

LF101001-08

FINANCING AGREEMENT

among

CITY OF RAPID CITY, SOUTH DAKOTA

and

THE EVANGELICAL LUTHERAN GOOD SAMARITAN SOCIETY

and

WELLS FARGO BROKERAGE SERVICES, LLC

Relating to:

\$9,000,000

City of Rapid City, South Dakota
Health Care Facilities Revenue Bond
(The Evangelical Lutheran Good Samaritan Society Project)
Series 2001

Dated as of November 1, 2001

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EXHIBIT A PROJECT DESCRIPTION

THIS FINANCING AGREEMENT, dated as of November 1, 2001, is by and among the **CITY OF RAPID CITY, SOUTH DAKOTA**, a municipality chartered under the constitution of the State of South Dakota (the “City”), **THE EVANGELICAL LUTHERAN GOOD SAMARITAN SOCIETY**, a North Dakota nonprofit corporation qualified to do business in South Dakota and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Society”), and **WELLS FARGO BROKERAGE SERVICES, LLC**, as the lender, registered owner of the Bond and servicer (“Wells Fargo”).

W I T N E S S E T H :

WHEREAS, the City is authorized by the provisions of Chapter 9-54 of the South Dakota Codified Laws, as amended (the “Act”), to finance and refinance the capital costs and other expenses of projects used for or in connection with health care facilities and related health care services for nonprofit organizations; and

WHEREAS, the Act further authorizes the City to issue revenue bonds for the purposes described above, including the financing of all incidental expenses incurred in issuing such bonds, to secure the payment of such bonds as provided in the Act, and to enter into financing agreements with others for the purpose of providing revenue to pay such bonds upon such terms and conditions as the City Council of the City may deem advisable; and

WHEREAS, the Act further allows title to any project financed at all times to remain in the name of the user of the project; and

WHEREAS, pursuant to and in accordance with the Act, the City, in furtherance of the purposes of the Act, has adopted an ordinance to undertake the financing of certain health care facilities, and the refinancing of certain obligations as previously incurred therefor (collectively, the “Project”); and

WHEREAS, the City proposes to refinance the cost of the Project (as further described in Exhibit A hereto) under the Act by the issuance of a revenue bond of the City pursuant to this Agreement, and by loaning the proceeds thereof to the Society; and the Society desires to borrow the proceeds of said revenue bond upon the terms and conditions set forth in this Agreement; and

WHEREAS, Wells Fargo proposes to purchase such revenue bond from the City;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained in this Agreement, the parties hereto formally covenant, agree and bind themselves as follows:

Section 1. Definitions. The following terms, except where the context indicates otherwise, shall have the respective meanings set forth below:

“*Act*” means Chapter 9-54 of the South Dakota Codified Laws, as amended.

“*Administrative Expenses*” means the reasonable and necessary expenses incurred by the City pursuant to this Agreement, other than the Initial Fee.

“*Agreement*” means this Financing Agreement and any amendments and supplements hereto.

“*Bond*” means City of Rapid City, South Dakota, Health Care Facilities Revenue Bond (The Evangelical Lutheran Good Samaritan Society Project), Series 2001, issued pursuant to this Agreement.

“*Business Day*” means a day on which banking business is transacted in both the city in which Wells Fargo has its principal corporate office and the city in which the Society has its principal corporate office.

“*City*” means City of Rapid City, South Dakota, and its successors and assigns.

“*Closing Date*” means December 4, 2001.

“*Code*” means the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

“*Completion Date*” means the date of completion of the Project as that date shall be certified pursuant to Section 11 hereof.

“*Cost of the Project*” shall be deemed to include but not be limited to the cost of financing, refinancing, acquiring, constructing, improving and equipping the Project and other financing costs, including legal, accounting and other similar costs, points to Wells Fargo and the Initial Fee.

“*Determination of Taxability*” means, as a result of an Event of Taxability, a final decree or judgment of any federal court or a final action of the Internal Revenue Service determining that interest paid or payable on the Bond is or was includable in the gross income of a Registered Owner of the Bond for federal income tax purposes under the Code. However, no such decree or action will be considered final for this purpose unless the City and the Society have been given written notice and, if it is so desired and is legally allowed, have been afforded the opportunity to contest the same, either directly or in the name of any Registered Owner, and until conclusion of any appellate review, if sought.

“*Event of Default*” means any occurrence or event described as such in Section 18 hereof.

“*Event of Taxability*” means the failure of the City or the Society to observe any covenant, agreement or representation herein, or the enactment of legislation which failure or enactment results in a Determination of Taxability.

“*Initial Fee*” means the initial fee, if any, of the City.

“*Loan*” means the loan by the City to the Society of the proceeds from the sale of the Bond pursuant to this Agreement.

“*Net Proceeds*” means, when used with respect to any insurance payment or condemnation award, the gross proceeds thereof attributable to the Project less the portion of the expenses (including attorneys’ fees) incurred in the collection of such gross proceeds or award.

