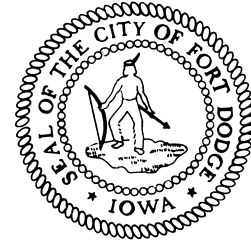


**March 18, 2015**

**To: Mayor Bemrich and City Council**

**From: David Fierke, City Manager**

**Subject: Public hearing and Resolution authorizing the issuance and sale of Facility Revenue Bonds (The Marian Home), Series 2015**



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**ACTION: For vote Monday, March 23, 2015**

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**Brief History**

The Marian Home is planning an expansion/remodel to their facility. As a not-for-profit, the City can serve as a conduit for their bonds so they can enjoy income tax exemption status like a city. Dorsey and Whitney has provided an explanation of the process and impact (see attached).

**Analysis of Issue**

As a conduit, the City's credit is not at risk, nor is this debt counted against the City's constitutional debt limit. The debt is counted against the City's \$10M bank qualified threshold for 2015, but no additional public debt is planned for 2015, only a SRF loan.

**Budget Impact**

There is no impact to operational budgets.

**Staff Conclusions / Recommendations**

Approval of the resolution is recommended.

**Implementation and Accountability**

The process will contain many steps like a traditional offering of the City.

Signed

---

David R. Fierke  
City Manager

February 17, 2015

Honorable Mayor and  
Members of the City Council  
819 1<sup>st</sup> Avenue S  
Fort Dodge, Iowa

Re: City of Fort Dodge, Iowa  
Facility Revenue Bond  
(The Marian Home Project), Series 2015

Dear Mayor and Members of the City Council:

The purpose of this letter is to outline the authority, constitutional debt provisions and procedures for consideration with respect to the issuance of revenue bonds on behalf of The Marian Home, Fort Dodge, Iowa (the "Borrower") by the City of Fort Dodge, Iowa (the "City").

The Borrower proposes to issue \$5,500,000 in revenue debt to provide for the acquisition, construction, improving, equipping and furnishing of a nursing care facility of the Borrower located at 2400 6th Avenue North, Fort Dodge, Iowa. The Borrower is a 501(c)(3) non-profit corporation.

Bonds issued under Chapter 419 of the Code of Iowa by cities and counties are common methods in the State of Iowa of obtaining federally tax-exempt financings for industrial manufacturing, solid waste disposal and non-profit entities. Because the interest on such bonds is exempt from federal income taxes, the Borrower is able to borrow money at a lower interest rate than a conventional financing would allow.

#### **Authority of Municipalities to Issue Revenue Debt**

The City is authorized pursuant to Chapter 419.2 of the Code of Iowa to issue revenue bonds for a project within, or within eight miles, of its corporate boundaries for the purpose of defraying the cost of any "project" as defined at Section 419.1(12) of the Code. The proceeds of the bonds resulting from the purchase of the bonds by bondholders are in turn loaned to the Borrower. These types of bonds are commonly referred to as "conduit" bonds because the City acts as a conduit between the purchasers of the bonds and the Borrower. The proceeds of the

Honorable Mayor and  
Members of the City Council  
February 17, 2015  
Page 2

sale of the bonds are then loaned to the Borrower pursuant to a Loan Agreement pursuant to which the Borrower agrees to make payments pursuant to the Loan Agreement corresponding to the payments on the bonds.

### **Revenue Bonds Cannot be Constitutional Debt of the Issuing Municipality**

The City is not liable for repaying the bonds and the bonds are payable only from the amounts paid by the Borrower under the Loan Agreement. In fact, bonds issued pursuant to Chapter 419 are statutorily prohibited from being debt of the City within any state constitutional provision. Chapter 419 of the Code provides statutory protection to the City in Section 419.3, which reads:

*“The principal of and interest on such bonds shall be payable solely out of the revenues derived from the project to be financed by the bonds... bonds... issued under authority of this chapter shall never constitute an indebtedness of the municipality, within the meaning of any state constitutional provision or statutory limitation, and shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. Such limitation shall be plainly stated on the face of each such bond.”*

The documents providing for the loan from the City to the Borrower, the bond itself, and the authorizing proceedings for the bonds will clearly state the language of Chapter 419.3 in order that the Bank remains on notice that the bonds shall not constitute debt of the City.

### **Bank-Qualification**

The City will also be asked to designate the bonds as bank-qualified. Section 265 of the Internal Revenue Code provides a governmental issuer may issue up to \$10,000,000 each per calendar year. It is our understanding the City has not issued and does not anticipate issuing indebtedness this calendar year. To the extent this is not correct consideration should be given to the amount of indebtedness the City would issue in calendar year 2015.

### **Procedures for Issuing Revenue Debt Pursuant to Chapter 419**

The resolution to be considered by the City Council at a meeting in February would set forth the intent to publish a notice and set a public hearing date on the proposal to issue the bonds. The notice of the public hearing would be published at least once not less than fifteen (15) days prior to the date of the public hearing as set forth in Section 419.9 of the Code of Iowa. A

Honorable Mayor and  
Members of the City Council  
February 17, 2015  
Page 3

subsequent meeting of the City Council to be held in March would provide for considering action to hold the hearing, consider the adoption of a resolution authorizing the issuance of the bonds and authorizing the Mayor and the City Clerk to execute a loan agreement, offering documents, bonds, and closing certificates. Shortly after the City Council takes action to authorize the issuance of the bonds, documents will be signed by the parties to the transaction, including the City and the Borrower and the bonds will be issued.

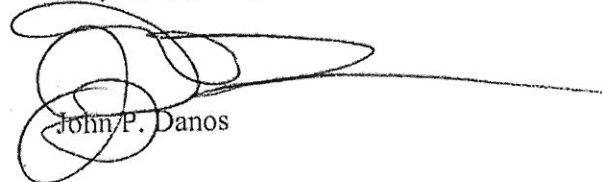
### **Our Role as Bond Counsel**

Acting as Bond Counsel, our office will review each of the documents and proceedings necessary to close the transaction in order to ensure compliance with the necessary state and federal legal requirements. On the day of closing and issuance of the Bonds we will issue our opinion that all steps required to issue the Bonds have been completed and confirming that the Bonds are not a constitutional debt of the City.

I hope this information will be useful to you as the City Council proceeds with this matter and I look forward to answering any questions.

If you have any further questions in the interim, or if there is anything further I can provide to be of assistance, please do not hesitate to contact me.

Very truly yours,



John P. Danos

HEARING, AUTHORIZATION AND  
ISSUANCE PROCEEDINGS

Fort Dodge, Iowa

March 23, 2015

The City Council of Fort Dodge, Iowa, met in regular session on March 23, 2015, at \_\_\_\_\_ o'clock p.m., at City Hall, Fort Dodge, Iowa. The meeting was called to order by the Mayor and the roll being called, there were present the Mayor and the following named Council Members:

Present: \_\_\_\_\_

Absent: \_\_\_\_\_

\*\*\*Other Business\*\*\*

The Board investigated and found that notice of intention to issue Facility Revenue Bonds (The Marian Home), Series 2015 in one or more series, in an amount not to exceed \$5,500,000 (the "Bonds") had, as directed by the City Council, been duly given according to law.

This being the time and place specified in the notice for the public hearing on the proposal to issue such Bonds, the Mayor announced that all local residents attending the hearing would now be given an opportunity to express their views for or against the proposal to issue the Bonds. The following local residents attending the hearing expressed their views as follows:

The following local residents who had submitted written comments prior to the hearing expressed their views in such written comments as follows:

After all local residents who appeared at the hearing who desired to do so had expressed their views for or against the proposal to issue the Bonds, Council Member \_\_\_\_\_ introduced the following resolution and moved its adoption, seconded by Council Member \_\_\_\_\_; and after due consideration thereof by the City Council, the Mayor put the question on the motion and upon the roll being called, the following named Council Members voted:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Whereupon, the Mayor declared the motion duly carried and the resolution adopted as follows:

RESOLUTION NO. \_\_\_\_\_

Resolution authorizing the issuance and sale of Facility Revenue Bonds (The Marian Home), Series 2015 of Fort Dodge, Iowa, in an aggregate principal amount not to exceed \$5,500,000; the execution and delivery of a Loan Agreement with The Marian Home, Fort Dodge, Iowa; the execution and delivery of an Assignment and Pledge Agreement and other related matters.

Be It Resolved by the City Council of Fort Dodge, Iowa (the “Issuer”) as follows:

Section 1. (A) The City of Fort Dodge, Iowa (the “Issuer”), is a City authorized and empowered by the provisions of Chapter 419 of the Code of Iowa, 2015, as amended (the “Act”), to issue revenue bonds for the purpose of acquiring, constructing, improving and equipping a facility for an organization described in Section 501(c)(3) of the Internal Revenue Code (the “Code”) which is exempt from federal income tax under Section 501(a) of the Code (a “Tax Exempt Organization”), each of which purposes is a “project” within the meaning of the Act and each of which projects may be located within, or within eight miles of, the Issuer.

(B) The Issuer has been requested by The Marian Home, Fort Dodge, Iowa (the “Borrower”), a Tax Exempt Organization, to issue its Facility Revenue Bonds (The Marian Home), Series 2015 in an aggregate principal amount not to exceed \$5,500,000 (the “Bonds”) pursuant to the Act for the purpose of (i) financing the acquisition, construction, improving, equipping and furnishing of a nursing care facility of the Borrower located at 2400 6th Avenue North, Fort Dodge, Iowa (the “Project”) and (ii) paying for costs of issuance and certain other costs associated with the issuance of the Bonds.

(C) A Resolution proposing to finance the Project through the issuance of revenue bonds or notes of the Issuer in an aggregate principal amount not to exceed \$5,500,000 and to loan said amount to the Borrower was adopted on February 23, 2015.

(D) As required by the Act and Section 147(f) of the Code, the Issuer has previously provided notice of the Issuer’s intention to issue the revenue bonds or notes and has held a public hearing on the issuance of such revenue bonds or notes.

(E) The issuance and sale of the Bonds by the Issuer in the amount of not to exceed \$5,500,000, as a single bond or as multiple bonds, is permitted by the Act, and the Issuer hereby determines to issue the Bonds and to sell the Bonds to the Lender (as identified in the Loan Agreement). The Issuer will loan the proceeds of the Bonds (the “Loan”) to the Borrower in order to finance the Project and to pay costs of issuance.

(F) Pursuant to a Loan Agreement (the “Loan Agreement”) to be entered into between the Issuer and the Borrower, the Borrower agrees to repay the Loan in specified amounts and at specified times sufficient to pay in full when due the principal of, premium, if any, and interest on the Bonds. In addition, the Loan Agreement contains provisions relating to indemnification, insurance, and other agreements and covenants which are required or permitted by the Act and which the Issuer and the Borrower deem necessary or desirable. The Loan Agreement has been submitted to the City Council for its review.

(G) Pursuant to an Assignment and Pledge Agreement (the “Pledge Agreement”) to be entered into between the Issuer and the Lender, the Issuer, among other things, will grant to the Lender a security interest in all of the Issuer’s rights, title and interest in and to the Loan Agreement, including, but not limited to, the right to receive Loan Repayments (as defined in the Loan Agreement), except the Issuer’s right to indemnification and attorneys’ fees and expenses thereunder. The Pledge Agreement has been submitted to the City Council for its review.

(H) The Bonds will be a special limited obligation of the Issuer payable solely from payments derived pursuant to the Loan Agreement. The Bonds shall not be payable from or charged upon any funds other than the revenues pledged to the payment thereof, nor shall the Issuer be subject to any liability thereon. No holder of the Bonds shall have the right to compel any exercise of the taxing power of the Issuer to pay the Bonds or the interest thereon, nor to enforce payment thereof against any property of the Issuer. The Bonds shall never constitute a debt of the Issuer within the meaning of any constitutional or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Issuer. A draft of the Bonds has been submitted to the City Council for its review.

Section 2. In order to provide funds to finance the Project, the Issuer hereby authorizes the issuance of the Bonds in a principal amount not to exceed \$5,500,000 and at interest rates which will produce a net interest cost of not to exceed 4% per annum. The Bonds shall be in the form submitted to the City Council and shall mature in the years and amounts, be subject to redemption, and provide interest at the rates as determined by the Borrower and the Lender prior to their issuance and delivery.

Section 3. The Loan Agreement, the Pledge Agreement and the Bonds are hereby made a part of this Resolution as though fully set forth herein and are hereby approved in substantially the forms presented to the City Council. The Mayor and the City Clerk are authorized and directed to execute, acknowledge and deliver said documents on behalf of the Issuer with such changes, insertions and omissions therein as Bond Counsel may hereafter deem appropriate, such execution to be conclusive evidence of approval of such documents in accordance with the terms hereof.

Section 4. The Mayor and the City Clerk are authorized and directed to execute and deliver all other documents which may be required under the terms of the Loan Agreement or Pledge Agreement, or by Bond Counsel, and to take any other action as may be required or deemed appropriate for the performance of the duties imposed thereby to carry out the purposes thereof.

