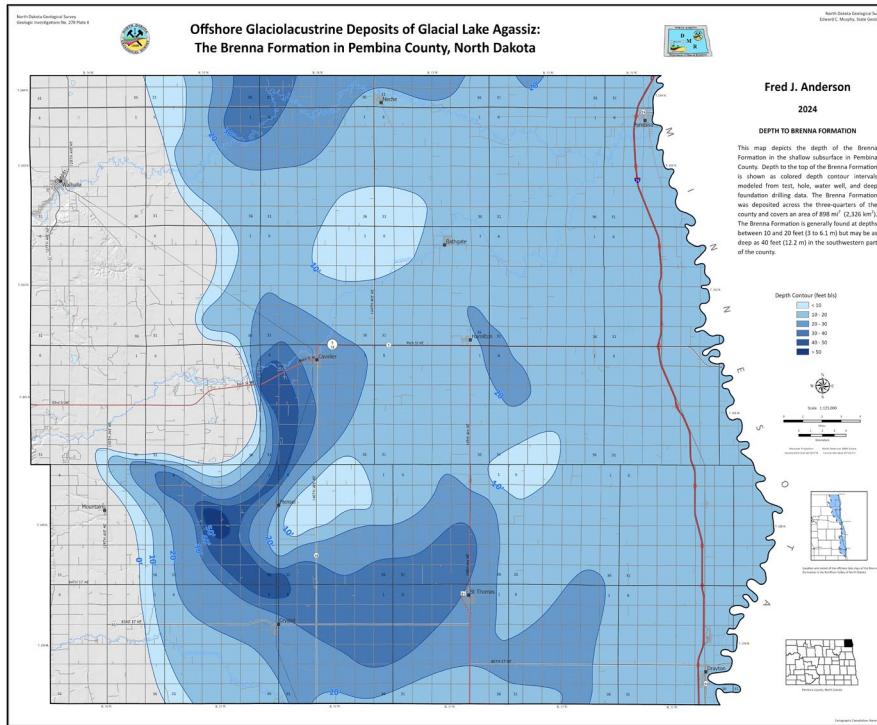
Steve Chittick  
2024



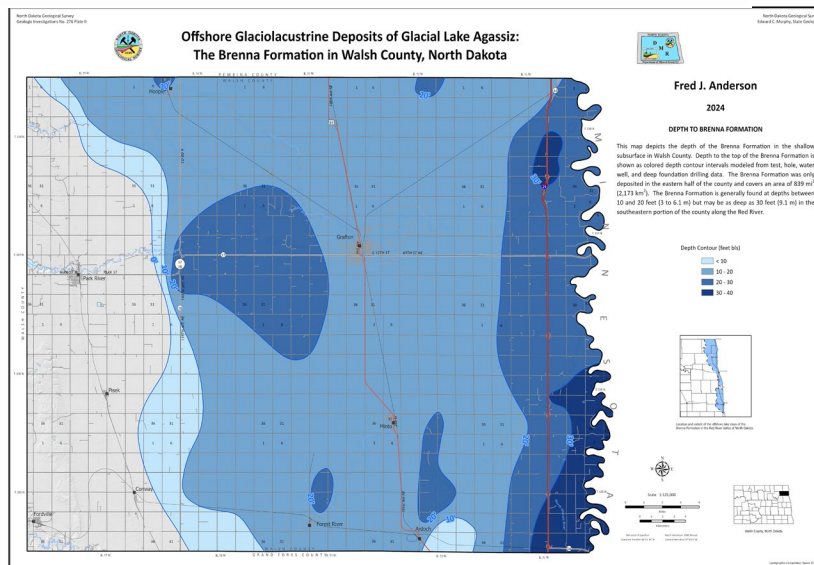
Top: An isopach or thickness map of the Opeche B salt. Bottom: Southeast to northwest cross-sections through the Opeche Formation in Billings, Stark, Dunn, and Mountrail counties.

## Brenna Formation Maps

The Geological Survey has recently published a series of drill hole location, depth, and thickness maps on the Brenna Formation, the lower of the two glacial lake clays, in the Red River Valley. The first two sets of maps cover Cass and Grand Forks counties and were published in 2023 and the two most recent sets of maps are for Walsh and Pembina counties (Geologic Investigations no. 276 and 278) were published this year. These maps are especially useful for construction projects including determining the approximate depths to use for piers and piles to obtain the correct foundation support.