“*Outstanding*” means, as of any particular time, the Bond which has been duly authenticated and initially delivered hereunder except (a) a Bond previously cancelled by the City or delivered to the City for cancellation, (b) a Bond in lieu of the Bond which has been authenticated and delivered pursuant to Section 3(d) hereof, and (c) that portion of principal of any Bond which has previously been paid.

“*Project*” means the financing and refinancing of improvements and equipment described in Exhibit A attached hereto and the refinancing of the loans incurred to acquire, construct, improve and equip the Project.

“*Project Fund*” means the fund by that name created pursuant to Section 9 hereof.

“*Registered Owner*” means the registered owner of the Bond.

“*Society*” means The Evangelical Lutheran Good Samaritan Society, a North Dakota nonprofit corporation qualified to do business in South Dakota and an organization described in Section 501(c)(3) of the Code, and its successors and assigns.

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

Section 2. Representations and Warranties by Society, City and Wells Fargo.

(a) ***Society Representations and Warranties.*** The Society represents and warrants that:

(i) The Society is a nonprofit corporation duly incorporated in the State of North Dakota and is in good standing in North Dakota and in the State and is duly qualified to transact business in the State, is not in violation of any provision of its Articles of Incorporation or its Bylaws, has power to enter into this Agreement, and has duly authorized the execution and delivery of this Agreement.

(ii) The Society is an organization described in Section 501(c)(3) of the Code, does not constitute a private foundation under Section 509(a) of the Code, and its income is exempt from federal taxation under Section 501(a) of the Code. The Society has received a determination from the Internal Revenue Service to the foregoing effect, and none of the bases for such determination has changed since the date thereof.

(iii) The Society agrees that during the term of this Agreement it will maintain its corporate existence, will continue to be a nonprofit corporation in good standing in the State, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another legal entity or permit one or more other legal entities to consolidate with or merge

into it, provided that the Society may, without violating the agreement contained in this Section, consolidate with or merge into another legal entity, or permit one or more legal entities to consolidate with or merge into it, or sell or otherwise transfer to another legal entity all or substantially all of its assets as an entirety, provided (A) that the surviving, resulting or transferee legal entity as the case may be, shall be a nonprofit legal entity organized and existing under the laws of one of the states of the United States of America, shall be qualified to do business in the State, shall have a net worth immediately subsequent to such acquisition, consolidation, merger or transfer at least equal to 100% of that of the Society immediately prior to such acquisition, consolidation, merger or transfer, shall be an organization described in Section 501(c)(3) of the Code, and shall assume in writing all of the obligations of the Society under this Agreement; (B) that such acquisition, consolidation, merger or transfer will not affect the tax-exempt status of the interest on the Bond; (C) that prior to such acquisition, consolidation, merger or transfer Wells Fargo shall be furnished a certificate from the chief financial officer of the Society or his deputy stating that in the opinion of such officer none of the covenants contained in this Agreement will be violated as a result of such acquisition, consolidation, merger or transfer; and (D) that Wells Fargo shall have consented to such merger, sale or transfer; in which case the City shall release the Society in writing, concurrently with and contingent upon the assumption described above and compliance with the foregoing conditions, from all liability hereunder.

(iv) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated by such document nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of the terms, conditions or provisions or any restriction of any agreement or instrument to which the Society is now a party or by which the Society is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Society except as provided in this Agreement.

(v) The Project is suitable for or used in connection with health care facilities of the type authorized and permitted by the Act, and the Cost of the Project to be financed and refinanced through the Loan was not less than \$9,000,000.

(vi) None of the proceeds of the Bond will be used to provide inventories, raw materials or working capital for the Society.

(vii) The Society intends to operate or to cause the Project to be operated as health care institution as defined in the Act and in accordance with the Society's nonprofit mission, in a manner which will not impair the exemption of interest on the Bond from federal income taxation.

(viii) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or threatened against the Society (or, to the Society's knowledge, any basis therefore) wherein an unfavorable decision, ruling or finding would adversely and directly affect the transactions contemplated by this Agreement, the ability of the Society to make payments under this Agreement or its ability to perform its other obligations under this Agreement or the validity or enforceability of the Bond or this Agreement.

(ix) All financial statements of the Society provided to Wells Fargo are true and correct as of their date, and no material adverse changes have occurred in the financial condition of the Society since such date.

(x) All governmental approvals necessary for the acquisition and operation of the Project have been received or obtained, including but not limited to those dealing with zoning requirements, if any.

(xi) Payments of principal of and interest on the Bonds are a general obligation of the Society as a whole, payable from the Society's general revenues.

(b) ***City Representations and Warranties.*** The City represents and warrants that:

(i) In authorizing the issuance of the Bond, the City's purpose is, and in its judgment the effect thereof will be, the promotion of economic activities by encouraging nonprofit corporations to expand or remain in this State; and to protect the health, safety and welfare of the people of the State.