Section 5. In order to qualify the Bonds as “qualified tax exempt obligations” within the meaning of Section 265(b)(3) of the Code, the Issuer hereby makes the following factual statements and representations:

(A) The Issuer hereby designates the Bonds as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code;

(B) The reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii) of Section 265(b)(3)(c) of the Code) which will be issued by



the Issuer (and all entities whose obligations will be aggregated with those of the Issuer) during this calendar year 2015 will not exceed \$10,000,000; and

(C) Not more than \$10,000,000 of obligations issued by the Issuer during this calendar year 2015 (including the Bonds) have been designated for purposes of Section 265(b)(3) of the Code.

Section 6. The Mayor, the City Clerk and other officers of the Issuer are authorized to furnish to the Lender, the Borrower and Bond Counsel certified copies of all proceedings and records of the Issuer relating to the Bonds, and such other affidavits and certificates as may be required to show the facts relating to the legality and marketability of the Bonds as such facts appear from the books and records in the officer's custody and control or as otherwise known to them; and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the Issuer as to the truth of all statements contained therein.

Section 7. The provisions of this Resolution are hereby declared to be severable and if any section, phrase or provisions shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

Section 8. All resolutions or parts thereof in conflict herewith are hereby repealed, to the extent of such conflict.

Section 9. This Resolution shall become effective immediately upon its passage and approval.

Passed and approved March 23, 2015.

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Mayor

Attest:

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City Clerk

\* \* \*Other Business\* \* \*

On motion and vote, the meeting adjourned.

STATE OF IOWA )

CITY OF FORT DODGE ) SS.

I, the undersigned, being first duly sworn, do hereby depose and certify that I am the duly appointed, qualified and acting City Clerk of the aforementioned City and that as such I have in my possession, or have access to, the complete corporate records of said City and of its City Council and its officers; that I have carefully compared the transcript hereto attached with the aforesaid corporate records; and that said transcript hereto attached is a true, correct and complete copy of all the corporate records in relation to adoption of a Resolution authorizing the issuance and sale of Facility Revenue Bonds (The Marian Home), Series 2015 in an aggregate principal amount not to exceed \$5,500,000.

WITNESS my hand and the corporate seal of said City hereto affixed this \_\_\_\_ day of \_\_\_\_\_, 2015.

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

(Seal)

June 1, 2015

The Marian Home  
Fort Dodge, Iowa

CSBank, a division of Carroll County State Bank  
Fort Dodge, Iowa

City of Fort Dodge, Iowa

We have acted as bond counsel in connection with the issuance by the City of Fort Dodge, Iowa (the “Issuer”) of a \$5,500,000 Facility Revenue Bond (The Marian Home Project), Series 2015 (the “Bond”). We have examined the law and such certified proceedings and other papers as we deem necessary to render this opinion including the resolution (the “Bond Resolution”) authorizing the issuance and sale of the Bond adopted by the City Council of the Issuer on March 23, 2015.

The Bond is issued pursuant to Chapter 419 of the Code of Iowa, as amended (the “Act”) and the Bond Resolution. Under a Loan Agreement dated as of June 1, 2015 (the “Loan Agreement”) by and between the Issuer and The Marian Home, Fort Dodge, Iowa (the “Borrower”), the Issuer has loaned the proceeds from the sale of the Bond to the Borrower for the purpose of financing the acquisition of a Project (as defined in the Loan Agreement), and the Borrower has agreed to make payments to be used to pay when due the principal of, premium, if any, and interest on the Bond, and such payments and other revenues under the Loan Agreement (collectively, the “Revenues”) and the rights of the Issuer under the Loan Agreement (except certain rights to indemnification, reimbursement and administrative fees) are pledged and assigned by the Issuer to CSBank, a division of Carroll County State Bank (the “Lender”) pursuant to an Assignment and Pledge Agreement dated as of June 1, 2015 (the “Pledge Agreement”) between the Issuer and the Lender as security for the Bond. The Bond is payable solely from the Revenues and are secured by a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement dated as of June 1, 2015 (the “Mortgage”) between the Borrower and the Lender. The Borrower and the Issuer have entered into a Tax Exemption Agreement (the “Tax Exemption Agreement”) dated as of June 1, 2015, between the Issuer and the Borrower to satisfy the criteria under Sections 103 and 148 of the Internal Revenue Code of 1986 (the “Code”).

As to questions of fact material to our opinion, we have relied upon representations of the Issuer and the Borrower contained in the Pledge Agreement, the Loan Agreement, the Tax Exemption Agreement, the certified proceedings and other certifications of public officials furnished to us, and certifications furnished to us by or on behalf of the Borrower, without undertaking to verify the same by independent investigation.

Based upon the foregoing, we are of opinion that, under existing law:

1. The Issuer is a city and political subdivision of the State of Iowa with statutory power under the Act to enter into and perform the Pledge Agreement, Loan Agreement, and the Tax Exemption Agreement and issue and sell the Bond.

2. The Pledge Agreement, the Tax Exemption Agreement, and the Loan Agreement have been duly authorized, executed and delivered by the Issuer and, assuming due authorization and execution by the other parties thereto, are valid and binding obligations of the Issuer enforceable upon the Issuer. The Pledge Agreement creates a valid lien on the Revenues and on the rights of the Issuer under the Loan Agreement (except certain rights to indemnification, reimbursement and administrative fees).

3. The Bond has been duly authorized, executed and delivered by the Issuer and is a valid and binding limited obligation of the Issuer. The principal of, premium, if any, and interest on the Bond are payable solely from the Revenues. The Bond and the interest and premium, if any, thereon do not and shall never constitute an indebtedness of the Issuer within the meaning of any state constitutional provision or statutory limitation and shall not constitute or give rise to a pecuniary liability of the Issuer or a charge against the general credit or taxing powers of the Issuer.

4. The Bond is a “private activity bond” within the meaning of Section 141 and a “qualified 501(c)(3) bond” within the meaning of Section 145 of the Internal Revenue Code of 1986 (the “Code”). Interest on the Bond (i) is excludable from gross income of the owners thereof for federal income tax purposes; (ii) will not be treated as a specific item of tax preference for purposes of the federal alternative minimum tax for individuals and corporations, and (iii) in the case of corporations (as defined for federal income tax purposes) will be taken into account in determining adjusted current earnings for purposes of computing such alternative minimum tax. The Code sets forth certain requirements that must be satisfied on a continuing basis in order for interest on the Bonds to continue to be excluded from gross income for federal income tax purposes. The Issuer and the Borrower have covenanted in the Tax Exemption Agreement to comply with the applicable requirements of the Code. We express no opinion with respect to the federal income tax consequences to the recipients of interest on the Bonds except as stated herein.

5. Interest on the Bond is not exempt from present Iowa income taxes.

6. The Bond is a “qualified tax-exempt obligation” under and within the meaning of Section 265(b)(3)(B) of the Code.

In rendering the opinions contained in paragraphs 4 and 6 above, we have relied upon representations and certifications made by the Issuer, the Borrower and others in connection with the issuance of the Bond as to the nature, cost, use and useful life of the facilities financed by the Bond, the application to be made of the proceeds of the Bond, the investment of such proceeds

and other matters material to the tax-exempt status of the income borne by the Bond. We have assumed that the proceeds of the Bond will be applied in accordance with the provisions of the Loan Agreement, the Tax Exemption Agreement and the representations made by the Issuer and the Borrower with respect thereto, and that the Issuer and the Borrower will make any necessary calculations and pay to the United States any amounts required under Section 148 of the Code. Failure by the Issuer and the Borrower to comply with applicable requirements of the Code could cause the interest on the Bonds to be includable in the gross income of the owners thereof for federal income tax purposes, either prospectively or retroactively to the date hereof.

In rendering this opinion, we have also relied upon the opinion of Bennett, Crimmins & Smith, Fort Dodge, Iowa, counsel to the Borrower, as to the due organization, existence and good standing of the Borrower under the laws of the State of Iowa, as to the due and valid authorization, execution and delivery by the Borrower of the Loan Agreement, the Tax Exemption Agreement and the Mortgage and the enforceability of such documents against the Borrower, as to the power and authority of the Borrower to execute and deliver and perform and carry out its obligation under the Loan Agreement, the Mortgage, and the Tax Exemption Agreement and as to the status of the Borrower as an organization described in Section 501(c)(3) of the Code and exempt from taxation under Section 501(a) of the Code.

It is to be understood that the rights of the holders of the Bond and the enforceability of the Bond, the Loan Agreement, the Mortgage, the Pledge Agreement, the Tax Exemption Agreement, and the Bond Resolution may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

**DORSEY & WHITNEY LLP**

## CLOSING CERTIFICATE OF THE ISSUER

The undersigned, the Mayor and City Clerk, respectively, of the City of Fort Dodge, Iowa (the "Issuer"), acting for the Issuer, do hereby certify as of June 1, 2015 (the "Dated Date") as follows:

1. The Issuer's Facility Revenue Bond (The Marian Home Project), Series 2015 (the "Bond"), in the amount of \$5,500,000, bearing interest at the rate and maturing on the dates provided in the Bond, has been duly executed by and on behalf of the Issuer as of June 1, 2015 (the "Bond Date"), with the signatures of the undersigned and impressed with the seal of the Issuer and the Bond has been delivered to CSBank, a division of Carroll County State Bank (the "Lender").

2. Attached hereto and identified as Exhibits are the following:

- a. Exhibit A - Proceedings of the City Council - Resolution Setting Hearing Date; Affidavit of Publication of Notice of Intention to Issue Facility Revenue Bonds
- b. Exhibit B - Proceedings of the City Council - Hearing and Authorization of Bond Issuance (the "Bond Resolution").

3. The Issuer has duly authorized the execution and delivery of the Bond, the Loan Agreement, dated as of June 1, 2015 (the "Loan Agreement") between the Issuer and The Marian Home, Fort Dodge, Iowa (the "Borrower"); the Assignment and Pledge Agreement dated as of June 1, 2015 (the "Pledge Agreement") between the Issuer and the Lender, and the Tax Exemption Agreement dated as of June 1, 2015 (the "Tax Exemption Agreement") between the Issuer and the Borrower.

4. The Bond, the Loan Agreement, the Pledge Agreement and the Tax Exemption Agreement have been duly executed by and on behalf of the Issuer with the signatures of the undersigned Mayor and City Clerk, and the corporate seal of the Issuer has been affixed thereto, and are in substantially the form approved by the Bond Resolution, except for certain insubstantial changes determined subsequent to such meeting as approved by Issuer's Counsel and Bond Counsel.

5. To the best of our knowledge, the execution and delivery of the Bond, the Loan Agreement, the Pledge Agreement and the Tax Exemption Agreement and the compliance by the Issuer with the provisions thereof will not constitute on the part of the Issuer a material breach of or a material default under any existing court or administrative decree or order or any agreement or other instrument to which the Issuer is subject or by which it or its properties is or may be bound.

6. No litigation is pending to which the Issuer is a party, or to the knowledge of the undersigned threatened, to restrain or enjoin the issuance or sale of the Bond, the application of the proceeds thereof, or the payment, collection or application of monies pursuant to the Loan Agreement or in any way affecting any authority for or the validity of the Loan Agreement, the Bond, the Pledge Agreement and the Tax Exemption Agreement.

7. Neither the corporate existence of the Issuer, nor, to the best of our knowledge, the titles of the present officials of the Issuer to their respective offices are being contested and no authority or proceedings for the issuance of the Bond, including the Bond Resolution, or the execution and delivery of the Loan Agreement, Pledge Agreement, or the Tax Exemption Agreement have been modified, repealed, revoked or rescinded.



WITNESS our hands and the seal of the Issuer as of the Dated Date.

**CITY OF FORT DODGE, IOWA**

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

Attest:

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

(Seal)

EXHIBIT A

PROCEEDINGS OF THE CITY COUNCIL  
RESOLUTION SETTING HEARING DATE

EXHIBIT B

PROCEEDINGS OF THE CITY COUNCIL  
HEARING AND AUTHORIZATION OF BOND ISSUANCE

4815-3409-6418\3

## **TAX EXEMPTION AGREEMENT**

One purpose of executing this Agreement is to set forth various facts regarding the \$5,500,000 City of Fort Dodge, Iowa Facility Revenue Bond (The Marian Home Project), Series 2015 (the “Bond” or “Series 2015 Bond”) and to establish the expectations of the Issuer and the Borrower as to future events regarding the Bond and the use of the Bond proceeds. To the extent such facts do not relate directly to the Issuer, the Issuer is relying upon the certifications of the Borrower, which is reasonable and prudent.

The undersigned are, respectively, the duly qualified and acting Mayor and City Clerk of the City of Fort Dodge, Iowa (the “Issuer”) and the President of The Marian Home, Fort Dodge, Iowa (the “Borrower”). As the Mayor and City Clerk, respectively, we are charged with the responsibility of issuing the Bond of the Issuer in the principal amount of not to exceed \$5,500,000, and on this June 1, 2015 (the “Dated Date”) do further certify as follows:

1. This Tax Exemption Agreement is made for the purpose of establishing the reasonable expectations of the Issuer as to the amount and use of proceeds of the Bond. It is intended and may be relied upon as a certification under Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), and Treasury Regulations, Section 1.148-2(b)(2), and is being executed and delivered as part of the record of proceedings in connection with the issuance of the Bond.