*The depth to the Brenna Formation in Pembina County.*



*The depth to the Brenna Formation in the eastern half of Walsh County.*

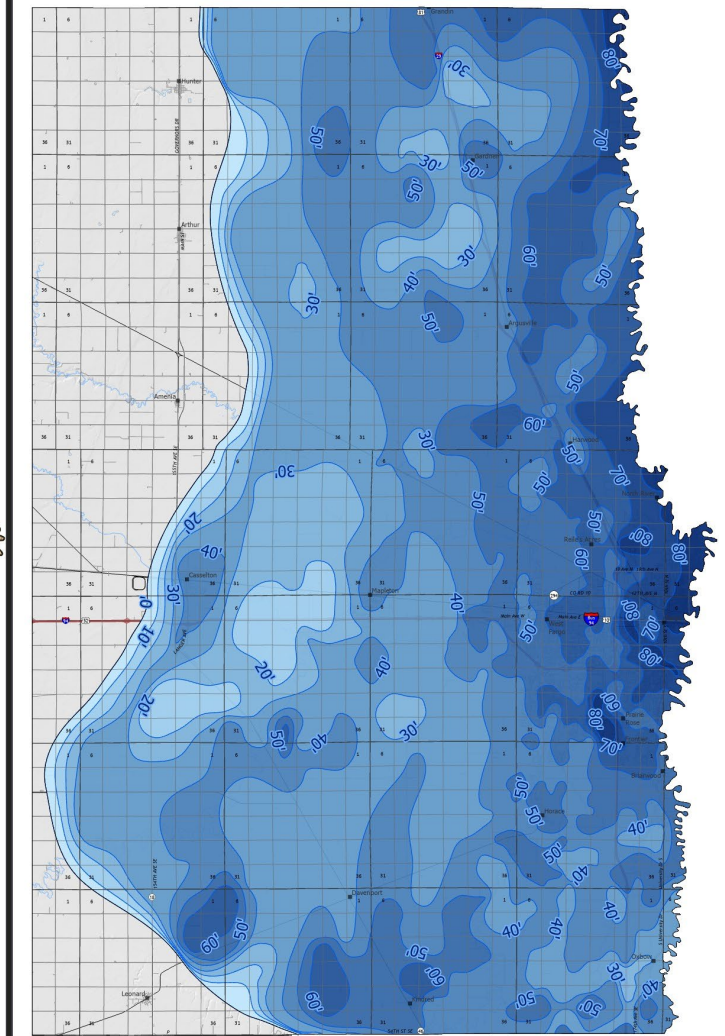
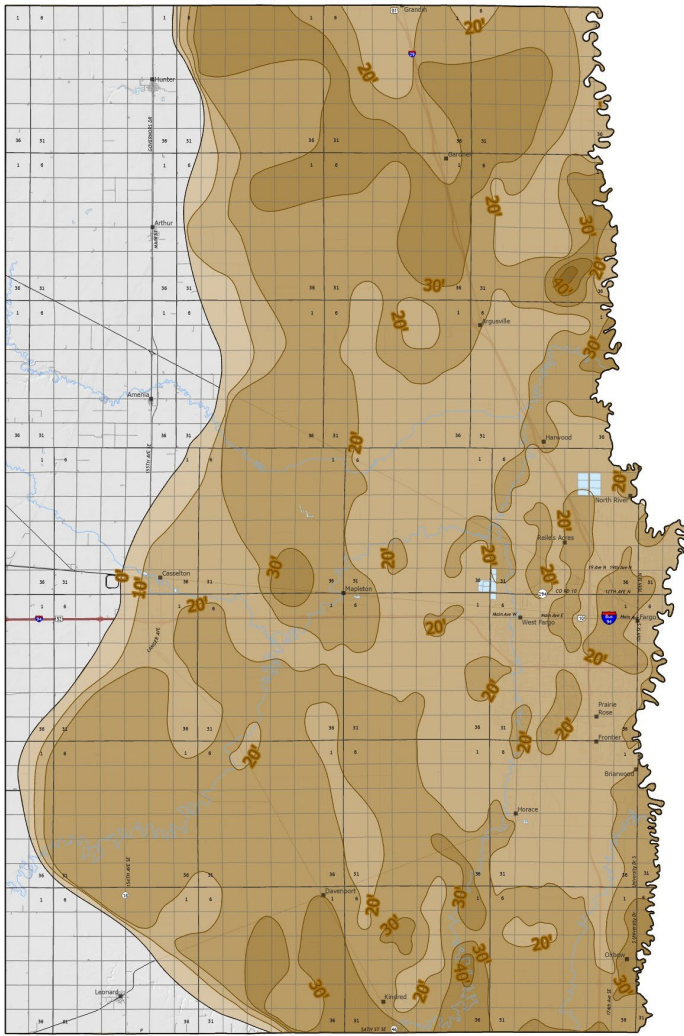




*An exposure of laminated, silty clays of the Sherack Formation along a drainage of the Red River just to the north of the city of Fargo.*



*The gray-blue clays of the Brenna Formation are exposed during excavation for a waste cell in the Fargo landfill.*



*The depth (on the left) and the thickness (on the right) maps of the Brenna Formation in Cass County (Geologic Investigation no. 273). The contour interval for both maps is 10 feet.*



*Sediments of the Sherack Formation are exposed in the west bank of the Red River north of Fargo.*

## Water Problems in the Paleontology Offices

We are hopeful that Facilities has found a solution to the water problems in the Paleontology Section in the Heritage Center. The hole that was cut into the slab sat open for four months and remained dry once drain tile on the outside of the building was tied into the storm sewer. In the last six weeks, Facilities hired a contractor to install a sump and discharge pipe, repair the slab, recarpet the area, and add an electric outlet and alarm in the corner of the room.



*Last summer, we vacated this portion of the paleontology wing of the Heritage Center due to water problems. Facilities is confident that piping the drain tile out to the storm sewer and the installation of the sump pump will solve the issue.*



*Office furniture for three offices was recently moved back into the area.*

## Regulatory Programs (January 1 to March 31, 2024)

Coal Exploration Program	No permits were issued this quarter.
Subsurface Mineral Program	No permits were issued this quarter.
UIC Class III Well Program	No permits were issued this quarter.
Geothermal Program	Three permits (0 residential, 3 commercial) were issued this quarter.
Paleontological Resource Program	Two permits were issued this quarter.

## Publications This Quarter (January 1 to March 31, 2024)

- Anderson, F.J., 2024, Geophysical Maps of North Dakota: Bouger and Isostatic Gravity Anomaly and Aeromagnetic Anomaly, North Dakota Geological Survey Miscellaneous Map Series No. 45, 3 pl.
- Anderson, F.J., 2024, Offshore Glaciolacustrine Deposits of Glacial Lake Agassiz: The Brenna Formation in Pembina County,

North Dakota, North Dakota Geological Survey Geologic Investigations No. 278, 3 pl.

Anderson, F.J., 2024, Offshore Glaciolacustrine Deposits of Glacial Lake Agassiz: The Brenna Formation in Walsh County, North Dakota, North Dakota Geological Survey Geologic Investigations No. 276, 3 pl.

Anderson, F.J., 2024, A Thump In The Night: Possible Cryoseismic Occurrences In North Dakota, DMR Geo News Newsletter, vol. 51, no. 1, p. 8-9.

Anderson, F.J. 2024, Surface Geology of the Arthur SE Quadrangle, North Dakota: North Dakota Geological Survey 24K Map Series No. Artr SE - sg.

Anderson, F.J. 2024, Surface Geology of the Gardner Quadrangle, North Dakota: North Dakota Geological Survey 24K Map Series No. Gdnr - sg.

Anderson, F.J. 2024, Surface Geology of the Grandin Quadrangle, North Dakota: North Dakota Geological Survey 24K Map Series No. Grnd - sg.

Anderson, F.J. and Murphy, E.C., 2024, Areas of Landslides Gorham SE Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Grhm SE - 13.

Anderson, F.J. and Murphy, E.C., 2024, Areas of Landslides Gorham SW Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Grhm SW - 13.

Anderson, F.J. and Murphy, E.C., 2024, Areas of Landslides Wannagan Creek East Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. WngC E - 13.

Boyd, C.A., 2024, North Dakota's Mosasaur, DMR Geo News Newsletter, vol. 51, no. 1, p. 1-4.