(ii) The City is a municipality chartered under the constitution of the State, designated as a political subdivision of the State, authorized and empowered by the provisions of the Act to adopt the bond ordinance relating to the issuance of the Bond and to enter into the transactions contemplated by this Agreement, and to apply the proceeds from the sale of the Bond as set forth herein. The City is authorized by the provisions of the Act to issue the Bond to finance the Cost of the Project, to loan the proceeds from the sale of the Bond to the Society pursuant to this Agreement, and to assign the payments to be received pursuant to this Agreement as security for the payment of the principal of and interest on the Bond.

(iii) It has duly authorized all necessary action to be taken by it for: (A) the issuance and sale of the Bond upon the terms set forth in the bond ordinance relating thereto; and (B) the execution, delivery, receipt and due performance of this Agreement, the Bond, and any and all such other agreements and documents as may be required to be executed, delivered and received by it to carry out, give effect to and consummate the transactions contemplated hereby.

(iv) To its knowledge, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body

pending or threatened against or affecting it wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby, or the validity or the enforceability of the Bond or this Agreement.

(v) To its knowledge, the execution and delivery of this Agreement, the Bond and the other agreements contemplated hereby, and compliance with the provisions thereof, will not conflict with or constitute on its part a breach of or a default under any existing law, court or administrative regulation, decree or order or any agreement, indenture, mortgage, lease or other instrument to which it is subject or by which it is or may be bound.

(vi) The Society has represented that the Cost of the Project was no less than \$9,000,000. On that basis, the City proposes to issue the Bond in the principal amount of \$9,000,000 as set forth in this Agreement, in order to finance and refinance the Cost of the Project.

(vii) The City covenants that it will not pledge the payments and other amounts received pursuant to this Agreement other than to secure the Bond.

(viii) The City Council of the City has determined that the refinancing of the Project is in the public interest.

(c) ***Wells Fargo's Representations and Warranties.*** Wells Fargo represents and warrants that:

(i) Wells Fargo is an institutional brokerage subsidiary of Wells Fargo & Co.

(ii) Wells Fargo has all power and authority necessary (A) to execute and deliver this Agreement, (B) to perform its obligations under this Agreement and (C) to consummate the transactions contemplated by this Agreement.

(iii) Wells Fargo has taken all actions necessary to authorize (A) the execution and delivery of this Agreement, (B) the performance of its obligations under this Agreement and (C) the consummation of the transactions contemplated by this Agreement.

(iv) This Agreement has been duly executed and delivered by Wells Fargo and constitutes, assuming due execution and delivery by the other parties hereto, the valid and binding obligation of Wells Fargo, enforceable against Wells Fargo in accordance with its terms, except as limited by bankruptcy, insolvency, reorganizations, moratorium and other similar laws affecting the rights of creditors generally and the exercise of judicial discretion in accordance with principles of general equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(v) To its knowledge, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body

pending or threatened against or affecting it wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby, or the validity or the enforceability of the Bond or this Agreement.

(vi) To the best knowledge of Wells Fargo, the execution and delivery by Wells Fargo of this Agreement will not violate any law, rule, regulation or ordinance, or any order, judgment or decree of any federal, state or local court or will conflict with, or constitute a breach of, or a default under, the charter or by-laws of Wells Fargo or any agreement, instrument or commitment to which Wells Fargo is a party or by which Wells Fargo or any of its property is bound.

(vii) To the best knowledge of Wells Fargo, it is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or governmental agency, which default might have consequences that would adversely affect its performance hereunder.

(viii) All fees charged by Wells Fargo in connection with this Agreement are no more than those which are reasonable and customary for lenders to charge in connection with similar transactions not financed through the issuance of tax-exempt bonds.

(ix) Any certificate signed by a representative of Wells Fargo and delivered pursuant to and concurrently with this Agreement shall be deemed a representation of Wells Fargo as to the statements made therein.

Section 3. Terms and Form of Bond.

(a) ***Authorization of Bond; Form of Bond.*** There is hereby authorized by the City to be issued hereunder and secured hereby a bond in the principal amount of \$9,000,000, designated as “City of Rapid City, South Dakota, Health Care Facilities Revenue Bond (The Evangelical Lutheran Good Samaritan Society Project), Series 2001.” The Bond shall be issuable as a fully registered Bond numbered “1,” shall be dated as of November 1, 2001, and shall bear interest at 4.50% per annum on the unpaid principal balance from the Closing Date through maturity or earlier redemption, as determined in the next paragraph; provided, that if an Event of Taxability shall have occurred, the Bond shall bear interest at an annual rate of 8.00%, beginning on the first day of the month following the date the Registered Owner gives written notice of the Event of Taxability to the Society. The total principal amount of the Bond that may be issued hereunder is expressly limited to \$9,000,000 (except as provided in subsection (c) of this Section). Authorized denominations for the Bond are \$100,000 and any integral multiple of \$5,000 above \$100,000. The final maturity of the Bond is November 1, 2006.

Accrued interest on the Bond shall be payable in arrears on the first day of each May and November, commencing May 1, 2002, and upon maturity of the Bond (the “Interest Payment Date”). Interest on the Bond shall be calculated on the basis of a 360-day year consisting of twelve 30-day months, for the actual days elapsed.