2. The Commissioner of Internal Revenue Service has not published notice of, nor has the Issuer been notified of, any listing or proposed listing of the Issuer by the Internal Revenue Service as an issuer whose certification may not be relied upon for arbitrage purposes by the holders of its obligations.

3. This Tax Exemption Agreement is given to certify certain facts and expectations regarding the amount and use of the proceeds of the Bond. To the best of our knowledge and belief, without any independent investigation being undertaken, the facts contained herein are accurate, timely, correct and complete and the expectations set forth herein are reasonable and there are no other facts or expectations that would materially change such facts and expectations.

4. Based solely upon representations made by the Borrower, we reasonably expect the following with respect to the Bond:

(a) The purpose of the Bond is to provide funds for (i) financing the acquisition, construction, improving, equipping and furnishing of a nursing care facility of the Borrower located at 2400 6th Avenue North, Fort Dodge, Iowa

(b) The net sale proceeds of the Bond will be used to acquire and construct the Project with the cost estimate as set forth in Exhibit A attached hereto.

(c) Neither the Issuer nor the Borrower has created or established, or expects to create or establish any debt service fund, sinking fund, reserve fund or other similar fund which is expected to be available for payment of the Bond.

(d) The Borrower has entered into contracts for construction, acquisition and installation of certain portions of the Project and the amounts payable thereunder exceed \$\_\_\_\_\_ (5% of the proceeds of the Bond). The Borrower expects work on acquisition and construction of the Project to proceed with due diligence to completion, which is currently expected to be on or about \_\_\_\_\_, 2015. The Borrower expects that all proceeds of the Bond allocated to the Project (\$\_\_\_\_\_) ("Project Proceeds") will be spent to pay or reimburse the Borrower for the payment of Project Costs within three years of the Dated Date; any Project Proceeds held by the Borrower prior to application to the costs of the Project may be invested by the Borrower without restriction as to yield.

(e) No portion of the Bond is being issued solely for the purpose of investing the proceeds thereof at a yield higher than the Bond yield.

(f) On the basis of the foregoing, it is expected that the proceeds of the Bond will not be used in a manner that would cause the Bond to be "arbitrage bonds" within the meaning of Section 148 of the Code and applicable Treasury Regulations.

5. The Bond has been sold by the Issuer to the CSBank, a division of Carroll County State Bank (the "Lender"), and the Lender has certified for the benefit of the Issuer and the Borrower such warranties, covenants and representations as set forth in the Lender's Certificate. For purposes of computing yield and certain other purposes, the Bond is treated as comprising a single issue of bonds issued as of the date hereof pursuant to a "draw down loan" under Section 1.150-1(c)(4)(i) of the Regulations. The Bond qualifies for such treatment since (i) the Bond will be issued and delivered pursuant to the Loan Agreement under which funds will be advanced periodically by the Purchaser over a period not to exceed three years; (ii) the Bond is equally and ratably secured under the Loan Agreement and is issued pursuant to a common plan of financing; and (iii) the principal amount of the initial draw exceeds the lesser of \$50,000 or 5% of the issue price of the Bond. The Issuer and the Borrower have determined that the issue price of the Bond, as defined in Section 1.148-1(b) of the Regulations and Section 1.273(b)(1) and (2) of the Code, is \$5,500,000, equaling the aggregate authorized principal amount of the Bond.

6. (a) The Bond is being purchased for a purchase price as follows:

Principal	\$5,500,000
Total Purchase Price	\$5,500,000

(b) On the Dated Date the Total Purchase Price, as shown in 6(a) above, will be allocated as follows:

To the Borrower for Project Costs	\$_____
Costs of Issuance Paid	\$_____

All income, if any, derived from the investment of moneys on deposit in the name of the Borrower pursuant to the Bond shall be further used to pay costs related to the Project. Any excess funds following completion of the Project shall be used to prepay the Bond.

7. The term of the Bond is not longer than is reasonably necessary for the governmental purposes of the Bond. The weighted average maturity of the Bond is \_\_\_\_\_ years. The proceeds of the Bond will be applied to pay the costs of the portions of the Project as shown on Exhibit A hereto. The reasonably expected economic life of the portions of the Project to be financed with the proceeds of the Bond is \_\_\_\_\_ years. The weighted average maturity of the Bond, therefore, does not exceed 120 percent of the average reasonably expected economic life of the property financed with the proceeds of the Bond.

8. No proceeds of the Bond are being used to make grants to any person.

9. Based on the representation of the Lender contained in the Lender's Certificate, which the Borrower and the Issuer have no reason to believe are untrue, and the representations contained in this Agreement, the fees of the Lender will be treated as interest on the Bond for purposes of calculating the Bond Yield. Neither the Borrower nor any member of the Issuer is a related person to the Lender within the meaning of Section 144(a)(3) of the Code. The fees paid to the Lender do not exceed two percent (2%) of the proceeds received from the sale of the Bond.

10. The Borrower will maintain a record regarding the expenditure of all proceeds of the Bond and will compute and cause the payment to the United States of America all amounts required under Section 148(f) of the Code and the Temporary Regulations issued thereunder, if necessary.

11. The cost of the Modified Accelerated Recovery System ("MACRS") (within the meaning of Section 168 of the Code) assets comprising the Project and the cost of the land and other property, all of which have been or will be financed with the proceeds of the Bond is as follows:

(a)	Buildings and structures	\$_____
(b)	Equipment with MACRS life of more than 5 years	\$_____
(c)	Equipment with MACRS life of 5 years or less	\$_____
(d)	Land	\$_____

12. The Bond qualifies as a "construction issue" as defined in Section 148(f)(4)(c)(vi) of the Code and Section 1.148-7(f) of the Regulations because at least 75% of the "available construction proceeds" as defined in Section 148(f)(4)(c)(vi) of the Code will be allocated to capital expenditures that are allocable to the cost of land, buildings, improvements, permanent structures or constructed personal property.

13. The Bond is a “fixed yield issue” as defined in Section 1.148-1(b) of the Regulations. Accordingly, the yield on the Bond (the “Bond Yield”) is that discount rate which when used in computing the present value as of the issue date of all unconditionally payable payments of principal, interest, and fees paid or reasonably expected to be paid for qualified guarantees on the Bond, produces an amount which is equal to the present value, using the same discount rate, of the aggregate issue price thereof. Such payments will include principal and interest to be paid on the Bond. Based upon the foregoing, the Bond Yield on the Bond has been computed to be 2.50% per annum.

14. The proceeds of the Bond allocated to the Project will be fully spent for costs of the Project within the following time periods:

- (a) At least 10% will be spent within 6 months of the date hereof;
- (b) At least 45% will be spent within 12 months of the date hereof;
- (c) At least 75% will be spent within 18 months; and
- (d) All of the proceeds will be spent within two years of the date hereof.

15. Within 15 days of the Dated Date, neither the Issuer nor the Borrower has sold or delivered (nor will either the Issuer nor the Borrower within 15 days after the Dated Date) any other tax-exempt obligations that are reasonably expected to be paid out of substantially the same source of funds as the Bond.

16. No portion of the property financed with the proceeds of the Bond are expected to be sold or otherwise disposed of prior to the last maturity of the Bond, except as otherwise provided in the Loan Agreement.

17. The Issuer and the Borrower acknowledge that any changes in facts or expectations from those set forth herein may result in different yield restrictions or rebate requirements and agree that Bond Counsel will be contacted if such changes occur.

18. The Borrower will not use more than 2% of the proceeds of the Bond (including but not limited to investment earnings, if any), to pay costs relating to the issuance of the Bond (within the meaning of Section 147(g) of the Code).

19. No portion of the proceeds of the Bond shall be used to provide any airplane, skybox (or other private luxury box), facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

20. The terms, provisions, covenants and conditions of this Agreement shall bind and inure to the benefit of the respective successors and assigns of the Issuer and the Borrower.

21. Except for expenditures not exceeding \$100,000 in the aggregate and certain preliminary expenditures evidenced by the files and records of the Borrower (the “Preliminary Expenditures”) and except as provided in the next sentence, none of the proceeds of the Bond will be used to reimburse the Borrower for expenditures paid prior to the date (December 25,

(a) All Preliminary Expenditures relate to architectural, engineering, surveying, soil testing, bond issuance and similar costs that were incurred prior to commencement of construction, or acquisition of the Project and do not include any costs related to land acquisition, site preparation and similar costs incident to commencement of construction.

(b) All Preliminary Expenditures represent (i) costs of a type that would be properly chargeable to a capital account under the Code (or would be so chargeable with a proper election) under federal income tax principles if the Borrower were treated as a corporation subject to Federal income taxation or (ii) a cost of issuing the Bond.

(c) Funds corresponding to Gross Proceeds used to reimburse a Preliminary Expenditure (a "Reimbursement Allocation") will not be used within one year after making such Reimbursement Allocation in a manner that results in the creation of Replacement Proceeds of the Bond or any other issue. The preceding sentence does not apply to amounts deposited in a bona fide debt service fund.

(d) No Reimbursement Allocation will employ any action that (A)(i) enables the Borrower to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage and (ii) overburdens the tax-exempt bond market to avoid arbitrage restrictions or (B) avoids the restrictions under Sections 142 through 147 of the Code.

21. To the best of the Borrower's knowledge, information and belief, there are no other facts, estimates or circumstances that would materially change any of the foregoing information.



IN WITNESS WHEREOF, we have hereunto set our hands and the seal of the Issuer as  
of the Dated Date

**CITY OF FORT DODGE, IOWA**

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

Attest:

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

(Seal)

IN WITNESS WHEREOF, we have hereunto set our hands as of the Dated Date

**THE MARIAN HOME, FORT DODGE, IOWA**

By: \_\_\_\_\_  
Most Reverend R. Walker Nickless, President

**Exhibit A**

**Itemized Costs of the Project and Average Economic Life**

(A)	(B)	(C)	(D)	(E)
<u>ITEM</u>	<u>COST</u>	<u>AMOUNT PAID WITH BOND PROCEEDS</u>	<u>LIFE (YEARS)</u>	<u>EXTENSION (C) x (D)</u>
Land				
Buildings and structures				
Equipment with a useful life of 10 years				
Equipment with a useful life of 5 years				
Equipment with a useful life of 3 years	_____	_____		_____
Total				
Average Economic Life*			\$ _____	\$ _____

\*Land is excluded from this calculation.

4838-3211-6258\2 2/25/2015

June 1, 2015

City of Fort Dodge, Iowa  
City Hall  
819 1<sup>st</sup> Avenue S  
Fort Dodge, Iowa 50501

Re: \$5,500,000 City of Fort Dodge, Iowa Facility Revenue Bond  
(The Marian Home Project), Series 2015

Ladies and Gentlemen:

We have acted as counsel for the City of Fort Dodge, Iowa, an Iowa municipal corporation and a political subdivision of the State of Iowa (the "Issuer"), in connection with the Issuer's issuance and sale on this date of the Bond referred to in the caption hereof (the "Bond").

The Bond is issued pursuant to Chapter 419 of the Code of Iowa, as amended (the "Act") and the Bond Resolution. Under a Loan Agreement dated as of June 1, 2015 (the "Agreement"), by and between the Issuer and The Marian Home, Fort Dodge, Iowa (the "Borrower") the Issuer has loaned the proceeds from the sale of the Bond to the Borrower for the purpose of financing the acquisition, equipping and furnishing of a Project (as defined in the Agreement), and the Borrower has agreed to make payments to be used to pay when due the principal of, premium, if any, and interest on the Bond, and such payments and other revenues under the Agreement (collectively, the "Revenues") and the rights of the Issuer under the Agreement (except certain rights to indemnification, reimbursement and administrative fees) are pledged and assigned by the Issuer to CSBank, a division of Carroll County State Bank (the "Lender") pursuant to an Assignment and Pledge Agreement dated as of June 1, 2015 (the "Pledge Agreement") between the Issuer and the Lender as security for the Bond. The Bond is payable solely from the Revenues pursuant to the Agreement. The Borrower and the Issuer have entered into a Tax Exemption Agreement dated as of June 1, 2015, between the Issuer and the Borrower to satisfy the criteria under Sections 103 and 148 of the Internal Revenue Code of 1986 (the "Code").

Based upon the foregoing, we are of the opinion that:

1. The Issuer is a municipal corporation duly created and validly existing under the Constitution and laws of the State of Iowa and has full power and authority to enter into, execute and deliver the Loan Agreement, and the Pledge Agreement.

2. The resolution of the Issuer authorizing the issuance and sale of the Bond has been duly adopted by the Issuer and no further action of the Issuer is required for its continued validity.

3. There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or, to our knowledge, threatened against or affecting the Issuer, to restrain or enjoin the issuance or delivery of the Bond or in any way contesting or affecting the authority for the issuance of the Bond or for the execution, delivery and performance of the Loan Agreement, Pledge Agreement, or Tax Exemption Agreement or in any way contesting or affecting the corporate existence or powers of the Issuer, or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement, Pledge Agreement, or Tax Exemption Agreement or the validity or enforceability of the Bond or the Loan Agreement, Pledge Agreement, or Tax Exemption Agreement.