Chittick, S.D., 2024, Opeche B Salt Extent and Thickness, Williston Basin, North Dakota, North Dakota Geological Survey Geologic Investigations No. 277

Chittick, S.D., 2024, Opeche A Salt Extent and Thickness, Williston Basin, North Dakota, North Dakota Geological Survey Geologic Investigations No. 275

Kruger, N.W., 2024, Getting Into Hot Water, DMR Geo News Newsletter, vol. 51, no. 1, p. 6-7.

Maike, C.A., 2024, Areas of Landslides Anamoose SW Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Anms SW - 13.

Maike, C.A., 2024, Areas of Landslides Kongsberg NE Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Kgbg NE - 13.

Maike, C.A., 2024, Areas of Landslides Balfour NW Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Blfr NW - 13.

Maike, C.A., 2024, Areas of Landslides Balfour Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Blfr - 13.

Maike, C.A., 2024, Areas of Landslides Drake NW Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Drke NW - 13.

Maike, C.A., 2024, Areas of Landslides Drake Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Drke - 13.

Maike, C.A., 2024, Areas of Landslides Anamoose Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Anms - 13.

Maike, C.A., 2024, Areas of Landslides Clifton Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Clfn - 13.

Maike, C.A., 2024, Areas of Landslides Kongsberg Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Kgbg - 13.

Maike, C.A., 2024, Areas of Landslides Butte Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Butt - 13.

Maike, C.A., 2024, Areas of Landslides Kief Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Kief - 13.

Maike, C.A., 2024, Areas of Landslides Drake SW Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Drke SW - 13.

Maike, C.A., 2024, Areas of Landslides Drake SE Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Drke SE - 13.

Maike, C.A., 2024, Areas of Landslides Martin Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Mrtn - 13.

Maike, C.A., 2024, Areas of Landslides Alkali Lake Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. AlkL - 13.

Maike, C.A., 2024, Areas of Landslides Long Lake Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. LngL - 13.

Maike, C.A., 2024, Areas of Landslides Sheyenne Lake Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. ShyL - 13.

Maike, C.A., 2024, Areas of Landslides Turtle Lake Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. TrtL - 13.

Maike, C.A., 2024, Areas of Landslides Peterson Lake Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. PtrL - 13.

Maike, C.A., 2024, Areas of Landslides Pelican Lake Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map

- Series No. PenL - 13.
- Maike, C.A., 2024, Areas of Landslides Pelican Lake SE Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. PenL SE - 13.
- Maike, C.A., 2024, Areas of Landslides Lincoln Valley SE Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. LncV SE - 13.
- Maike, C.A., 2024, Areas of Landslides Mertz Slough Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. MrzS - 13.
- Maike, C.A., 2024, Areas of Landslides Pony Gulch Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. PnyG - 13.
- Maike, C.A., 2024, Areas of Landslides Lincoln Valley SW Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. LncV SW - 13.
- Maike, C.A., 2024, Areas of Landslides Horseshoe Valley Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. HshV - 13.
- Maike, C.A., 2024, Areas of Landslides Lincoln Valley Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. LncV - 13.
- Anderson, F.J., 2024, Areas of Landslides Blacktail Coulee Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. BlkC - 13.
- Anderson, F.J., 2024, Areas of Landslides Ruso Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Ruso - 13.
- Moxness, L.D., 2024, Areas of Landslides Milnor Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Mlnr - 13.
- Moxness, L.D., 2024, Areas of Landslides De Lamere Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. DLmr - 13.
- Moxness, L.D., 2024, Areas of Landslides Lisbon Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Lsbn - 13.
- Moxness, L.D., 2024, Areas of Landslides Lisbon NE Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Lsbn NE - 13.
- Moxness, L.D., 2024, Areas of Landslides Venlo Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Vnlo - 13.
- Moxness, L.D., 2024, Areas of Landslides Wyndmere NW Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Wynd NW - 13.
- Moxness, L.D., 2024, Areas of Landslides Wyndmere NE Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Wynd NE - 13.
- Moxness, L.D., 2024, Areas of Landslides Wyndmere SE Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Wynd SE - 13.
- Moxness, L.D., 2024, Areas of Landslides Elliot Quadrangle, ND Quadrangle: North Dakota Geological Survey 24K Map Series No. Elot - 13.
- Starns, E.C., and Nesheim, T.O., 2024, Redevelopment of Madison Fields in Burke County Demonstrates Fracture Stimulation Is Effective, DMR Geo News Newsletter, vol. 51, no. 1, p. 14-16.
- York, B.C., 2024, North Dakota Geological Survey Geologic Map Viewer: Touring The State's New Online Resource, DMR Geo News Newsletter, vol. 51, no. 1, p. 10-13.

### **Presentations This Quarter (January 1 to March 31, 2024)**

- J. Person, Tour of Dakota, general public, Heritage Center, January 10.
- B. Barnes, J. Person, Prehistoric Fishing, Missouri Valley Montessori, Heritage Center, January 11.
- J. Person, Minnesota Public Radio, Beulah Mammoth interview, Heritage Center, January 11.
- M. Householder, Dakota tour, General Public, Heritage Center, February 2.
- J. Person, Dakota tour, General Public, Heritage Center, February 7.
- J. Person, Paleo lab and collections tour, Heritage Center, March 6.
- T. Ford, Paleo lab and collections tour, St. Joe's Montessori preschool (Mandan), Heritage Center, March 11.
- B. Barnes, Paleo lab and collections tour, "Mom's Group," Heritage Center, March 12.
- B. Barnes, Paleo lab and Dakota tour, Heritage Center staff and visitors, Heritage Center, March 15.
- B. Barnes, Rock Collection tour, Central Dakota Gem Mineral Society, Heritage Center, March 17.
- B. Barnes, J. Person, Paleo lab and collections tour, St. Anne's 3rd grade, Heritage Center, March 20.
- J. Person, B. Barnes, Prehistoric Fishing, Sunrise 2nd grade, Heritage Center, March 21.
- C. Boyd, NDGS Public Fossil Digs, Potential Donors, Online, March 27.
- B. Barnes, J. Person, Science Olympiad Fossils, Science Olympiad Jr & Sr High Bismarck State College, March 28.
- C. Lash, Paleontology as a Career, Horizon Middle School 8<sup>th</sup> Graders, March 28.
- L. Moxness, E. Murphy, Geoscience Occupations, Horizon Middle School 8<sup>th</sup> Graders, March 28.