The principal of the Bond shall be repaid in four (4) annual installments, due each November 1 during the term of the Note, commencing November 1, 2003, in accordance with the following schedule:

Date	Principal
November 1, 2003	\$215,000
November 1, 2004	225,000
November 1, 2005	235,000

with a final payment of all unpaid principal and accrued interest due November 1, 2006.

The payment of the principal of and the interest on the Bond shall be made to the Registered Owner in immediately available funds at its address as it last appears on the registration book kept by Wells Fargo as provided in subsection (b) of this Section. All such payments shall be made in lawful money of the United States of America. The final payment of principal of and interest on the Bond shall be made only upon presentation and surrender of the Bond to the City for cancellation.

The Bond shall be a special, limited obligation of the City payable solely out of the revenues and other security pledged hereby. The City shall not in any event be liable for the payment of the principal of or interest on the Bond or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the City, and neither the Bond nor this Agreement shall be construed to constitute an indebtedness of the City within the meaning of any constitutional or statutory provision.

No agreements or provisions contained herein nor any agreement, covenant or undertaking by the City contained in any documents executed by the City in connection with any property of the Society financed, directly or indirectly, out of Bond proceeds or the issuance, sale and delivery of the Bond shall give rise to any pecuniary liability of the City or a charge against its general credit, or shall obligate the City financially in any way, except with respect to the funds available hereunder. No failure of the City to comply with any term, covenant or agreement herein or in any document executed by the City in connection with the Bond shall subject the City to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the funds available hereunder. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the City for failure to comply with any term, condition, covenant or agreement herein; provided, that no costs, expenses or other monetary relief shall be recoverable from the City except as may be payable from the funds available hereunder. The members of the City Council of the City, its officers, attorneys and agents shall not be liable personally on the Bond or be subject to any personal liability or accountability by reason of its issuance. The Bond is a special obligation of the City and is not a debt of the City, the City, the State or any of the its political subdivisions for which the faith and credit of the City, the City, the State or any of its political subdivisions are pledged, and neither are

they liable on the Bond nor is the Bond payable out of any funds or properties other than those pledged for the payment thereof.

The Bond shall be delivered in substantially the following form, with such appropriate variations, omissions and insertions as permitted or required by this Agreement:

(Form of Bond)

CITY OF RAPID CITY, SOUTH DAKOTA
HEATH CARE FACILITIES REVENUE BOND
(THE EVANGELICAL LUTHERAN GOOD SAMARITAN SOCIETY PROJECT)
SERIES 2001

No. 1

\$9,000,000

KNOW ALL PERSONS BY THESE PRESENTS that the City of Rapid City, South Dakota (the "City"), a municipality chartered under the constitution of the State of South Dakota, for value received, hereby promises to pay solely from the sources and as hereinafter provided, to the order of Wells Fargo Brokerage Services, LLC, or registered assigns (the "Registered Owner" or "Wells Fargo"), on the dates hereinafter specified, the principal sum of NINE MILLION DOLLARS (\$9,000,000), and in like manner to pay interest on the unpaid principal balance at the rate of 4.50% per annum from the date of issuance; provided, that if an Event of Taxability shall have occurred, this bond shall bear interest at a rate equal to 8.00%, beginning on the first day of the month following the date the Registered Owner hereof gives written notice of the Event of Taxability to the Society. Overdue installments of principal shall continue to bear interest until paid. Payments of the principal of and interest on this bond prior to the final payment shall be made by The Evangelical Lutheran Good Samaritan Society, 4800 W. 57th Street, Rapid City, South Dakota 57106 (the "Society"), to the Registered Owner hereof in immediately available funds at its address as it last appears on the registration book kept by Wells Fargo. The final payments of the principal of and the interest on this bond shall be made by the Society upon presentation and surrender of this bond to the City for cancellation. All such payments shall be made in lawful money of the United States of America. Authorized denominations for the bond are \$100,000 and any integral multiple of \$5,000 above \$100,000. The final maturity of this bond shall be November 1, 2006.

Accrued interest on this Bond shall be payable in arrears on the first day of each May and November, commencing May 1, 2002, and upon maturity of this Bond (the "Interest Payment Date"). Interest on this Bond shall be calculated on the basis of a 360-day year consisting of twelve 30-day months, for the actual days elapsed.

The principal of this Bond shall be repaid in four (4) annual installments, due each November 1 during the term of this Bond, commencing November 1, 2003, in accordance with the following schedule:

Date	Principal
November 1, 2003	\$215,000
November 1, 2004	225,000
November 1, 2005	235,000

with a final payment of all unpaid principal and accrued interest due November 1, 2006.