4. The execution, delivery and performance by the Issuer of the Loan Agreement, the Pledge Agreement, the Tax Exemption Agreement and the Bond (a) will not violate any provision of Iowa laws or any applicable judgment, order or regulation of any court or of any public or governmental agency of the State of Iowa, and (b) will not conflict with or result in the breach of any of the provisions of, or constitute a default under, any indenture, loan agreement, deed of trust or other agreement or instrument to which the Issuer is a party or by which it or its properties are bound.

5. The Loan Agreement, the Pledge Agreement, the Tax Exemption Agreement and the Bond have each been duly and validly authorized, executed and delivered by the Issuer. The Loan Agreement, the Pledge Agreement, the Tax Exemption Agreement and the Bond is in full force and effect and are valid and binding instruments of the Issuer enforceable in accordance with their terms, except as enforceability thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally, by the application of equitable principles if equitable remedies are sought and by judicial discretion in appropriate cases.

**DORSEY & WHITNEY LLP**

LOAN AGREEMENT  
BETWEEN  
THE CITY OF FORT DODGE, IOWA  
and  
THE MARIAN HOME, FORT DODGE, IOWA

Dated as of June 1, 2015

The interest of the City of Fort Dodge, Iowa in this Loan Agreement has been assigned to CSBank, a division of Carroll County State Bank.

This Instrument was drafted by:

Dorsey & Whitney LLP  
801 Grand, Suite 4100  
Des Moines, Iowa 50309  
(515) 283-1000

THIS LOAN AGREEMENT, dated as of June 1, 2015, between the City of Fort Dodge, Iowa (the “Issuer”) and The Marian Home, Fort Dodge, Iowa (the “Borrower”);

### PRELIMINARY STATEMENTS

WHEREAS, the Issuer is a City authorized and empowered by the provisions of Chapter 419 of the Code of Iowa (2015), as amended (the “Act”), to issue revenue bonds, notes or other securities and loan the proceeds thereof pursuant to a loan agreement to one or more contracting parties (as defined in the Act) to be used to pay the cost of acquiring, by construction or purchase, land, buildings, improvements and equipment, or any interest therein, to be located either within, or within eight miles of, the corporate limits of the Issuer and to be suitable for use of any facility for an organization described in Section 501(c)(3) of the Internal Revenue Code, (the “Code”) which is exempt from federal income tax under Section 501(a) of the Code (a “Tax Exempt Organization”), and to retire any existing indebtedness on a facility for a Tax Exempt Organization; and

WHEREAS, the Issuer has been requested by The Marian Home, Fort Dodge, Iowa (the “Borrower”) to issue its Facility Revenue Bond (The Marian Home Project), Series 2015 in an aggregate principal amount of \$5,500,000 (the “Bond”) pursuant to the Act for the purpose of (i) financing the acquisition, construction, improving, equipping and furnishing of a nursing care facility of the Borrower located at 2400 6th Avenue North, Fort Dodge, Iowa (the “Project”) and (ii) paying for costs of issuance and certain other costs associated with the issuance of the Bond; and

WHEREAS, pursuant to the Act, the Issuer is obtaining funds to loan to the Borrower for such purposes through the issuance and sale of the Bond, which will be issued pursuant to the Act and a resolution of the City Council of the Issuer (the “Bond Resolution”) and is secured by an assignment of this Loan Agreement by the Issuer to CSBank, a division of Carroll County State Bank (the “Lender”) pursuant to an Assignment and Pledge Agreement dated as of June 1, 2015 (the “Pledge Agreement”), from the Issuer to the Lender; and

WHEREAS, the Bond will be payable out of the payments to be made by the Borrower under this Loan Agreement.

NOW, THEREFORE, in consideration of the promises, the respective representations and agreements contained herein, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of and interest payable on the Bond and the performance of all the covenants of the Borrower contained herein, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS AND RULES OF INTERPRETATION

#### Section 1.01 Definitions.

In this Loan Agreement the following terms have the following respective meanings unless the context clearly requires otherwise:

“Act” means Chapter 419 of the Code of Iowa (2015) as amended.

“Additional Bonds” means bonds, notes, indebtedness or other obligations incurred by the Borrower and ranking on a parity with the Series 2015 Bond.

“Affiliate” means any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Borrower. For purposes of this definition, “Control” when used with respect to any specified person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Authorized Denomination” means \$250,000 and multiples of \$5,000 in excess thereof.

“Bond” or “Series 2015 Bond” means the Facility Revenue Bond (The Marian Home Project), Series 2015 dated as of the Dated Date issued by the Issuer pursuant to the Bond Resolution to evidence the loan made by the Lender to the Issuer.

“Bond Counsel” means the firm of Dorsey & Whitney LLP, Des Moines, Iowa, or any other firm of nationally recognized bond counsel experienced in tax-exempt financing, selected by the Borrower and acceptable to the Lender.

“Bond Resolution” means the resolution adopted March 23, 2015 by the City Council of the Issuer authorizing the issuance of the Bond and establishing the terms and conditions thereof.

“Borrower” means The Marian Home, Fort Dodge, Iowa, an Iowa nonprofit corporation, its successors and assigns.

“Code” means the Internal Revenue Code of 1986, as amended.

“Dated Date” means June 1, 2015.

“Delivery Date” means June 1, 2015.

“Event of Default” means any of the events described in Section 6.01 hereof.

“Fiscal Year” shall mean the Borrower’s fiscal year which starts September 1 of each calendar year and ends on the following August 31 of the following calendar year.



“Gross Revenues” means the total unrestricted revenues, gains and other support of the Borrower for a specified period, as determined in accordance with generally accepted accounting principles and shown on the Statement of Operations of the Borrower for such period.

“Indebtedness” shall mean (i) all indebtedness, whether or not represented by bonds, debentures, notes or other securities, for the repayment of money borrowed, (ii) all indebtedness for the payment of the purchase price of property or assets purchased, (iii) all guaranties, endorsements, assumptions and other contingent obligations with respect to, or to purchase or to otherwise acquire, indebtedness of others, (iv) all indebtedness secured by any mortgage, pledge or lien existing on property owned, subject to such mortgage, pledge or lien, whether or not indebtedness secured thereby shall have been assumed, and (v) installment purchase contracts, loans secured by purchase money security interests, lease-purchase agreements or capital leases (including leases of real property), entered into by the Borrower in connection with the acquisition of property not previously owned by the Borrower and computed in accordance with generally accepted accounting principles; provided, however, that “Indebtedness” does not include: (a) debt up to the amount of the aggregate cash equivalents and marketable securities (valued at market) held in an account of the Borrower which have been pledged and designated by the Borrower (consistent with the restriction attendant to such funds) to satisfy a specified debt of the Borrower, (b) non-capitalized leases related to the operation of the Borrower, (c) unsecured borrowings from any Affiliate of the Borrower, or (d) trade accounts payable and accrued expenses incurred in the normal course of business. For purposes of this definition no single evidence of indebtedness shall be counted more than once even though more than one of the clauses (i) - (v) above may apply.

“Issuer” means the City of Fort Dodge, Iowa, its successors and assigns.

“Lender” means CSBank, a division of Carroll County State Bank, its successors and assigns.

“Loan” means the loan by the Issuer to the Borrower of the proceeds of the Bond pursuant to this Loan Agreement.

“Loan Agreement” means this Loan Agreement between the Issuer and the Borrower, including any amendment hereof or supplement hereto.

“Loan Repayments” means the payments required of the Borrower pursuant to Section 3.02 of this Loan Agreement.

“Long Term Indebtedness” means Indebtedness incurred, assumed or guaranteed by the Borrower maturing more than one year after it is incurred, assumed or guaranteed.

“Maturity Date” means December 1, 2031.

“Mortgage” means the Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement dated as of June 1, 2015, from the Borrower to the Lender including any amendment thereof or supplement thereto.

“Net Revenues Available for Debt Service” means, for any period of determination thereof, the Gross Revenues of the Borrower for such period (excluding any extraordinary revenues or income) less the total operating expenses of the Borrower for the same specified period (excluding extraordinary losses and expenses), as determined in accordance with generally accepted accounting principles, to which there shall be added the amount of all depreciation, amortization and interest expense and other non-operating revenue and contributions available for debt service, all for the same specified period.

“Payment Date” means the 1<sup>st</sup> business day of each month, and with respect to interest shall commence July 1, 2015 and with respect to principal shall commence December 1, 2015, and continue to and include the Maturity Date.

“Pledge Agreement” means the Assignment and Pledge Agreement dated as of June 1, 2015, between the Issuer and the Lender, including any amendment thereof or supplement thereto.

“Primary Deposit Account” means the deposit account into which substantially all of the Borrower’s receipts from its operations are deposited and from which substantially all of its disbursements for its operations are made.

“Project” means the financing of the acquisition, construction, improving, equipping and furnishing of a nursing care facility of the Borrower located at 2400 6th Avenue North, Fort Dodge, Iowa.

“Project Costs” means all direct costs authorized by the Act and the Code paid for the Project, including but not limited to expenditures in connection with (i) the preparation of plans and specifications for the Project Facilities (including any preliminary study or planning of the Project or any aspect thereof) and payment of any architectural, engineering or supervisory fees and expenses, (ii) costs of demolition of any existing building or structure, (iii) the acquisition of the land (if any) for the Project Facilities, including but not limited to labor, services, materials and supplies used in construction, and all construction, acquisition and installation expenses required to provide utility services or other facilities, and all real or personal properties deemed necessary in connection with the Project Facilities (including architectural, engineering and supervisory services with respect to any of the foregoing), (iv) the acquisition of equipment, (v) costs of issuance of the Bond and (vi) any other costs and expenses relating to the Project.

“Project Facilities” means the facilities financed with the proceeds of the Bond.

“Tax Exempt Organization” means an organization described in Section 501(c)(3) of the Code which is exempt from taxation under Section 501(a) of the Code.

#### Section 1.02 Rules of Interpretation.

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

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

(C) The article and section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

(D) References herein to any particular section or subdivision hereof are to the section or subdivision of this instrument as originally executed.

## ARTICLE II

### REPRESENTATIONS

#### Section 2.01 Representations of the Issuer.

The Issuer makes the following representations as the basis for its covenants herein:

- (A) The Issuer is a city and political subdivision of the State of Iowa.
- (B) In authorizing the issuance of the Bond to finance the Project, the Issuer has determined that the Project is a “project” as defined in the Act.
- (C) The issuance and sale of the Bond; the execution and delivery of this Loan Agreement and the assignment of this Loan Agreement to the Lender; and the performance of all covenants and agreements of the Issuer contained in the Bond, the Pledge Agreement and this Loan Agreement have been duly authorized by resolutions of the governing body of the Issuer adopted at meetings thereof duly called and held by the affirmative vote of not less than a majority of its members.
- (D) To provide funds to finance the costs of the Project, in anticipation of the receipt of Loan Repayments hereunder, the Issuer has duly authorized the Bond in the principal amount of \$5,500,000 to be issued upon the terms set forth in the Bond Resolution and the Bond, under the provisions of which the Issuer has agreed to assign its interest therein to the Lender as security for the repayment of the principal of and interest on the Bond.
- (E) Pursuant to the Bond Resolution and this Loan Agreement, the Issuer has authorized and directed the Lender, as purchaser of the Bond, to make payments directly to the Borrower on the Delivery Date and thereafter, as provided herein in amounts equal to the principal amount advanced under the Bond plus accrued interest thereon from its Dated Date, such payment to constitute payment of the purchase price thereof and the making of the Loan hereunder.
- (F) There is not pending or threatened any suit, action or proceeding against the Issuer before or by any court, arbitrator, administrative agency or other governmental authority which materially and adversely affects the validity, as to the Issuer, of this Loan Agreement, any of its obligations hereunder or any of the transactions contemplated hereby.
- (G) To the best of the Issuer’s knowledge: (i) no member of the governing body or other officer of the Issuer is directly or indirectly financially interested in this Loan Agreement or any contract, agreement or job hereby contemplated to be entered into or hereby taken; (ii) no official or employee of the Issuer has or will have any personal interest, direct or indirect, in this Loan Agreement; (iii) the Issuer has not paid or given any official or employee of the Borrower any money or other consideration for obtaining this Loan Agreement; and (iv) the Issuer has not paid, nor is it required to pay, the Borrower any amounts as consideration for the financing contemplated by this Loan Agreement.

Section 2.02 Representations, Agreements and Tax Covenants of the Borrower.

The Borrower represents and agrees as the basis for the undertakings on its part herein contained and makes the following covenants regarding issues raised by the Code, upon which the Lender and the Issuer may rely:

(A) The Borrower is a nonprofit corporation duly organized and existing under the laws of the State of Iowa, with full corporate right, authority and legal capacity to consummate the transactions contemplated by this Loan Agreement. The Borrower has corporate power to enter into this Agreement and the Mortgage and by proper action in accordance with its organizational documents has been duly authorized to execute and deliver this Agreement and the Mortgage and to carry out the transactions contemplated herein and therein.

(B) The Borrower covenants that no use will be made of any moneys which, if such use could have been reasonably expected on the date of issuance of the Bond, would have caused the Bond to be classified an "arbitrage bond" within the meaning of Section 148 of the Code, and further covenants to comply with the requirements of said Section 148 and any regulations relating thereto and to execute such certificates as may be necessary to evidence such compliance.