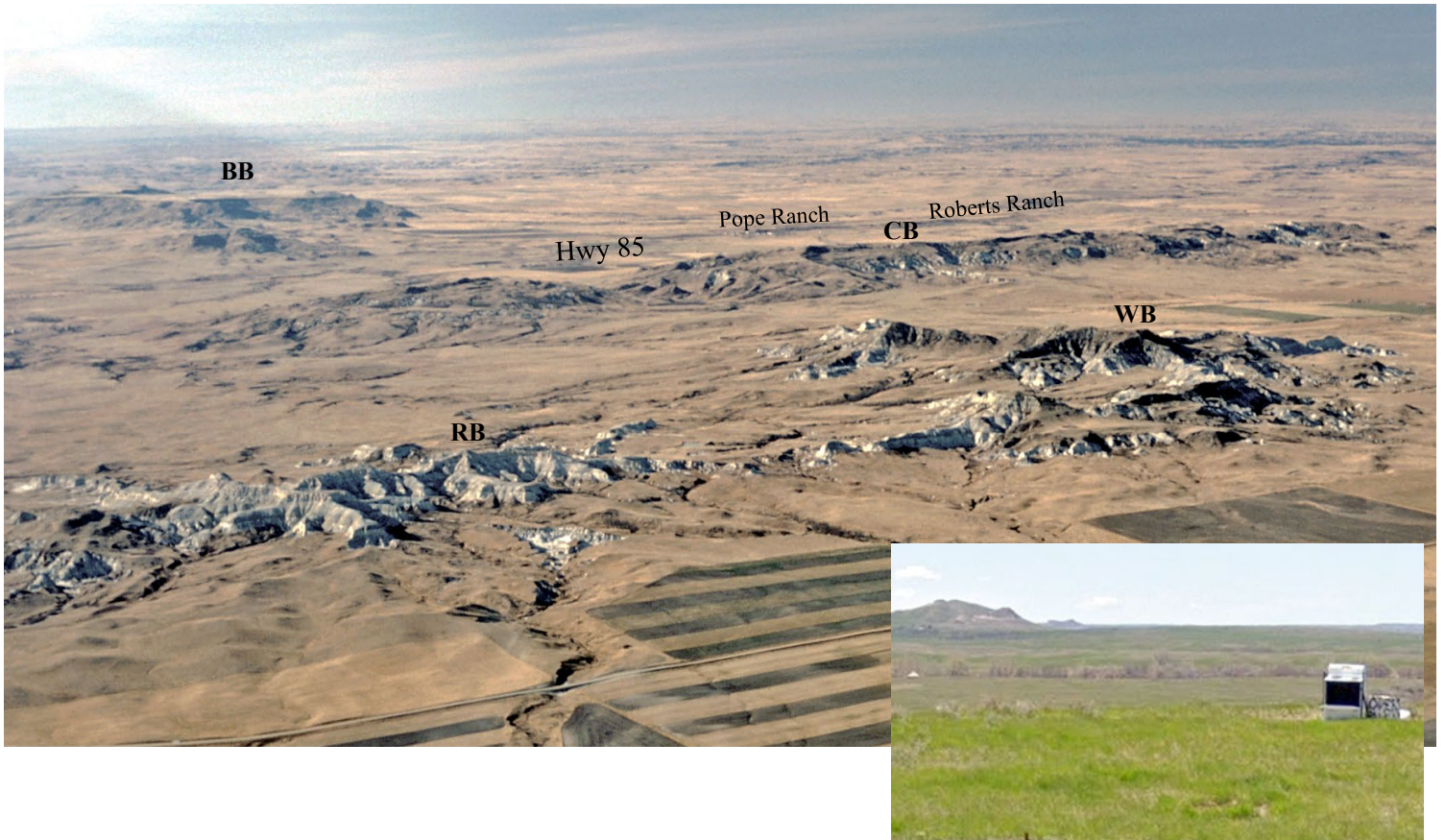
*Ellen (Roberts) Pope (1895-1994) pumping water from a well near Black Butte in Slope County, circa 1910. The photograph hangs in the Pioneer Room at the ND State Capitol (SHSND 03-525).*



*Left: Ellen Roberts (age 13) on a draft horse in 1908 (SHSND 03-154). Right: Earl Douglass of the Carnegie Museum and an assistant remove a skull from White River or Arikaree rocks at White Butte in 1910 (SHSND 03-194).*



*Looking southwest to Black Butte in Slope County.*



*Oblique aerial photograph taken looking west-northwest from Rattlesnake Butte (RB) and White Butte (WB) in the foreground, Chalky Buttes (CB) in the midground, and Black Butte (BB) in the background. Inset photo: Stanley Pope's "open range."*



*Looking southwest to Slide Butte, Slope County, North Dakota in 1991. A landslide (white arrow) occurred along the top of this butte in the fall of 1930 and again on March 26, 1932.*

**BLACK BUTTE, OLD LANDMARK ERUPTS FOR THE SECOND TIME**

*Bowman County Pioneer, March 31, 1932*

**GAS POCKET MIGHT HAVE CAUSED ERUPTION-TONS OF ROCKS, DIRT BLOWN OUT OF CRATER-SIMILAR BLAST OCCURRED SEVERAL YEARS AGO-INVESTIGATION AT THAT TIME**

*Mandan Pioneer, April 5, 1932*

**SECRETS OF BLACK BUTTE'S ANTICS IS NOW DISCLOSED**

*Slope County Post, April 21, 1932*

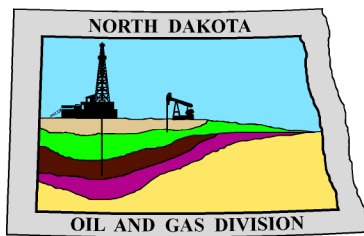
**STATE GEOLOGIST SAYS GAS POCKETS CAUSE BLACK BUTTE QUAKES**

*Bowman County Pioneer, April 28, 1932*



*The Robert's Cottonwood Grove Ranch House in Slope County, circa 1900 (SHSND 03-175).*





# Oil and Gas Division

Lynn D. Helms - Director

Mark F. Bohrer - Assistant Director

Department of Mineral Resources

Lynn D. Helms - Director

North Dakota Industrial Commission

[www.oilgas.nd.gov](http://www.oilgas.nd.gov)

## QUARTERLY REPORT JAN-FEB-MAR 2024

*to the*

## NORTH DAKOTA INDUSTRIAL COMMISSION

Mark F. Bohrer  
Assistant Director  
Oil and Gas Division  
Department of Mineral Resources  
North Dakota Industrial Commission

June 26, 2024

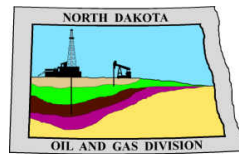
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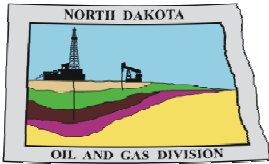
# 2024 REPORT