This bond is an authorized bond of the City limited in principal amount to \$9,000,000, issued for the purpose of providing funds to the Society to refinance the cost of certain health care facilities (collectively, the "Project"), pursuant to a loan of the proceeds of this bond (the "Loan") by the City to the Society. This bond is issued under and is secured by a Financing Agreement, dated as of November 1, 2001 (the "Agreement"), among the City, the Society and Wells Fargo Brokerage Services, LLC ("Wells Fargo"). Under the terms of the Agreement, the Society is obligated to repay the Loan by paying to the Registered Owner of this bond on behalf of the City moneys sufficient to pay the principal of and interest on this bond. The Agreement may be amended to the extent and in the manner provided in such document. Except as otherwise described herein, this bond is payable only out of revenues derived pursuant to the Agreement, and reference is hereby made to the Agreement for a description of the nature and extent of the security, the rights, duties and obligations of the City, the Society and Wells Fargo and the terms and conditions upon which this bond is, and is to be, secured.

The issuance of this bond and the Loan have been authorized by a bond ordinance duly adopted by the City Council of the City pursuant to the laws of the State of South Dakota, including particularly Chapter 9-54 of the South Dakota Codified Laws, as amended (the "Act"). THIS BOND IS ISSUED UNDER THE AUTHORITY OF, AND IN ACCORDANCE WITH THE PROVISIONS, RESTRICTIONS AND LIMITATIONS OF, THE ACT AND PURSUANT TO THE AGREEMENT. THE BOND AND THE INTEREST THEREON ARE TO BE PAID FROM THE REVENUE RECEIVED UNDER THE AGREEMENT. THE BOND IS NOT, AND SHALL NOT BE DEEMED TO BE, A GENERAL OBLIGATION OF THE CITY, NOR SHALL IT BE PAYABLE IN ANY MANNER BY TAXATION.

In case an Event of Default, as specified in the Agreement, shall occur, the principal of this bond together with accrued interest hereon may be declared due and payable in the manner and with the effect provided in the Agreement.

The registered owner of this bond shall have the option, but only upon 14 days' written notice to the Society, to put the whole bond back to the Society on any date, for purchase at par plus interest accrued to the purchase date, upon the occurrence of either of the following:

- (i) the Society shall fail to maintain at least \$90,000,000 in marketable securities and/or cash, free of any lien or encumbrance; or
- (ii) the rating of the Society by Standard & Poor's Ratings Group shall fall below "BBB-".

The City and the Society may treat the person in whose name this bond is registered as the absolute owner hereof for all purposes and shall not be affected by any notice to the contrary.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Agreement and the issuance of this bond do exist, have happened and have been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, the City of Rapid City, South Dakota has caused this bond to be executed by the manual signature of its Mayor and its seal to be affixed hereto and to be manually signed and attested by its City Clerk, all as of November 1, 2001.

[SEAL]

CITY OF RAPID CITY, SOUTH DAKOTA

Attest:

By _____
City Clerk

By _____
Mayor

COUNTERSIGNED:

By _____
Attorney residing in the State of South
Dakota and duly licensed to practice therein.

(End of Form of Bond)

(b) **Registration and Transfer.** Wells Fargo, on behalf of the City, shall keep a registration book showing the name and address of the Registered Owner. The Bond may be transferred by an assignment duly executed by the Registered Owner or its attorney duly authorized in writing, and filed with Wells Fargo, and the Registered Owner may, to the extent permitted by law, sell participations in the Bond, provided that the Bond shall always be registered in the name of only one owner. In case of any transfer, Wells Fargo shall give the Society written notice of the name and address of the transferee.

The person in whose name the Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the Bond shall be made by the Society on behalf of the City only to or upon the written order of the Registered Owner or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Bond to the extent of the sum or sums so paid.

In each case, Wells Fargo, on behalf of the City, shall require the payment by the Registered Owner requesting transfer of any tax or other governmental charge required to be paid with respect to such transfer, as well as printing, typing or copying costs and any other expenses incurred by the City, if any.

(c) **Replacement of Lost or Damaged Bond.** In the event of loss of or damage to the Bond, the City, at the expense of the Registered Owner, may issue a replacement Bond identical to that lost or damaged, upon receipt of an affidavit of the Registered Owner that such Bond has been lost or, if damaged, upon receipt of the damaged Bond. Such expense, which the City may require to be paid in advance, may include the costs of investigation, printing, typing, insurance or indemnity premiums, attorney fees, travel and communications.

(d) **Execution of Bond.** The Bond shall be executed on behalf of the City by the manual or facsimile signature of the Mayor of the City and its corporate seal shall be thereunto affixed and attested by the manual or facsimile signature of the City Clerk. In case any officer who shall have signed the Bond shall cease to be such officer of the City before the Bond has been authenticated by the City or delivered, the Bond, with the signature thereto affixed may, nevertheless, be executed and delivered by the City as though the person or persons who signed the Bond had remained in office.

(e) **Delivery of Bond.** The Bond shall not be delivered until there shall have been delivered to and by the City, as the case may be, a certified copy of the ordinance authorizing the Bond and originally executed counterparts of this Agreement.

(f) **Option to Put Bond.** The registered owner of the Bond shall have the option, but only upon 14 days' written notice to the Society, to put the whole Bond back to the Society on any date, for purchase at par plus interest accrued to the purchase date, upon the occurrence of either of the following:

(i) the Society shall violate its liquidity covenant, contained in Section 17(c) hereof; or

(ii) the rating of the Society by Standard & Poor's Ratings Group shall fall below "BBB-".