(C) The Borrower covenants that it will comply with and fulfill all other requirements and conditions of the Code and regulations and rulings issued pursuant thereto, and not take any action, or refrain from taking any action or permit others to take any action or refrain from taking any action, if a result thereof is to cause the interest on the Bond to be included in gross income of the holders thereof for federal income tax purposes in each case, which action or refrain from action is reasonably practicable for the Borrower to undertake and within the Borrower's control.

(D) The Borrower covenants that it will not spend less than 95% of the proceeds of the Bond to pay the costs of acquisition, construction and furnishing of the Project (not including costs of issuance of the Bond) and that not more than 2% of the total proceeds advanced under the Bond will be spent to pay costs of issuance of the Bond.

(E) Neither the execution and delivery of this Loan Agreement or the Mortgage, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement or the Mortgage materially conflicts with or results in a breach of any of the material terms, conditions or provisions or any restriction in any organizational document or any agreement or instrument to which the Borrower is now a party or by which it is bound the breach of which could reasonably be expected to have a material adverse effect on the Borrower's financial condition, or constitutes a material default under any of the foregoing, or results in the creation or imposition of any material lien, charge or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any instrument or agreement, other than as provided in this Agreement or the Mortgage.

(F) The Borrower will not take or permit to be taken any action which is under its direction or control and which would have the effect, directly or indirectly, of causing interest on the Bond to be includable in gross income of the holders thereof under Section 103 of the Code

in each case, which refrain from taking of action or curtailing of taking of action is reasonably practicable for the Borrower.

(G) There is no litigation or proceedings pending, or to the knowledge of Borrower threatened, against the Borrower or any other person affecting in any manner whatsoever the right of the Borrower to execute this Loan Agreement or the Mortgage or the ability of the Borrower to pay the loan payments hereunder or to otherwise comply with its obligations contained in this Loan Agreement or the Mortgage.

(H) No further approval, consent or authorization of, or filing or registration with, any governmental or regulatory agency is required in connection with the execution, delivery and performance of this Loan Agreement and the Mortgage, other than the recordings and filings necessary to perfect the liens created hereby and thereby.

(I) The Borrower covenants that the weighted average maturity of the Bond will not exceed 120% of the average reasonably expected economic life of the facilities financed with the proceeds of the Bond.

(J) To the best knowledge of the Borrower, (i) no member of the City Council or officer of the Issuer has either a direct or indirect financial interest in or will personally benefit financially from this Loan Agreement or the Bond or any contract, agreement or job hereby contemplated to be entered into or hereby undertaken, (ii) no official or employee of the Issuer shall have any personal interest, direct or indirect, in this Loan Agreement, and (iii) the Borrower has not paid or given any official or employee of the Issuer any money or other consideration for obtaining this Loan Agreement.

(K) The Borrower is a Tax Exempt Organization. The Borrower is not a “private foundation” as defined in Section 509(a) of the Code. Not more than five percent (5%) of the proceeds of the Bond will be used, directly or indirectly, to finance or refinance property used in an unrelated trade or business of the Borrower determined by applying Section 513(c) of the Code or in the trade or business of any person other than a Tax Exempt Organization. There is no action, proceeding or investigation pending or threatened by the Internal Revenue Service or authorities of the State of Iowa which, if adversely determined, might result in a modification of the status of the Borrower as a Tax Exempt Organization.

(L) To the Borrower’s knowledge the Project Facilities presently comply and shall at all times comply with all applicable building, zoning and environmental restrictions and other requirements or restrictions enacted or promulgated by the State of Iowa, or any political subdivision or agency thereof, or by the government of the United States of America or any agency thereof, any restrictions of record which might limit or affect the intended use of the Project Facilities, in each case, the violation of which might reasonably be expected to have a material adverse effect on the Borrower’s financial condition. The Borrower shall, however, have the right to contest any of the foregoing and if compliance therewith may legally be held in abeyance during such contest, provided such contest shall be prosecuted with due diligence and in good faith. To the Borrower’s knowledge, the Borrower has obtained all consents, permits and licenses necessary to be obtained as of the date hereof to occupy and operate the Project Facilities for its intended purposes.

(M) None of the proceeds of the Bond will be used to provide any airplane, skybox (or other private luxury box), facility primarily used for gambling, or store whose principal business is the sale of alcoholic beverages for consumption off premises.

Section 2.03 The Lender May Rely on Representations.

The Issuer and the Borrower agree that the representations contained in this Article II are for the use and benefit of the Lender, and the Lender shall be entitled to rely thereon, subject, however, to the limitations on liability set forth in Section 7.06 hereof.

## ARTICLE III

### THE LOAN; THE BOND

#### Section 3.01 Amount and Source of the Loan.

The Issuer agrees to lend to the Borrower and the Borrower agrees to borrow from the Issuer, upon the terms and conditions herein, the principal sum of \$5,500,000 or so much as is advanced thereunder by having the proceeds of the Bond so advanced directly to the Borrower by the Lender to finance the costs of the Project all in accordance with the provisions of this Loan Agreement. Forthwith upon the execution and delivery of this Loan Agreement and all other documents and instruments necessary to the transactions contemplated hereby and the recording and filing of such documents as may be required to be filed or recorded by the Lender or Bond Counsel, the Issuer will execute the Bond and cause it to be delivered to the Lender.

#### Section 3.02 Repayment of the Loan.

The Borrower agrees to make the payments under this Loan Agreement directly to the Lender in such amounts and at such times as set forth in the Bond.

Each payment by the Borrower to the Lender hereunder (the "Loan Repayments") shall be made at the principal office of the Lender. Each Loan Repayment made to the Lender hereunder shall pro tanto discharge the Issuer's obligation in respect of the Bond.

#### Section 3.03 Determination of Taxability.

If the holder of the Bond receives notice of a "Determination of Taxability" (as hereinafter defined), the rate of interest on the Bond shall be automatically increased, effective as of the "Date of Taxability" (as hereinafter defined) to an annual interest rate equal to the rate of interest which will produce the equivalent yield to the Lender as the yield on the Bond to the Lender immediately prior to such Date of Taxability, in which event the Loan Repayments required hereunder by the Borrower shall be adjusted accordingly with the increased payments required pursuant to the Bond. In such case, the Borrower agrees also to pay to the Lender forthwith an amount equal to the aggregate difference between (i) the amounts actually paid between the Date of Taxability and the date of receipt of notice of the Determination of Taxability and (ii) the payments due during such period based upon the increased rate, together with the amount of interest and penalties, if any, incurred by the Lender as a result of such change in taxable status. For the purpose of this Section, a "Determination of Taxability" shall mean the issuance of a statutory notice of deficiency by the Internal Revenue Service, or a ruling of the National Office or any District Office of the Internal Revenue Service, or a final decision of a court of competent jurisdiction in which proceeding the Lender or the Borrower has been a party, or an unqualified opinion of Bond Counsel, which holds that either (i) the Bond is not a "qualified tax exempt obligation" within the meaning of Section 265(b)(3) of the Code or (ii) the interest payable on the Bond is includable in the gross income of the holder for federal income tax purposes, if the period, if any, for contest or appeal of such action, ruling or decision by the Borrower or Lender has expired without any such contest or appeal having been properly instituted by the Lender or the Borrower. Neither the Borrower nor the Lender shall be required



to contest or appeal any Determination of Taxability but in the event the Borrower determines to contest such Determination of Taxability, either in its own name or on behalf of the Lender, that contest shall be under the control of and at the expense of the Borrower. The "Date of Taxability" shall mean that point in time, as specified in the Determination of Taxability, ruling or decision that the interest payable on the Bond becomes includable in the gross income of the holder for federal income tax purposes.

#### Section 3.04 Notice of Proposed Taxability and Procedure Thereon.

No such Determination of Taxability, however, shall be effective unless the Borrower has been given notice either (a) of the issuance of such statutory notice of deficiency within sixty (60) days of such issuance, or (b) of the issuance of such ruling of the National Office or any District Office of the Internal Revenue Service within three (3) months of such ruling (and if the ruling was requested by the Lender, the Borrower received written notice that a ruling would be requested at least thirty (30) days prior to its submission and a copy of the request on or before the date of its submission to the National Office or any District Office of the Internal Revenue Service); or (c) of commencement of any such proceeding in any court of competent jurisdiction (in which proceeding the Borrower shall be allowed to intervene or to assume responsibility for the contest or appeal, or both, in the name of the holder, if necessary in the Borrower's opinion and at the Borrower's expense) within three (3) months of such commencement and before final judgment in such proceeding; or (d) of the request for the opinion of Bond Counsel within 5 days of each request. The provisions of this Section shall survive payment of the Bond and termination of this Loan Agreement.

In the event an investigation or audit is commenced by the Internal Revenue Service questioning the federal income tax exemption of the interest payable on the Bond or in the event the Lender, or the Borrower on behalf of the Lender, chooses to contest any statutory notice of deficiency, ruling of the Internal Revenue Service or judgment of a court of competent jurisdiction, the Lender, at its election, may increase the rate of interest on the Bond to the level set forth above, and require that the Borrower make Loan Repayments based upon such increased rate pending the final results of such investigation, suit or contest. The additional funds collected as a result of the rate increase shall be placed in escrow by the Lender and shall bear interest at a rate no greater than the original rate of interest on the Bond. In the event the contest is resolved in favor of the Lender and the Borrower, and the interest on the Bond continues to be exempt from federal income taxation, the funds held in such escrow account shall be returned to the Borrower. In the event the contest is resolved against the Lender and the Borrower and interest payable on the Bond is held to be subject to federal income taxation, the amount in the escrow account shall be applied to the additional Loan Repayments then due pursuant to this Section, with any excess returned to the Borrower.

#### Section 3.05 The Borrower's Obligations Unconditional.

All Loan Repayments and all other payments required of the Borrower hereunder shall be paid without notice or demand (except as provided herein and in the Bond) and without setoff, counterclaim, abatement, deduction or defense. The Borrower will not suspend or discontinue any payments, and will perform and observe all of its other agreements in this Loan Agreement and, except as expressly permitted herein, will not terminate this Loan Agreement for any cause,

including but not limited to any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of the Issuer or the Lender, change in the tax or other laws or administrative rulings or actions of the United States of America or of the State of Iowa or any political subdivision thereof or failure of the Issuer or the Lender to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Loan Agreement, the Mortgage or the Bond.

**Section 3.06 Agreement to Acquire, Construct and Furnish the Project Facilities; Substitution.**

The Borrower agrees that it will acquire, construct, furnish and complete, or cause to be acquired, constructed, furnished and completed, the Project Facilities as promptly as practicable.

The Borrower may from time to time change the Project to substitute equipment for or improvements to the Project for part or all of the equipment or improvements then constituting a part of the Project, and may pay for such substitute equipment or improvements with the proceeds of the Bond so long as (i) the same will still constitute a “project” within the meaning of the Act, (ii) the same consist of equipment for or improvements to the Project intended for use of a Tax Exempt Organization and (iii) the same have sufficient reasonably expected economic lives such that the weighted average maturity of the Bond does not exceed the average reasonably expected economic life of the facilities financed with the proceeds of the Bond by more than 20%

**Section 3.07 Deposit of Bond Proceeds; Disbursements; Authorized Project Costs.**

All of the proceeds of the Bond shall be advanced from time to time by the Lender as set forth in this Section. The Lender will make an initial advance on the Delivery Date of the Bond of at least \$50,001, and will make further advances under the Bond from time to time to pay or reimburse the Borrower for payment of Project Costs and costs of issuance, upon the submission by the Borrower of a draw request in the form set forth in Exhibit A attached hereto. The Borrower shall submit such draw requests no more than one (1) time per month unless additional advances are approved at the option of the Lender. The Lender’s obligation to make advances is subject to the receipt of an acceptable draw request presented by the Borrower, together with supporting documentation as may be required by the Lender. Draw requests may be made no later than December 1, 2016.

**Section 3.08 Additional Bonds**

So long as the Borrower shall not be in default hereunder, the Borrower may incur additional Indebtedness for any purpose in accordance with this Section. The additional Indebtedness may be secured only by a pledge of Net Revenues and may not be secured by a first lien mortgage on the property set forth in Exhibit A of the Mortgage.

In order for the Borrower to incur additional Indebtedness, (i) the Borrower must provide to the Lender evidence that Net Revenues Available for Debt Service divided by principal plus interest expense for current Indebtedness plus debt service on the proposed additional debt to be

incurred is greater than 1.25 times for the most recent fiscal year or (ii) the Lender shall provide to the Borrower written consent for the incurrence of additional Indebtedness.

Section 3.09 Physical Bond.

The Bond shall be issued and shall be evidenced by a physical bond certificate and shall not be held pursuant to any book-entry system or any other system pursuant to which bond certificates are not issued.

Section 3.10 Transferability of Bond.