## 1st QUARTER

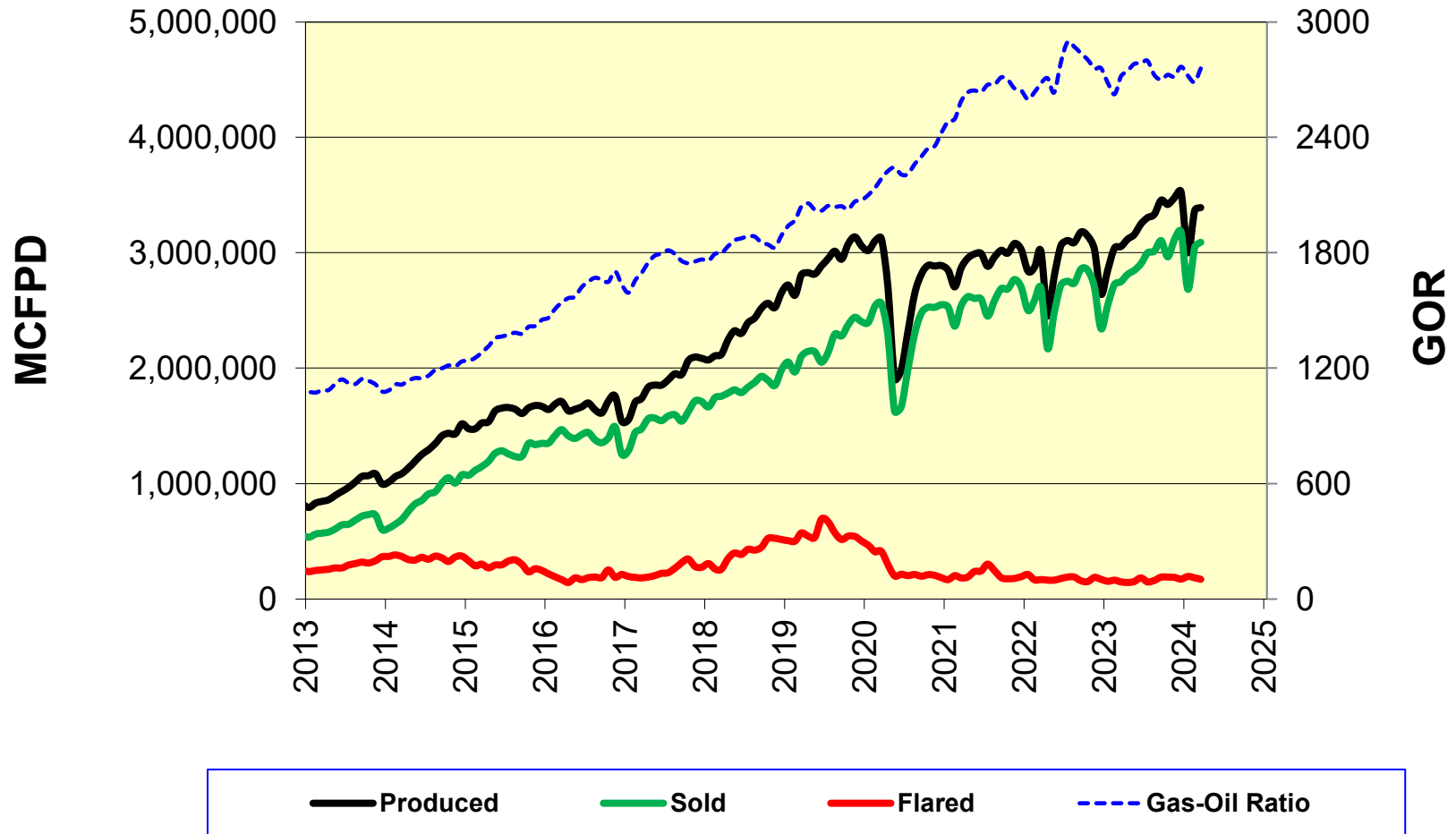
June 26, 2024

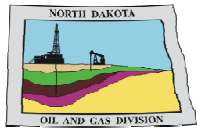


Statistics	1Q 2023	2Q 2023	3Q 2023	4Q 2023	1Q 2024
<b>Permitting:</b>					
Permit Applications Received	231	258	342	317	360
Rec'd in AOI: PP 2.01	0	0	0	0	0
Permits issued in PP 2.01	0	0	0	0	0
Denied/Relocated: PP 1.01	0	0	4	0	0
Stips: PP 1.02 (per well)	6.3	6.4	6.9	7.2	6.9
Permits Issued	227	230	206	181	205
YTD Permits (new permits only)	227	457	663	844	205
Approval Time (days)	42	40	35	38	43
<b>Drilling:</b>					
Rig Count	46	39	37	36	39
<b>Well count:</b>					
Producing	17,510	17,933	18,383	18,715	18,772
Newly Completed (Wells -- Wells/Rig)	225 -- 1.6	274 -- 2.3	303 -- 2.7	282 -- 2.6	250 -- 2.1
Enhanced Recovery	536	545	529	519	521
SWD	470	473	483	479	483
Waiting on Completion	480	456	387	343	310
<b>Production:</b>					
Barrels of Oil per Day	1,056,285	1,145,792	1,227,500	1,269,418	1,194,872
MCFD	2,944,176	3,174,619	3,349,171	3,473,505	3,253,079
Gas Capture (Bakken)	95%	96%	96%	95%	95%
Unit Oil	4%	5%	4%	3%	3%
Bakken Petroleum System Oil	97%	96%	97%	98%	97%
<b>Prices:</b>					
North Dakota Avg (\$/barrel)	\$71.49	\$69.47	\$77.44	\$72.57	\$69.78
Differential (WTI-ND avg)	\$4.33	\$4.29	\$4.62	\$5.90	\$7.24
ND Northern Border Gas (\$/MCF)	\$2.21	\$1.72	\$2.15	\$2.39	\$1.69
<b>Geophysical:</b>					
Water Well Complaints received	0	0	0	0	0
<b>Inspection and Enforcement</b>					
Inspections	40,189	39,911	36,298	39,298	43,738
Rigs-weekly goal	100%	100%	100%	100%	100%
UIC-monthly goal	92%	93%	93%	90%	93%
Well/Fac (Oct-Mar/mth: Apr-Sep/qtr)	82%	78%	88%	85%	88%
Problems Encountered	910	1,242	883	773	568
Resolved <30 days (verbal)	72%	74%	75%	70%	55%
Resolved <180 days (written)	2%	3%	2%	5%	8%
Complaints	2	9	7	14	12
Investigations Ongoing	0	0	0	0	0
Reservoir Data Fund	\$495,956	\$546,989	\$577,904	\$622,240	\$562,567
Abandoned Well Restoration Fund	\$21,970,227	\$25,312,303	\$24,347,900	\$24,592,965	\$32,523,586
Cash Bond Restoration Fund	\$1,475,893	\$1,502,482	\$1,505,941	\$1,609,222	\$1,592,454
Cash Bond Total	\$9,530,478	\$9,355,478	\$8,955,478	\$8,705,478	\$8,660,478
Surety Bond Total	\$156,629,210	\$173,024,960	\$182,931,960	\$178,306,960	\$183,229,960