Section 4. Loan of Bond Proceeds; Repayment of Loan.

(a) ***Loan of Bond Proceeds.*** The City agrees to finance the Cost of the Project by making the Loan to the Society of the proceeds of the Bond. In order to provide the funds to make the Loan, the City will sell and deliver the Bond to Wells Fargo as initial Registered Owner and will cause the proceeds thereof to be deposited into the Project Fund.

(b) ***Repayment of Loan.***

(i) The Society hereby covenants and agrees to repay the loan in installments (unless accelerated pursuant to Section 18 hereof), as follows: on or before each Interest Payment Date, commencing May 1, 2002, until the principal of the Bond shall have been fully paid, a sum in immediately available funds which will equal the amount payable on such date as interest on the Bond as provided in this Agreement, and on or before each principal payment date, commencing November 1, 2002, a sum in immediately available funds which will equal the amount payable on such date as principal of (whether at maturity, upon acceleration or otherwise) the Bond, all as provided in Section 3(a) hereof.

It is understood and agreed that all payments payable under this Section 4(b)(i) by the Society are assigned by the City to the Registered Owner, as his, her or its interest may appear. The Society consents to such assignment. The City hereby directs the Society and the Society hereby agrees to pay directly to the Registered Owner as his, her or its interest may appear, in immediately available funds, all payments payable by the Society pursuant to this Section 4(b)(i).

(ii) The Society will also pay the Administrative Expenses of the City if, as and when due. The Society shall pay to the City or to any payee designated by the City, upon written request, all reasonable costs, fees and expenses incurred by the City relating to the Bond, including, without limitation, legal fees and expenses incurred in connection with the issuance of the Bond and the interpretation and enforcement of any documents relating to the Bond.

(iii) In the event the Society shall fail to make any of the payments required in this Section 4(b), the item or installment so in default shall continue as an obligation of the Society with interest thereon at a rate equal to the "Base Rate" as announced by Wells Fargo Bank Minnesota, National Association, plus 5% per annum, to the extent permitted by law.

Section 5. No Prepayment of the Loan. The Bond is not callable prior to its maturity.

Section 6. Unconditional Obligations. Upon the making of the Loan, the obligations of the Society to make the payments required by Section 4(b) hereof shall be absolute and unconditional, shall be binding and enforceable against the Society in all circumstances whatsoever and shall not be subject to setoff, recoupment or counterclaim. The Society shall be obligated to make said payments whether or not the Project has been acquired and whether or not the Project has ceased to exist or to be functional to any extent from any cause whatsoever and the Society shall be obligated to make said payments regardless of whether the Society is in possession or is entitled to be in possession of the Project. Without in any way limiting the generality of the foregoing, such obligations shall not be affected by any exercise of any remedy by the City or the Registered Owner under Section 18 or 19 hereof, by the termination of this Agreement in part or in whole or by the diminution or the elimination of any of the Society's rights or obligations hereunder by judicial decree, legislative enactment or otherwise, failure of consideration or title, frustration of commercial purpose, condemnation, destruction or damage to the Project or other property of the Society, any change in the tax or other laws of the United States of America or the State or any political subdivision of either, by judicial interpretation or otherwise, or inability or failure of the City or Wells Fargo to perform any obligation hereunder. Except as otherwise expressly provided herein, the Society's other obligations under this Agreement shall likewise be absolute, unconditional, binding and enforceable in all circumstances whatsoever.

Section 7. Arbitrage. The Society hereby covenants, represents and warrants to the City and the Registered Owner that it will not make, or permit, any use of the proceeds of the Bond or take any other action which will cause the Bond or any subsequent obligations of the City to be "arbitrage bonds" within the meaning of Section 148 of the Code.

Section 8. Agreement to Operate and Maintain the Project; Tax Covenants. The Society agrees that it will operate and maintain the Project and all other facilities and property and equipment necessary for the operation of the Project. Nothing contained in this Section shall relieve the Society from making the payments required to be made pursuant to Section 4(b) hereof.

The Society covenants that the proceeds of the Bond are to be used only with respect to health care facilities to be located within the boundaries of the City. As of the date of this Agreement, the Society is an organization described in Section 501(c)(3) of the Code which is not a "private foundation" as defined in Section 509(a) of the Code; it has received a letter from the Internal Revenue Service to that effect; such letter has not been modified, limited or revoked; the Society is, according to its best information and belief, in compliance with all terms, conditions and limitations, if any, contained in such letter applicable to it; the facts and circumstances which form the basis of such letter as represented to the Internal Revenue Service continue substantially to exist; and the Society is exempt from federal income taxes under Section 501(a) and Section 501(c)(3) of the Code and agrees that it shall not perform any acts or enter into any agreements which shall adversely affect such federal income tax status, nor shall it carry on or permit to be carried on in the health care facilities or permit the health care facilities to be used in or for any trade or business if such activity would adversely affect the exemption of interest on the Bond from federal income taxation or if such activity would adversely affect the Society's federal income tax status under Section 501(c)(3) of the Code.