The Bond may be transferred only to (a) an affiliate of the Lender, (b) a trust or custodial arrangement established by the Lender, or one of its affiliates, the owners of beneficial interests in which are limited to qualified institutional buyers, as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the "1933 Act"), or (c) to a person or entity that is an "Accredited Investor" as defined in section 501 Regulation D of the 1933 Act. that has executed and delivered to the Issuer, the Lender and the Borrower an investor letter in the form attached hereto as Exhibit B; provided, further, that if the outstanding principal balance of the Bond is less than \$250,000, the Lender may not transfer the Bond without the prior written consent of both the Issuer and the Borrower. Notwithstanding any provision herein to the contrary, the Bond is transferable only as provided in the Bond and this Section 3.10.

## ARTICLE IV

### THE BORROWER'S COVENANTS

#### Section 4.01 Assignment.

The Borrower recognizes the authority of the Issuer to assign the Issuer's interest in and pledge all monies receivable under this Loan Agreement (other than any payments required to be made to the Issuer under Sections 4.03 or 6.04 hereof) to the Lender as security for the payment of the principal of and interest on the Bond and the payment of all fees and expenses of the Lender and others as provided herein and consents to such assignment.

#### Section 4.02 General Covenants of the Borrower.

The Borrower covenants and agrees with the Issuer and the Lender that it will:

(A) Complete the acquisition, equipping and furnishing of the Project as soon as practical and as required by the terms and conditions of this Loan Agreement;

(B) Repay the Loan by making the Loan Repayments required to be made hereunder, which payments will be at all times sufficient to provide for the prompt payment of principal and interest on the Bond;

(C) Pay or cause to be paid all expenses of the operation and maintenance of the Project, and pay or cause to be paid all taxes and special assessments levied upon or with respect to the Project. To this end, the Borrower agrees to perform all of the terms and covenants of the Mortgage, as fully as if such terms and covenants were set forth in full herein;

(D) Use and maintain or cause the use and maintenance of the Project to be kept in good repair and in good operating condition at its own cost, making such repairs and replacements as are necessary in the judgment of the Borrower so that the Project will remain a "project" under the Act and that the interest on the Bond will be exempt from federal income taxation;

(E) Comply with and fulfill all other requirements and conditions of the Code and regulations and rulings issued pursuant thereto relating to the operation of the Project, and not take any action, or refrain from taking any action, or permit others to take any action or refrain from taking any action if a result thereof is to cause the interest on the Bond to be subject to federal income taxation to which it would not otherwise have been subject;

(F) Conduct the same general type of business as it presently conducts, maintain its existence as an Iowa nonprofit corporation and as a Tax Exempt Organization, remain duly qualified to do business in the State of Iowa and not dispose of all or substantially all of its assets or consolidate with or merge into another corporation or permit any other corporation to consolidate with or merge into it unless (a) it receives the prior written consent of the Lender, which consent will not be unreasonably withheld, (b) the resulting, surviving or transferee corporation is a Tax Exempt Organization and (c) the resulting, surviving or transferee corporation assumes in writing the obligations of the Borrower hereunder and under the

Mortgage. No disposition of assets, consolidation or merger shall be undertaken by the Borrower if the effect thereof would be to cause the interest payable on the Bond to become subject to federal income taxation. Every surviving, resulting or transferee corporation shall be bound by all of the covenants and agreements of the Borrower herein. Consent as to any one transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions;

(G) Have annual audited financial statements prepared by a certified public accountant and provide the Lender with a copy of the same, along with the opinion of such accountant relating thereto within 120 days after the close of each of the Borrower's fiscal years;

(H) Maintain the types and amounts of insurance as required by the Mortgage.

Section 4.03 Indemnity.

Even if caused in part by a party indemnified hereunder but if not caused by the gross negligence or willful misconduct of such party, the Borrower will pay, and will protect, indemnify and save the Issuer and the Lender, their officers, employees and agents harmless from and against all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees), causes of action, suits, claims, demands and judgments of any nature arising from:

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

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

(C) Any violation of any contract, agreement or restriction by the Borrower related to the Project.

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

(E) Any statement or information relating to the expenditure of the proceeds of the Bond contained in the "Tax Exemption Agreement" or similar document furnished by the Borrower to the Issuer or the Lender which, at the time made, is misleading, untrue or incorrect in any material respect; and

(F) Any action taken in good faith by the Issuer or the Lender, their officers and employees, to carry out the transaction contemplated by this Loan Agreement, including but not limited to the issuance and sale of the Bond.

The provisions of this Section shall survive payment of the Bond and termination of this Loan Agreement for a period of five years after such payment and termination.

Section 4.04 Maintenance of Corporate Existence and Status as a Tax-Exempt Organization; Maintenance of Trust Estate.

Except for mergers, transfers or consolidations permitted by Section 4.05 hereof, the Borrower agrees that it will at all times maintain its existence as a nonprofit corporation and that it will not take any action or suffer any action to be taken by others which will alter, change or destroy its status as a nonprofit corporation or its status as a Tax-Exempt Organization.

The Borrower further agrees that it will not use the Project, or permit the same to be used in such a way, as to affect adversely the status of the Borrower as a Tax-Exempt Organization nor will it use any tax-exempt bond proceeds or property constructed or acquired with tax-exempt bond proceeds in any unrelated trade or business within the meaning of Section 513(a) of the Code; nor will it use or permit the Project Facilities to be used by any person other than a Tax-Exempt Organization or a governmental unit in such manner as would result in the loss of tax exemption for interest on the Bond or any tax-exempt Additional Bonds otherwise afforded under Section 103(a) of the Code; nor will it act in any other manner which would adversely affect the tax free nature for federal income tax purposes of the interest on the Bond or any tax-exempt Additional Bonds.

The Borrower further covenants that none of its revenues, income or profits, whether realized or unrealized, will be distributed to any of its officers or members, or inure to the benefit of any private person, association or corporation, other than for the lawful corporate purposes of the Borrower; provided, however, that the Borrower may pay to any person, association or corporation the value of any service or product performed for or supplied to the Borrower by such person, association or corporation.

The Borrower also covenants to cause any order, writ or warrant of attachment, garnishment, execution, replevin or similar process filed against any part of the funds or accounts held by the Lender in trust for the Borrower to be discharged, vacated, bonded or stayed within 90 days after such filing (which 90-day period shall be extended for so long as the Borrower is contesting such process in good faith), but, notwithstanding the foregoing, in any event not later than five days prior to any proposed execution or enforcement with respect to such filing or any transfer of moneys or investments pursuant to such filing.

Section 4.05 Transfer, Merger or Consolidation.

The Borrower is and the Borrower agrees that it will remain duly qualified to do business as a nonprofit corporation in the State of Iowa and will maintain its corporate existence and will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into any other corporation unless at the time of such merger or consolidation or transfer of assets and after giving effect thereto:

(a) the Borrower or the other corporation surviving such merger or consolidation or to whom such assets are conveyed (the "Surviving Corporation") shall be a Tax-Exempt Organization;

(b) either the Borrower shall be the successor of such merger or consolidation or the Surviving Corporation shall expressly assume in writing the due and punctual performance and observance of all of the covenants and conditions of this Agreement;

(c) no Event of Default shall have occurred and be continuing and no event shall have occurred and be continuing which, with the lapse of time or filing of notice, or both, would constitute an Event of Default; and

(d) such merger or consolidation or transfer of assets will not adversely affect the exemption from federal income taxes of the interest on any tax-exempt bonds.

Upon any such merger or consolidation or transfer of assets, the Borrower or the Surviving Corporation shall deliver to the Lender a certificate signed by its President or any Vice President and its chief financial officer demonstrating that all of the foregoing conditions have been satisfied, which certificate shall be supported: as to paragraph (a) above, by an opinion of counsel for the Borrower and, as to paragraph (e) above, by an opinion of Bond Counsel.

#### Section 4.06 Primary Deposit Account.

The Borrower agrees to maintain its Primary Deposit Account with the Lender or a banking affiliate of the Lender; provided, however, that failure to so maintain its Primary Deposit Account shall not result in an Event of Default hereunder; provided further that, at any time the Borrower fails to maintain its Primary Deposit Account with the Lender or a banking affiliate of the Lender, the interest rate on the Bond shall be 3.50% per annum.

## ARTICLE V

### THE BORROWER'S OPTIONS

#### Section 5.01 Prepayment of the Loan Repayments and the Bond.

The Borrower shall have, and is hereby granted, the option to prepay the Loan, in whole but not in part, on any Payment Date in an amount equal to the principal and interest as set forth in Exhibit A attached hereto. In the event the Borrower elects to prepay the Loan in whole, the Borrower shall cause to be given in the name of the Issuer due notice of redemption or prepayment of the Bond as required by the Bond, and shall pay the corresponding principal and interest when due to the Lender. The Issuer hereby authorizes the Borrower to give mailed notice of prepayment and, if required by law, published notice of prepayment of the Bond in the name of the Issuer, from time to time.

#### Section 5.02 Termination Upon Retirement of the Bond.

At such time as no principal balance or interest on the Bond remains outstanding, and arrangements satisfactory to the Lender and the Issuer have been made for the discharge of all other accrued liabilities, if any, under this Loan Agreement, this Loan Agreement shall by its terms terminate, and the Lender and the Issuer, on demand of the Borrower and, with respect to the Issuer, at the Borrower's cost and expense, shall execute and deliver to the Borrower a proper instrument or proper instruments acknowledging the satisfaction and termination of this Loan Agreement and shall convey, assign and transfer or cause to be conveyed, assigned or transferred, and shall deliver or cause to be delivered, to the Borrower, all property, including money, then held hereunder.



## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

#### Section 6.01 Events of Default.

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

(A) If the Borrower shall fail to pay any Loan Repayment required under this Loan Agreement on or before the date that the payment is due and shall continue unpaid for fifteen (15) calendar days after written notice;

(B) If the Borrower shall fail to observe and perform any other covenant, condition or agreement on its part under this Loan Agreement for a period of thirty (30) days after written notice, specifying such default and requesting that it be remedied, given to the Borrower by the Issuer or the Lender; provided, however, that if such default can be cured but cannot be cured within such 30 days, it shall not constitute a default hereunder if the Borrower provides to the Lender with a proposed method and schedule of curing such default, initiates action to cure such default within such 30 days, diligently pursues such action until such default is cured and provides the Lender with progress reports relating thereto at such interval as may be reasonably requested by the Lender;

(C) If there shall be entered any decree or order by a court having jurisdiction thereof adjudging the Borrower a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under the Federal Bankruptcy Act or any other applicable Federal or State law which in the case of an involuntary petition is not dismissed within 90 days, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Borrower or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Borrower in furtherance of any such action;

(D) If any "Event of Default" has occurred under the Mortgage and is not cured during any applicable grace period;

(E) If (i) an event of default has occurred in the payment of the principal of, premium, if any, or interest on any obligation of the Borrower for borrowed money, as and when the same shall become due, or under any mortgage, agreement or other instrument under or pursuant to which such indebtedness is issued, and such default shall continue beyond the period of grace, if any, allowed with respect thereto and (ii) (a) a creditor has commenced foreclosure proceedings against the Borrower, (b) a creditor has obtained a judgment against the Borrower in excess of \$25,000 and has begun execution proceedings thereon or (c) a creditor has obtained a judgment against the Borrower and within thirty (30) days thereof, the Borrower has failed to pay such judgment or post a supersedeas bond for the payment thereof; or

(F) If there is a determination that any representation or warranty made by the Borrower in this Loan Agreement or in any certificate, document or instrument furnished in

connection with the issuance and sale of the Bond or under the terms of this Loan Agreement is untrue in any material respect and such representation or warranty cannot be made currently true within a period of thirty (30) days after written notice, specifying such default and requesting that it be remedied, given to the Borrower by the Issuer or the Lender; provided, however, that if such default can be cured but cannot be cured within such 30 days, it shall not constitute a default hereunder if the Borrower provides the Lender with a proposed method and schedule of curing such default, initiates action to cure such default within such 30 days, diligently pursues such action until such default is cured, and provides the Lender with progress reports relating thereto at such intervals as may be reasonably requested by the Lender;

provided, however, that if after any default shall have occurred which does not result in a nonpayment of principal of, or interest on, the Bond, and prior to the Issuer or the Lender exercising any of the remedies provided in Section 6.02(A) hereof the Borrower shall have completely cured such default by depositing with the Lender or the Issuer, as appropriate, sufficient money, or by performing such other acts or things in respect of which it may have been in default under this Agreement as the Lender may determine, then in every such case such default shall be waived, rescinded and annulled by the Lender or the Issuer, as appropriate, by written notice given to the Borrower; but no such waiver, rescission and annulment shall extend to or affect any subsequent default or impair any right or remedy consequent thereon.

#### Section 6.02 The Issuer's Remedies.

Whenever any Event of Default referred to in Section 6.01 shall have happened and be subsisting, in addition to any other remedies available to it under the Mortgage, any one or more of the following remedial steps may be taken by the Issuer, pursuant to Section 6.06 hereof:

(A) Declare the principal amount of all Loan Repayments payable under this Loan Agreement for the remainder of the term of this Loan Agreement with interest accrued thereon (being an amount equal to that necessary to pay in full the Bond, assuming acceleration of the Bond, and pay all other indebtedness hereunder) to be immediately due and payable, whereupon, without further notice, the same shall become immediately due and payable by the Borrower; or

(B) Require the Borrower to make available or furnish copies of all books and records of the Borrower pertaining to the property subject to the Mortgage; or

(C) Take whatever action at law or in equity as may appear necessary or appropriate to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement or the Mortgage.