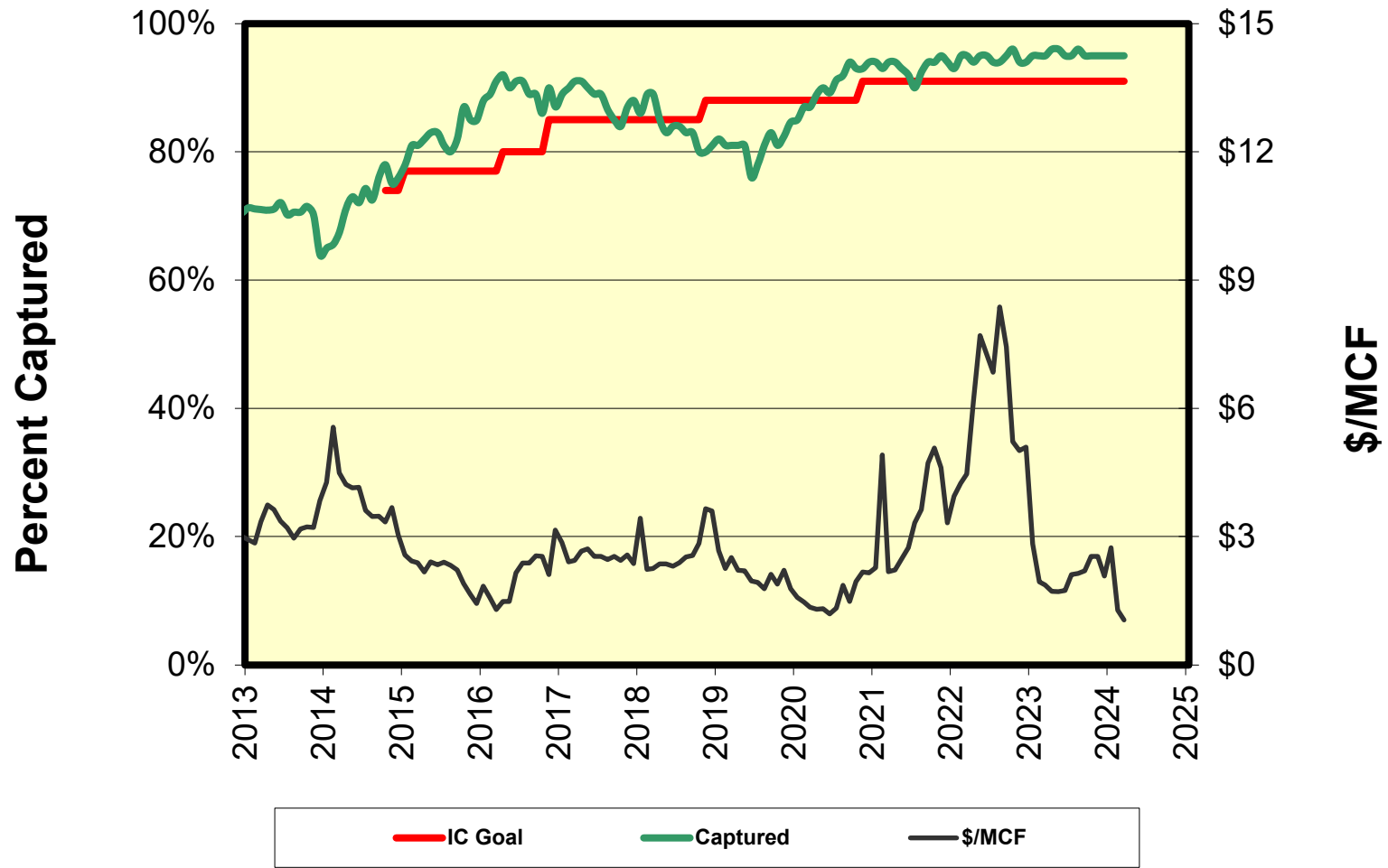


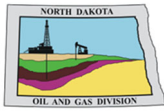
## North Dakota Daily State Gas Volumes





# North Dakota Bakken Gas Captured





## Gas Processing Update Meetings

May 2, 2024

Outrigger Energy II LLC

Bill Sanderson Gas Plant 270 MMCFD

52% plant utilization, 140 MMCFD

New residue gas compressor increases nameplate to 270 MMCFD

New one-way interconnect with Kinder Morgan

June 18, 2024

Petro-Hunt, LLC

Little Knife Gas Plant 24 MMCFD

23 new wells in 2024

Three interconnects with OneOK

Charlson Area

Gas has difficulty getting uphill from Lake due to liquids; 8-inch line, lift and lay

6 new wells in 2024

1 loops extensions in 2024, hopefully one in 2025

11 MRUs on 7 pads for flare mitigation

East Fork and Stockyard Creek Areas

Older wells get pressured out

November 6, 2023

OneOK, Inc.

Grasslands Gas Plant 100 MMCFD

Acid gas injection; 3,011,477 barrels injected

Demecks Lake III – online Q1 2023 200 MMCFD

North Charlson Area – Two pipeline projects approved, installation in 2024

Will alleviate bulk of flaring

Activity moving out of core area

Another 50 MMCFD compression – two projects, online Q4 2023 and Q1-Q2 2024

250 MMCFD compression increase over last year

No plant expansions planned, optimize capacity by moving gas around

Refracs – need to know schedule, may come in middle of system – hydraulics

November 7, 2023

Targa Resources Corporation

Little Missouri I

Little Missouri II

Little Missouri III

Little Missouri IV 200 MMCFD

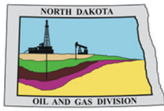
Little Missouri I-III approximately 90 MMCFD

Little Missouri IV – joint venture with Hess, Targa has 65 to 100 MMCFD excess capacity

Little Missouri IV interconnected to Little Missouri I, II, and III

Three interconnects

No plant expansions planned



## Gas Processing Update Meetings

November 8, 2023

SOGC, Inc.