Section 9. The Project Fund. Wells Fargo shall create in the name of the City a separate fund designated as the “City of Rapid City, South Dakota, Health Care Facilities Revenue Bond (The Evangelical Lutheran Good Samaritan Society Project), Series 2001 Project Fund.” Proceeds of the Bond shall be deposited in the Project Fund. Moneys on deposit in the Project Fund shall be expended to pay the Cost of the Project, including but not limited to payment of the loan from Bank of America. All such disbursements therefor will be made by Wells Fargo upon receipt of a requisition or requisitions signed by the Society (a) stating with respect to each disbursement to be made: (i) the requisition number, (ii) the name and address of the person, firm or corporation to whom payment is due, (iii) the amount to be disbursed and (iv) that each obligation mentioned therein has been properly incurred, is a proper charge against the Project Fund and has not been the basis of any previous disbursement; (b) specifying in reasonable detail the nature of the obligation; and (c) accompanied by a bill or statement of account for such obligation. Any moneys in the Project Fund will be used for the Cost of the Project no later than three years after the Closing Date. Any moneys remaining in the Project Fund on that date will automatically be used to pay interest on the Bond, notwithstanding any other provisions of this Agreement; provided, however, that if the Society has deposited funds into the Project Fund from its reserves in anticipation of grants and donations received subsequent to such deposits, reimbursement of such reserves shall be provided prior to the application of the remaining moneys to the prepayment of the Bond.

Section 10. Investment of Moneys. All moneys held as a part of the Project Fund shall be invested by Wells Fargo, after consultation with the Society, in (a) bonds or other obligations of the United States of America; (b) bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States of America; (c) obligations issued or guaranteed as to principal and interest by any agency or person controlled or supervised by and acting as an instrumentality of the United States of America, pursuant to authority granted by the Congress of the United States of America; or (d) certificates of deposit issued by, or time deposit accounts or money market accounts of, commercial banks or savings and loan associations. All interest or other income realized as a result of the investments of moneys in the Project Fund shall be credited, and any losses shall be debited, to the Project Fund. Wells Fargo may make any and all such investments through its own trust department. Wells Fargo shall charge the Society no more than its actual reasonable costs in performing any such investment functions, which costs the Society agrees to pay.

Section 11. Establishment of Completion Date. The Completion Date shall be deemed to be the earliest of (a) the exhaustion of all moneys in the Project Fund, (b) the filing with Wells Fargo of a certificate signed by the Society stating that the acquisition of the Project has been completed or (c) three years after the Closing Date.

Section 12. Completion of Project if Project Fund Insufficient. In the event the moneys in the Project Fund available for payment of the Cost of the Project should not be sufficient to pay the Cost of the Project in full, the Society shall pay that portion of the Cost of the Project in excess of the moneys available therefor in the Project Fund. The City does not make any warranty, either express or implied, that the moneys which will be paid into the Project Fund will be sufficient to pay all the Cost of the Project. If the Society pays any portion of the Cost of the Project pursuant to this Section, it shall not be entitled to any reimbursement therefor

from the City or any Registered Owner, nor shall it be entitled to any diminution in or postponement of the payments required to be paid under Section 4(b) hereof.

Section 13. Ownership of Project; Assignment, Sale and Leasing. The City agrees that title to the Project shall be in and remain in the Society, and that the Project shall be the sole property of the Society, in which the City shall have no interest. The City covenants it will not take any action to interfere with the Society's ownership of the Project or to prevent the Society from leasing the Project or otherwise having possession and enjoyment of the Project during the term of this Agreement. However, the City retains the right and the Society grants the City the right to inspect the Project. This Agreement may be assigned and the Project sold or leased, as a whole or in part, by the Society, but only with the written consent of the City and the Registered Owner, which consent shall not be unreasonably withheld, subject, however, to each of the following conditions:

(a) No assignment, sale or lease shall relieve the Society from primary liability for any obligations hereunder, and in the event of any such assignment, sale or lease, the Society shall continue to remain primarily liable for payment of the amounts specified in Section 4(b) hereof and for performance and observance of the other agreements on its part herein provided to be performed and observed by the Society to the same extent as though no assignment, sale or lease had been made.

(b) The assignee, vendee or lessee shall assume the obligations of the Society hereunder to the extent of the interest assigned or leased, and the assignee, vendee or lessee shall be an organization described in Section 501(c)(3) of the Code.

(c) The Society shall, at least 30 days prior to the proposed execution and delivery thereof, furnish or cause to be furnished to the City and the Registered Owner a true and complete copy of each proposed assignment, assumption of obligation, sale or lease, as the case may be.

(d) Such assignment, sale or lease will not cause interest on the Bond to be subject to federal income taxation, and an opinion to that effect, rendered by a nationally recognized bond counsel, shall be delivered to the City and the Registered Owner prior to the effective date of any such assignment, sale or lease.