Whenever any Event of Default referred to in subparagraph (A) of the first paragraph of Section 6.01 shall have happened and be subsisting, the Borrower will be charged 5.00% of the unpaid portion of the regularly scheduled payment or \$15.00, whichever is less.

Whenever any Event of Default referred to in subparagraph (E) of the first paragraph of Section 6.01 shall have happened and be subsisting, the remedial step set out in subparagraph (A) of the first paragraph of this Section 6.02 shall be deemed to have been taken by the Lender without any notice to the Borrower and the Lender may take any of the other remedial steps

listed above, pursuant to Section 6.06 hereof. Notwithstanding the foregoing, upon an Event of Default referred to in subparagraph (E), including a failure to pay upon final maturity, the Interest Rate on the Bond shall be increased to 21.00% per annum. However, in no event will the Interest Rate exceed the maximum interest rate limitations under applicable law.

**Section 6.03 Manner of Exercise.**

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

**Section 6.04 Attorneys' Fees and Expenses.**

In the event the Borrower should default under any of the provisions of this Loan Agreement and the Issuer or the Lender should employ attorneys or incur other expenses for the collection of payments or the enforcement of performance of any obligation or agreement on the part of the Borrower, the Borrower will on demand and receipt of an accounting therefor pay to the Issuer or the Lender, respectively, the reasonable fee of such attorneys and such other reasonable and necessary expenses that have been so incurred from and after the occurrence of an Event of Default.

**Section 6.05 Effect of Waiver.**

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

**Section 6.06 The Lender's Exercise of the Issuer's Remedies.**

Whenever any Event of Default shall have happened and be subsisting the Lender may, but shall not be obliged to, exercise any or all of the rights of the Issuer under this Article VI upon providing notice to the Issuer.

Section 6.07 Application of Money.

The proceeds and avails of any remedy hereunder shall be applied as follows:

(A) First, to the payment of all costs and proper expenses (including reasonable attorneys' fees as permitted by law), liabilities incurred or advances made hereunder by the Issuer or the Lender;

(B) Second, to the payment to the Lender, on behalf of the Issuer, of the amount then owing or unpaid for principal and interest due on the Bond and in case any such proceeds shall be insufficient to pay the whole amount so due, then first to the payment of interest thereon and then to the payment of principal;

(C) Third, to the payment of any excess to the Borrower, its successor and assigns, or to whomsoever may be lawfully entitled to receive the same.

## ARTICLE VII

### GENERAL

#### Section 7.01 Notices.

Except as otherwise provided in this Loan Agreement, all notices, directives, certificates, requests, requisitions or other communications hereunder shall be in writing and shall be deemed to have been given or made when (a) received if sent by mail, (b) sent if sent by facsimile transmitter (with receipt confirmed), provided that a copy is mailed by certified mail on the same day, return receipt requested, or (c) received by the addressee if sent by delivery service (receipt requested) or delivered, in each case to the appropriate addresses, or facsimile numbers designated for a party as indicated below:

If to the Issuer:	City of Fort Dodge, Iowa City Hall 819 1 <sup>st</sup> Avenue S Fort Dodge, Iowa 50501 Attention: Mayor
If to the Borrower:	The Marian Home, Fort Dodge, Iowa 2400 6th Avenue North Fort Dodge, Iowa 50501 Attention: President
If to the Lender:	CSBank, a division of Carroll County State Bank  130 North 29th Street Fort Dodge, Iowa 50501 Attention: Matt Wagner

A duplicate copy of each notice, directive, certificate, request or other communication given hereunder by either the Issuer or the Borrower to the others shall also be given to the Lender; provided, however, that failure to give such duplicate notice shall not constitute a failure to give such notice hereunder. The Issuer, the Borrower and the Lender may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

#### Section 7.02 Binding Effect.

This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer and the Borrower and their respective successors and assigns.

#### Section 7.03 Severability.

If any term, condition or provision of this Loan Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the

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

Section 7.04 Amendments, Changes and Modifications.

Except as otherwise provided in this Loan Agreement, subsequent to the initial issuance of the Bond and before the Bond has been paid in full in accordance with its terms, this Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Lender.

Section 7.05 Execution of Counterparts.

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

Section 7.06 Limitation on the Issuer's Liability.

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

IN WITNESS WHEREOF, the Issuer has caused this Loan Agreement to be executed in its name, all as of the date first above written.

**CITY OF FORT DODGE, IOWA**

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

Attest:

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

(Seal)

IN WITNESS WHEREOF, the Borrower has caused this Loan Agreement to be executed in its name, all as of the date first above written.

**THE MARIAN HOME, FORT DODGE, IOWA**

By: \_\_\_\_\_  
Most Reverend R. Walker Nickless, President



**EXHIBIT A**  
**DRAW REQUEST**

CSBank, a division of  
Carroll County State Bank  
130 North 29th Street  
Fort Dodge, Iowa 50501  
Attention: Matt Wagner

RE: Direction to Make Disbursements from the City of Fort Dodge, Iowa Facility Revenue Bond (The Marian Home Project), Series 2015

As Bank under the Loan Agreement dated as of June 1, 2015 (the "Agreement") with the City of Fort Dodge, Iowa (the "City"), and The Marian Home, Fort Dodge, Iowa (the "Borrower") you are hereby directed to disburse from the City of Fort Dodge, Iowa Facility Revenue Bond (The Marian Home Project), Series 2015 (the "Project Fund") in accordance with Section 3.07 of the Agreement, the sum of \$\_\_\_\_\_ to be paid to \_\_\_\_\_. All terms used herein and not otherwise defined shall have the meanings set forth in the Agreement. Such disbursement has been properly incurred, is a proper charge against the Project Fund, is or was necessary in connection with the Project, has not been the basis of any previous withdrawal and represents the amount to which the Borrower or payee is entitled or is a cost of issuance of the Bonds.

To the best of our knowledge, every general contractor has filed with us receipts or waivers of liens of such contractors and subcontractors for all amounts theretofore certified for payment for work, materials, services and equipment furnished or performed by such contractors and subcontractors.

Sufficient funds are available to pay for the remaining cost of construction or acquisition relating to the Project, if any.

The undersigned hereby certifies that sum requested to be disbursed by this requisition is a proper expense of the Project pursuant to the Agreement.

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

THE MARIAN HOME, FORT DODGE, IOWA

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
(an Authorized Borrower Representative)

APPROVAL

The foregoing Draw Request is approved this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CSBANK, A DIVISION OF  
CARROLL COUNTY STATE BANK

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

**EXHIBIT B**  
**FORM OF INVESTOR LETTER**

[Date of Purchase]

[ADDRESSEES]

\$\_\_\_\_\_ **City of Fort Dodge, Iowa**  
**Facility Revenue Bond**  
**(The Marian Home Project),**  
**Series 2015**

Ladies and Gentlemen:

[NAME OF PURCHASER] ("Purchaser") has agreed to purchase the above-referenced bond (the "Bond") in the amount of [AMOUNT] which were issued in the original aggregate principal amount of \$\_\_\_\_\_ by the City of Fort Dodge (the "Issuer") The undersigned, an authorized representative of the Purchaser, hereby represents to you that:

1. The Purchaser 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 purchase of the Bond.

2. The Purchaser has authority to purchase the Bond and to execute this letter and any other instruments and documents required to be executed by the Purchaser in connection with the purchase of the Bond.

3. The undersigned is a duly appointed, qualified and acting representative of the Purchaser and is authorized to cause the Purchaser to make the certifications, representations and warranties contained herein by execution of this letter on behalf of the Purchaser.

4. The Purchaser is (a) an affiliate of CSBank, a division of Carroll County State Bank, (b) a trust or other custodial arrangement established by CSBank, a division of Carroll County State Bank or one of its affiliates, the owners of the beneficial interests in which are limited to "qualified institutional buyers" as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the "1933 Act") or (c) to a person or entity that is an "Accredited Investor" as defined in section 501 Regulation D of the 1933 Act.

5. The Purchaser understands that no official statement, prospectus, offering circular, or other comprehensive offering statement is being provided with respect to the Bond. The Purchaser has made its own inquiry and analysis with respect to the Issuer, the Borrower, the Project, the Bond and the security therefor, and other material factors affecting the security for and payment of the Bond.

6. The Purchaser acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, regarding the Borrower, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Issuer, the Borrower, the Project, the Bond and the security therefor, so that as a reasonable investor, it has been able to make its decision to purchase the Bond.

7. The Purchaser understands that the Bond (i) is not registered under the 1933 Act and are not registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (ii) is not listed on any stock or other securities exchange, and (iii) carry no rating from any credit rating agency.

8. The Bond is being acquired by the Purchaser for investment for its own account and not with a present view toward resale or distribution; provided, however, that the Purchaser reserves the right to sell, transfer or redistribute the Bond, but agrees that any such sale, transfer or distribution by the Purchaser shall be to a Person:

- (a) that is an affiliate of CSBank, a division of Carroll County State Bank;
- (b) that is a trust or other custodial arrangement established by CSBank, a division of Carroll County State Bank or one of its affiliates, the owners of any beneficial interest in which are limited to qualified institutional buyers; or
- (c) that is an “Accredited Investor” as defined in section 501 Regulation D of the 1933 Act.

[PURCHASER]

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

## ASSIGNMENT AND PLEDGE AGREEMENT

THIS ASSIGNMENT AND PLEDGE AGREEMENT, dated as of June 1, 2015 (this "Pledge Agreement"), between the City of Fort Dodge, Iowa, a city and political subdivision of the State of Iowa (the "Issuer"), and CSBank, a division of Carroll County State Bank (the "Lender");

### WITNESSETH:

WHEREAS, the Issuer has executed its Facility Revenue Bond (The Marian Home Project), Series 2015 (the "Bond") in favor of the Lender, which Bond is in the principal amount of \$5,500,000; and

WHEREAS, the Issuer has entered into a Loan Agreement (the "Loan Agreement") with The Marian Home, Fort Dodge, Iowa, an Iowa nonprofit corporation (the "Borrower"), of even date herewith whereby the Issuer will loan the proceeds of the Bond to the Borrower, and the Borrower will repay the loan upon the terms set forth therein; and

WHEREAS, the Issuer is desirous of further securing the Bond and of inducing the Lender to purchase the Bond;

NOW, THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. In order to secure the due and punctual payment of the Bond, the Issuer does hereby assign to the Lender and grant to the Lender a security interest in all of the Issuer's right, title, and interest in and to the Loan Agreement, including, but not limited to, the Issuer's right to receive Loan Repayments (as defined in the Loan Agreement) (except the Issuer's right to indemnification under Section 4.03 thereof and attorneys' fees and expenses under Section 6.04 thereof) pledged to the Issuer thereunder.

2. The Issuer hereby represents to the Lender that the Issuer is the owner of the Loan Repayments under the Loan Agreement pledged to the payment of the Bond pursuant to this Pledge Agreement, and of all rights, incident thereto, free and clear of any lien, security interest, or other encumbrance other than the security interest arising hereunder.

3. The Issuer hereby authorizes the Lender to exercise, whether or not an Event of Default has occurred under the Loan Agreement, either in the Issuer's name or the Lender's name, any and all rights or remedies available to the Issuer under the Loan Agreement. The Issuer agrees, on request of the Lender, to execute and deliver to the Lender such other documents or instruments as shall be deemed necessary or appropriate by the Lender at any time to confirm or perfect the security interest hereby granted.

4. The Issuer will not:

(a) exercise or attempt to exercise any remedies under the Loan Agreement, or terminate, modify, or accept a surrender of, or offer or agree to any termination, modification, or surrender of the same, or, by affirmative act, consent to the creation or existence of any security interest or other lien in the Loan Agreement to secure payment of any other indebtedness; or

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

5. The Issuer expressly covenants and agrees that the Lender shall be entitled to receive all payments under the Loan Agreement, other than any payments made by the Borrower pursuant to the Issuer's right of indemnification contained in Section 4.03 thereof and the payment by the Borrower of attorneys' fees and expenses under Section 6.04 thereof, and pursuant to the Loan Agreement the Borrower has agreed to make such payments directly to the Lender. The Lender covenants and agrees that all payments received by the Lender under the Loan Agreement shall be applied to the payment of principal and interest on the Bond.

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

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

8. This Pledge Agreement shall in all respects be construed in accordance with and governed by the laws of the State of Iowa. This Pledge Agreement may not be amended or modified except in writing signed by the Issuer and the Lender or their respective successors or assigns along with notice provided to the Borrower.

9. This Pledge Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

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

11. The Lender recognizes and agrees to the limitation of the Issuer's liability as set forth in Section 7.06 of the Loan Agreement. The Lender recognizes and understands that the Bond is a limited obligation of the Issuer payable solely from payments derived pursuant to the Loan Agreement and from the property which secures payments of the Bond. The Lender recognizes and understands that the Bond and the interest thereon shall never constitute a debt of the Issuer within the meaning of any constitutional provision or statutory limitation and shall

never constitute or give rise to a pecuniary liability of the Issuer or a charge against the Issuer's general credit or taxing power. The Lender recognizes and understands that the Bond does not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Issuer, except revenues under the Loan Agreement, and the agreement of the Issuer to perform or cause the performance of the covenants and other provisions set forth in the Bond shall be subject at all times to the availability of revenues from the Loan Agreement sufficient to pay all costs of such performance or the enforcement thereof.