South Lone Butte Area

- 3 pads connected to Petro-Hunt, LLC gas gathering pipeline
- Crusoe flare mitigation

Lone Butte and West Lone Butte Area

- Connected to OneOK

- North area not connected – discussions to get connected – Little Missouri River, topo, big horn sheep, landslide terrain

Mountrail County Area

- MPLX gathers majority, 150 MMCFD

December 5, 2023

Liberty Midstream Solutions LLC

County Line Gas Plant      30 MMCFD

- 25 MMCFD now, were at 10 MMCFD last year

- Only gather Liberty Resources Management Company, LLC gas

- 25 MMCFD expansion Q4 2024

December 5, 2023

Dakota Midstream

McKenzie County Low Rider Gathering System

- 10 MMCFD capacity

- Only Petro-Hunt, LLC wells

- Connects to True pipeline to Red Wing Creek Gas Plant

December 6, 2023

Kinder Morgan

Norse Gas Plant      175 MMCFD

- Tier II and III acreage

- Slight decline from last year but potential for dramatic increase in future

Watford City System

- Plant effectively full

- Plant expansion in 2027

Add 48 MMCFD compression systems wide in 2024

Several interconnects with other midstream operators

Attempt to offload gas during turnarounds

Working with SOGC and Burlington in Long X area, Burlington also

December 6, 2023

Flatirons Midstream

Springbrook Gas Plant      70 MMCFD

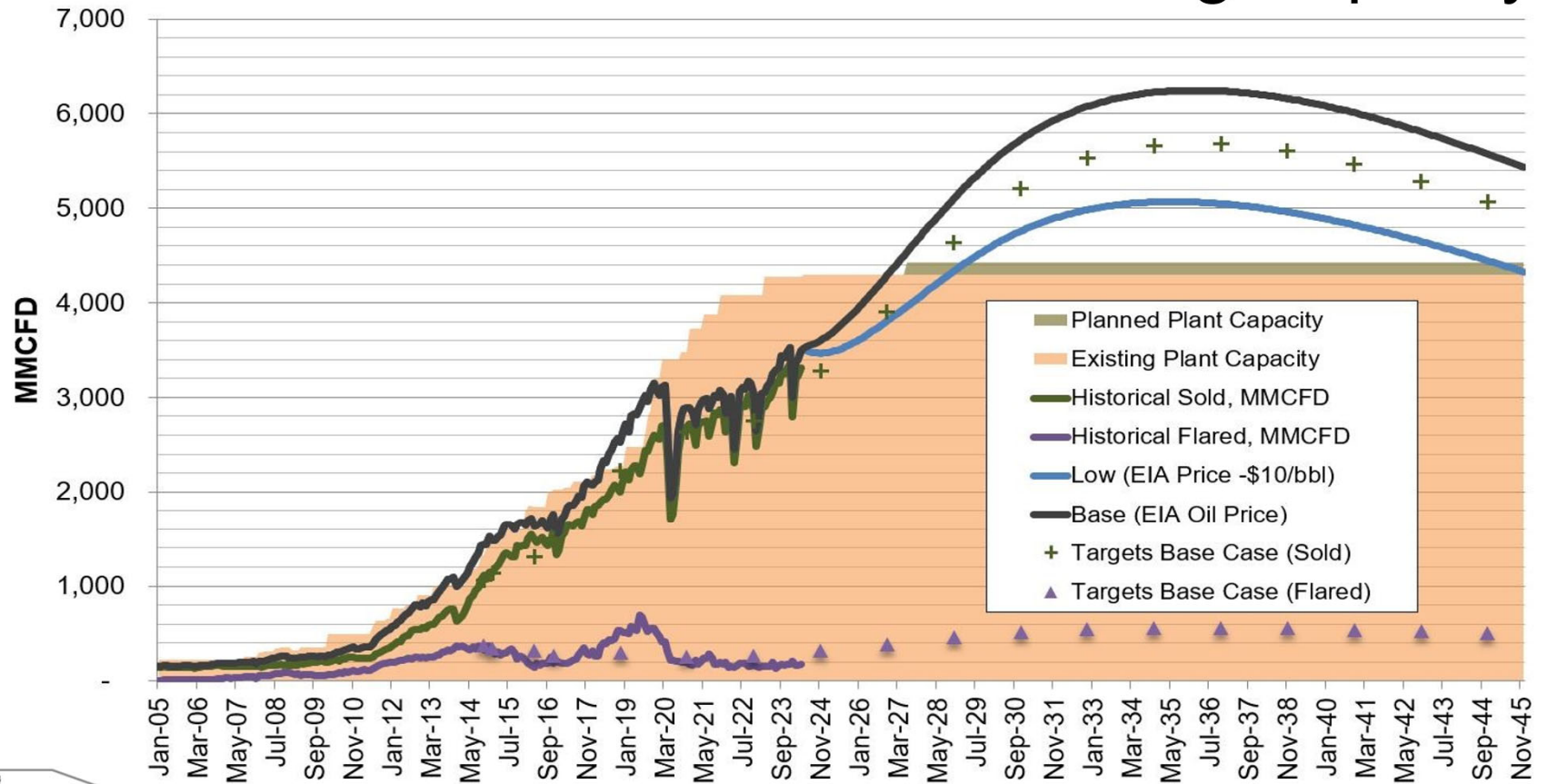
- 50 MMCFD currently

- Self-generated power

- Deliver residue gas for gas lift from plant tailgate

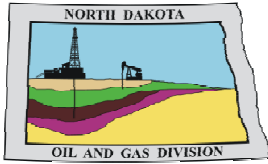
- NGL Y-Grade sold primarily in local markets supporting local energy and agricultural industries