12. The Lender recognizes and agrees that the Issuer has no pecuniary liability to the Lender or any subsequent Bondholder for the Issuer's failure to investigate, or negligence in the investigation of, the financial position or prospects of the Borrower or for failure of the Issuer to consider, or negligence in the consideration of, the adequacy of terms of, or collateral security for, the Bond or any related agreement. The Lender recognizes and agrees that the Issuer has no liability in connection with the issuance or sale of the Bond concerning representations made by or for performance of the obligation of any person who is a party to a related transaction or agreement, except as may be specifically provided in this Pledge Agreement, the Loan Agreement and the Bond.

13. The Lender acknowledges that the Bond has been issued without registration under state or federal or other securities laws, pursuant to an exemption for such issuance, and accordingly, the Bond may not be assigned or transferred in whole or in part, nor may any participation interest in the Bond be given pursuant to any participation agreement or otherwise, except in accordance with such registration requirements or in reliance on an applicable exemption from such registration requirements.

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

**CITY OF FORT DODGE, IOWA**

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

Attest:

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

(Seal)



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

**CSBANK, A DIVISION OF CARROLL  
COUNTY STATE BANK**

By: \_\_\_\_\_  
Matt Wagner, Senior Vice President

4830-2696-5793\4\495736\99999 2/6/2015

THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR JURISDICTION, AND MAY NOT BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH SECTION 3.10 OF THE LOAN AGREEMENT.

UNITED STATES OF AMERICA  
STATE OF IOWA  
COUNTY OF WEBSTER  
CITY OF FORT DODGE

Facility Revenue Bond  
(The Marian Home Project)  
Series 2015

Dated Date: June 1, 2015

No. R-1

\$5,500,000

THE CITY OF FORT DODGE, IOWA, a city and political subdivision of the State of Iowa (the "Issuer"), for value received, hereby promises to pay to the order of CSBank, a division of Carroll County State Bank, or registered assigns (the "Lender"), at its offices in Fort Dodge, Iowa, or such other place as the Lender may designate in writing, from the source and in the manner hereinafter provided, the principal sum of FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000) or such amounts as shall be advanced and outstanding hereunder with interest on the outstanding principal balance at the Interest Rate (defined herein). The principal and interest shall be paid in any coin or currency which at the time or times of payment is legal tender for the payment of public and private debts in the United States of America by the Borrower to the Lender commencing December 1, 2016.

Advances of principal in an amount not exceeding \$5,500,000 may be made under this Bond from time to time in accordance with the hereinafter referred to Loan Agreement beginning on the Dated Date hereof to and including December 1, 2016 or such later date as is approved by the Lender. The date and amount of each advance shall be noted by Lender on Schedule I attached hereto. Principal and interest on this Bond at the Interest Rate (defined herein) is payable as follows:

(i) Interest only on the unpaid outstanding principal amount of this Bond, calculated from the date of each advance, shall be payable on the 1<sup>st</sup> day of each month commencing July 1, 2015 to and including December 1, 2016 at a rate of 2.50 percent per annum;

(ii) Commencing on January 1, 2017 and continuing on the 1<sup>st</sup> day of each month thereafter to and including December 1, 2021, monthly installments of principal and interest shall be paid in an amount necessary to amortize the debt by the Maturity Date (defined herein) a rate of 2.50 percent per annum;

(iii) Commencing on January 1, 2022 and continuing on the 1<sup>st</sup> day of each month thereafter to and including December 1, 2026, monthly installments of principal and interest shall be paid in an amount necessary to amortize the debt by the Maturity Date at a per annum rate at a margin of 1.00% over the Five Year Treasury Constant Maturity index as published by the Federal Reserve Board; and

(iv) Commencing on January 1, 2027 and continuing on the 1<sup>st</sup> day of each month thereafter to and including December 1, 2031 (the “Maturity Date”), monthly installments of principal and interest shall be paid in an amount necessary to amortize the debt by the Maturity Date at a per annum rate at a margin of 1.00% over the Five Year Treasury Constant Maturity index as published by the Federal Reserve Board.

“Interest Rate” means an amount calculated at the rate specified in (i)–(iv) above, on a 365/360 basis; that is, by applying the ratio of the Interest Rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest paid under this Bond will be computed using this method.

If a payment is 15 days or more late, the Borrower will be charged 5.00% of the unpaid portion of the regularly scheduled payment or \$15.00, whichever is less.

The Borrower shall maintain its Primary Deposit Account (as defined in the hereinafter defined Loan Agreement) with the Lender while this Bond remains outstanding.

The Borrower shall have the option to prepay this Bond, in whole but not in part, on any Payment Date in an amount equal to the outstanding principal of the Bond plus interest accrued to the redemption date without premium.

In the event of a Determination of Taxability (as defined in the hereinafter referred to Loan Agreement) the Interest Rate on this Bond shall increase to an Interest Rate equal to the Interest Rate which will produce the tax equivalent yield to the Lender as the yield on the Bond to the Lender immediately prior to such Date of Taxability (as defined in the hereinafter referred to Loan Agreement) and the Issuer shall forthwith pay to the Lender the aggregate difference between (i) the amounts actually paid hereunder between the Date of Taxability (as defined in the hereinafter referred to Loan Agreement) and the date of receipt of notice of the Determination of Taxability, and (ii) the amounts which would have been due during such period if the increased Interest Rate had been in effect, together with the amount of interest and penalties, if any, incurred by the Lender as a result of such change in the taxable status. In addition, the Lender shall recalculate the monthly installment payment amounts on the basis of the then outstanding principal balance at the increased interest rate over the remaining term and thereafter such monthly installment payment amounts so determined shall be the monthly installment payment amounts due and payable hereunder.

This Bond is issued by the Issuer pursuant to Chapter 419 of the Code of Iowa (the “Act”) for the purpose of providing funds to be loaned to The Marian Home, Fort Dodge, Iowa (the “Borrower”), pursuant to the terms of a Loan Agreement dated as of June 1, 2015 (the “Loan Agreement”) for the purpose of financing the acquisition, construction, improving, equipping and furnishing of a nursing care facility of the Borrower located at 2400 6th Avenue North, Fort Dodge, Iowa, (the “Project”) and (ii) paying for costs of issuance and certain other costs associated with the issuance of the Bond.

The terms of the Loan Agreement will require payments by the Borrower which, together with other money available therefor, will be sufficient to provide for the payment of the principal of and interest on the Bond. The obligation of the Borrower to make payments is secured by a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement from the Borrower to the Lender dated as of June 1, 2015 (the "Mortgage").

This Bond is issued pursuant to and in full compliance with the Constitution and laws of the State of Iowa, particularly the Act, and pursuant to a resolution of the City Council of the Issuer duly adopted on March 23, 2015 (the "Resolution").

This Bond is a limited obligation of the Issuer payable solely from payments derived pursuant to the Loan Agreement and from the property which secures payment of this Bond. This Bond and the interest hereon shall never constitute a debt of the Issuer within the meaning of any constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Issuer or a charge against its general credit or general fund. This Bond does not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the Issuer, except revenues under the Loan Agreement, and the agreement of the Issuer to perform or cause the performance of the covenants and other provisions herein referred to shall be subject at all times to the availability of revenues from the Loan Agreement and the Mortgage, sufficient to pay all costs of such performance or the enforcement thereof. Under certain circumstances set forth in the Loan Agreement, the Issuer may issue Additional Bonds (as defined in the Loan Agreement) and the Borrower may incur Parity Obligations (as defined in the Loan Agreement) ranking on a parity with the Bond.

Notice of any prepayment by the Borrower shall be given to the Lender by delivery in person, by facsimile transmission or by certified or registered mail, addressed to the Lender at its registered address, not less than thirty (30) days prior to the date fixed for prepayment. At the date fixed for prepayment, funds shall be paid to the Lender at its registered address.

This Bond is transferable upon the books of the Issuer at the office of the City Clerk, by the registered holder in person or by its attorney duly authorized in writing, upon surrender hereof together with a written instrument of transfer satisfactory to the City Clerk, duly executed by the registered holder or its duly authorized attorney, as further provided in Section 3.10 of the Loan Agreement. Upon such transfer, the City Clerk will note the date of registration and the name and address of the newly registered holder in the registration blank appearing below. Alternatively, the City Clerk will, at the request of the registered holder, issue new Bonds in an aggregate principal amount equal to the unpaid principal balance of this Bond, and of like tenor except as to number and principal amount, and registered in the name of the registered holder. The City Clerk may deem and treat the person in whose name this Bond is last registered upon the books of the City Clerk, with such registration noted on the Bond, as the absolute owner hereof for the purpose of receiving payment of or on account of the principal balance, prepayment price, or interest and for all other purposes; all such payments so made to the registered holder or upon its order shall be valid and effectual to satisfy and discharge the liability upon this Bond to the extent of the sum or sums so paid, and the City Clerk shall not be affected by any notice to the contrary.

All of the agreements, conditions, covenants, provisions and stipulations contained in the Resolution, the Loan Agreement and the Mortgage are hereby made a part of this Bond to the same extent and with the same force and effect as if they were fully set forth herein. Pursuant to an

Assignment and Pledge Agreement dated as of June 1, 2015 (the "Pledge Agreement"), the Issuer has granted to the Lender a security interest in all of the Issuer's right, title, and interest in the Loan Agreement (except rights under Section 4.03 and Section 6.04 thereof). If an Event of Default occurs under the Loan Agreement or the Mortgage and is not cured within any applicable grace period, then the Lender may at its right and option declare immediately due and payable, without further notice, the principal balance of this Bond and interest accrued by the Lender in collecting or enforcing payment thereof, whether suit be brought or not, and all other sums due hereunder or under the Loan Agreement, or the Mortgage, anything to the contrary therein notwithstanding, and payment thereof may be enforced and recovered in whole or in part, at any time, by one or more of the remedies provided in this Bond, the Loan Agreement or the Mortgage. The Lender may extend the time for payment of interest and/or principal of this Bond without notice to or consent of any party liable hereon and without releasing any such party. Notwithstanding the foregoing, upon an Event of Default, including a failure to pay upon final maturity, the Interest Rate on this Bond shall be increased to 21.00% per annum. However, in no event will the Interest Rate exceed the maximum interest rate limitations under applicable law.

The remedies of the Lender, as provided herein and in the Loan Agreement or the Mortgage, shall be cumulative and concurrent; may be pursued singly, successively or together and, at the sole discretion of the Lender; and may be exercised as often as occasion therefor shall occur. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

The Issuer waives demand, presentment, protest and notice of dishonor and agrees that without any notice, the Lender and any present or future owner or owners of any property and interests covered by the Mortgage or any other document given to secure this Bond, or executed in connection with this Bond, may from time to time extend, renew or otherwise modify to the benefit of the Issuer of the date or dates or amount or amounts of payment above recited. Or, the Lender may from time to time release any part or parts of the property and interests subject to the Mortgage or to any such other document from the same, with or without consideration. In any case, the Issuer, subject to limitation of the Issuer's liability, shall continue to be liable to pay the unpaid balance of the indebtedness evidenced hereby as so extended, renewed or modified and notwithstanding any such release, and further agrees, subject to limitation of the Issuer's liability, to pay all costs of collection, including a reasonable amount for attorneys' fees, in case any payment shall not be made at maturity, and all costs and expenses, including attorneys' fees, incurred in protecting the security for this Bond or in preserving the properties or interests or any part hereof described in the Mortgage and any such other document, whether suit be brought or not.

It is intended that this Bond is made with reference to and shall be construed as an Iowa contract and governed by the laws thereof.

This Bond has been issued without registration under state, federal or other securities laws in reliance on an exemption therefrom. Consequently, this Bond may not be assigned or transferred in whole or in part, nor may any participation interest in this Bond be given pursuant to any participation agreement or otherwise except in accordance with such registration requirements or in reliance on an applicable exemption from such registration requirements and further may not be assigned or transferred except as provided in Section 3.10 of the Loan Agreement.

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

IN WITNESS WHEREOF, the Issuer has caused this Bond to be duly executed by the signatures of its Mayor and its City Clerk all as of the Dated Date hereof.

**CITY OF FORT DODGE, IOWA**

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

Attest:

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

(Seal)

PROVISIONS OF REGISTRATION

The ownership of the unpaid principal balance of this Bond and the interest accruing therein is registered on the books of the City of Fort Dodge, Iowa, in the name of the registered Holder last noted below.

Date of  
Registration

Name and Address  
of Registered Owner

Signature of  
the City Clerk

Dated Date

CSBank, a division of  
Carroll County State Bank  
130 North 29<sup>th</sup> Street  
Fort Dodge, Iowa 50501

SCHEDULE I

<u>Date of Advance</u>	<u>Amount of Advance</u>	<u>Lender's Initials</u>