# North Dakota Natural Gas Processing Capacity



JJ Kringstad - North Dakota Pipeline Authority



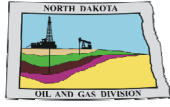


## NDIC -- DRILLING PERMIT REVIEW POLICY

APD Rec'd	Operator	Area of Interest	Public Land (sur loc)	Review Distance	Distance to Area of Interest	Well Pad Name	Surface Loc	Field	Existing Pad	Work Planned	Comments Received	Stipulations Imposed
9/28/2021	CLR	Lake Sakakawea	National Grasslands	0.5 mile	0.4 mile	LCU Ralph and Reckitt 6 wells	22-153-99 12 mi NW Newtown	Long Creek Bakken Unit	yes	No pad extension	USFWS SHSND NDWR	Perimeter berm; Spill Contingency Plan; No drilling pit will be utilized; Remote or auto shutdown equip; Onsite inspection prior to construction
10/20/2021	CLR	Lake Sakakawea	National Grasslands	0.5 mile	0.4 mile	LCU Ralph 1 well	22-153-99 12 mi NW Newtown	Long Creek Bakken Unit	yes	No pad extension	USFWS SHSND NDWR	Perimeter berm; Spill Contingency Plan; No drilling pit will be utilized; Remote or auto shutdown equip; Onsite inspection prior to construction

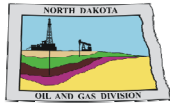
**No 1Q 2024 changes**

BCA	Badlands Conservation Alliance
NDCWS	North Dakota Chapter of The Wildlife Society
NDDOT	North Dakota Department of Transportation
NDDTL	North Dakota Department of Trust Lands
NDGFD	North Dakota Game and Fish Department
NDWR	North Dakota Water Resources
NPSTRNP	National Park Service-TR National Park
SHSND	State Historical Society of North Dakota
USACOE	United States Army Corps of Engineers
USFWS	United States Fish and Wildlife Service



## COMPLAINTS

Case No.	Respondent	Complaint Served	Penalty Proposed	Reasonable Fees and Expenses Proposed	Collected	Suspended Penalty			Same or Similar Violation Committed
						Amount Suspended	Justification	Suspended Period	
29140	North Range Resources, LLC (signed CA 7/27/2022)	12/23/2021	\$80,695.00	\$52.00			Paid \$40,348 in 2 installments, Aug and Sep 2022; violated CA; AG letter 7/24/2023 immediately pay suspended \$40,348; letter received but no date (green card received by DMR 8/7/2023); Sent summons to appear and defend against civil complaint 1/16/2024. Failed to answer. Motion for default judgement filed 2/20/2024. Order for judgement entered 3/12/2024. <b><u>Party interested in wells.</u></b>		No
29228	Noah Energy Inc. (signed CA 11/14/2022)	2/9/2022	\$224,039.00	\$283.00			Paid \$10,283; \$102,303 due 1/1/2023 Noah bankruptcy Default Order 32382 signed 1/24/2024 Bill of sale for equipment (\$10,000) signed by William Paddock 2/16/2024. <b><u>Surface equipment removed, will offer tubing after well plugged and abandoned.</u></b>		No
29775	High Plains Operating, LLC	1/18/2023	\$17,609.00	\$307.36			Served upon Secretary of State 1/18/2023 Default order signed 1/24/2024. <b><u>Filed summons and complaint with court 6/6/2024.</u></b>		No
29834	Double AA, LLC	1/26/2023	Determine costs at administrative hearing	\$34.44			Answer received 2/15/2023 Suggestion of chapter 7 bankruptcy 10/20/2023 Confiscated \$50,000 bond 12/18/2023 Confiscation of wells (10/26/2023 hearing) on hold under stay of bankruptcy court. Motion to abandon signed by bankruptcy court 3/13/2024. <b><u>IC orders confiscating 6 wells 4/30/2024.</u></b>		No
29835	WW Oilfield Services, LLC	4/12/2023, 8/17/2023	\$25,111.00	\$33.47			Served upon WW Oilfield by Bottineau County Sheriff on 4/12/2023 Served upon Secretary of State 8/17/2023 Default Order 10/4/2023 Order 33073 confiscated well 11/28/2023 Confiscated \$50,000 12/12/2023 Summons to appear and defend against civil complaint served 1/19/2024. <b><u>Order for Judgement entered 3/26/2024.</u></b>		No
30264	Freedom Energy Operating, LLC	8/23/2023	\$42,127.00	\$34.47			Served upon Secretary of State 8/23/2023 Default Order No. 32874 signed 12/18/2023 Summons to appear and defend against civil complaint sent 1/25/2024. Failed to answer. Filed default judgement with court 3/5/2024. <b><u>Order for Judgement entered 3/26/2024.</u></b>		No
30713	D90 Energy, LLC	2/12/2024	Determine costs at administrative hearing	\$294.77			Answer received 3/19/2024. <b><u>Draft consent agreement sent 5/15/2024.</u></b> <b><u>Meeting scheduled on 7/8/2024.</u></b>		No



## COMPLAINTS

Case No.	Respondent	Complaint Served	Penalty Proposed	Reasonable Fees and Expenses Proposed	Collected	Suspended Penalty			
						Amount Suspended	Justification	Suspended Period	Same or Similar Violation Committed
30716	Abraxas Petroleum Corp.	2/15/2024	Determine costs at administrative hearing	\$157.46		<u>Answer received 4/15/2024.</u> <u>Staff drafting consent agreement.</u>			No
30792	Henry Hill Oil Services. LLC	3/7/2024	Determine costs at administrative hearing	\$765.33		Answer received 3/27/2024. Counsel reached out for meeting. <u>Consent agreement in process of being sent.</u>			No
30866	Sakakawea Ventures, LLC	4/11/2024	Determine costs at administrative hearing	\$349.61		Answer received 4/25/2024. OGD reached out to see if interested in settlement.			No
30867	Wave Petroleum Operating, LLC	4/11/2024	Determine costs at administrative hearing	\$117.02		Answer received 4/30/2024. OGD reached out to see if interested in settlement.			No
30868	Nordstrand Engineering Inc.	4/11/2024	Determine costs at administrative hearing	\$150.62		Answer received 5/7/2024. Indicated may plug wells, asked for contractors.			No

Docket for Hearing

Thursday, May 30, 2024

N.D. Oil & Gas Division N.D. Oil & Gas Division 1000 East Calgary Avenue

**Case No. 30958, Order No. 33618:** Application of Continental Resources, Inc. pursuant to NDAC §43-02-03-88.1 for an order of the Commission authorizing the drilling of the Sleipnir SWD salt water disposal from a surface hole location in the NENW Section 3, T.155N., R.97W., to a bottom hole location in the NENW Section 3, T.155N., R.97W., Dollar Joe Field, Williams County, ND, in the Dakota group pursuant to NDAC Chapter 43-02-05, and providing such other and further relief.