Notwithstanding the foregoing, the Society shall be permitted to lease portions of the Project in its ordinary course of business without complying with the provisions of (b) or (c) above.

Section 14. No Warranty of Condition or Suitability by City. The City makes no warranty, either express or implied, as to the Project, including, without limitation, that it will be suitable for the Society's purposes or needs.

Section 15. Use of Project; Maintenance, Governmental Charges and Insurance.

(a) ***Compliance With Laws.*** The Society represents to the best of its knowledge after due inquiry that (i) as of the date hereof the Project is not in violation of any applicable subdivision, zoning, building, environmental protection, sanitary, safety or

other land use laws, rules or regulations and (ii) no activity the Society is conducting in the Project is a nuisance under applicable law. The Society covenants that it will use its best efforts to comply with such legal requirements in its use of the Project after the date hereof.

(b) ***Maintenance and Modification of Project by the Society.*** The Society agrees that at all times during the term of this Agreement, the Society will, at the Society's own expense, maintain, preserve and keep the Project or cause the Project to be maintained, preserved and kept, with the appurtenances and every part and parcel thereof, in good repair, working order and condition and that the Society will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals deemed proper and necessary by it.

In addition, after the Completion Date, the Society shall have the privilege of remodeling the Project, if applicable, or making substitutions, additions, modifications and improvements to the Project from time to time as the Society, in its discretion, may deem to be desirable for the Society's use for such purposes and, with respect to the Project, as shall be permitted by the Act, the costs of which remodeling, substitutions, additions, modifications and improvements shall be paid by the Society, and the same shall be the property of the Society and, with respect to such substitutions, additions, modifications and improvements to the Project, be included under the terms of this Agreement as part of the Project. Prior to undertaking any such remodeling, substitutions, additions, modifications or improvements which would materially alter the Project or the functional use thereof, the Society shall give written notice to the Registered Owner of the proposed action to be taken and shall not undertake such action without the prior written consent of the Registered Owner, which shall not be unreasonably withheld.

(c) ***Taxes and Governmental and Utility Charges.*** The Society will pay during the term of this Agreement, as the same respectively become due, all taxes and governmental charges, if any, of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any part thereof, or any interest therein or the revenues derived therefrom or hereunder, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project, provided that with respect to special assessments or other governmental charges, if any, that may lawfully be paid in installments over a period of years, the Society shall be obligated to pay only such installments as are required to be paid during the term of this Agreement.

The Society may, at the Society's expense and in the Society's name, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom.

(d) ***Casualty and Other Insurance.*** The Society agrees that it will insure the Project against such risks as are customarily insured against by persons similarly situated

in amounts sufficient to provide Net Proceeds of the lesser of (i) the full insurable value of the facilities securing the Bond on a replacement cost basis; or (ii) the face amount of the Bond at the time Outstanding. Such insurance may be obtained (A) by the purchase of insurance policies (including blanket policies covering multiple risk) insured by reputable insurance companies authorized and qualified to underwrite such risk; or (B) if such policies are not reasonably obtainable, by means of an adequate insurance fund satisfactory to the Registered Owner set aside and maintained out of the Society's earnings (including arrangements of such character with other companies for insurance); or (C) any combination thereof. In addition, the Society shall maintain such automobile and public liability insurance as is customarily carried by persons similarly situated.

Section 16. Damage, Destruction or Condemnation and Use of Net Proceeds.

(a) ***Damage, Destruction and Condemnation.*** If prior to full payment of the Bond (i) the Project or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (ii) the Project is condemned, i.e., title to or any interest in, or the temporary use of, the Project or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the Society shall be obligated to continue to pay the amounts specified in Section 4(b) hereof.

(b) ***Application of Net Proceeds.*** Prior to the Completion Date, the Society will cause the Net Proceeds of any insurance proceeds or condemnation award resulting from any events described in Section 16(a) hereof to be deposited in the Project Fund and to be disbursed therefrom as provided in this Agreement. Subsequent to the Completion Date, the Society will cause the Net Proceeds of any insurance proceeds or condemnation award resulting from any event described in Section 16(a) hereof to be deposited in a separate account maintained by the Society. All Net Proceeds so deposited shall be applied in one or more of the following ways as shall be elected by the Society in a written notice to the City and the Registered Owner:

(i) To the prompt repair, restoration, modification or improvement of the Project by the Society within one year of the date of occurrence of any event described in Section 16(a). Any balance of the Net Proceeds remaining after such work has been completed shall be paid to or retained by the Society.

(ii) To prepayment of the Loan and redemption of the Bond on the next Interest Payment Date.

(c) ***Insufficiency of Net Proceeds.*** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 16(b)(i) hereof, the Society will nonetheless complete the work and will pay any cost in excess of the amount of the Net Proceeds. The Society agrees that if by reason of any such insufficiency of the Net Proceeds the Society shall make any payments pursuant to the provisions of this Section, the Society shall not be entitled to any reimbursement therefor from the City, Wells Fargo or the Registered Owner, nor shall the Society be entitled to any diminution of the amounts payable under Section 4(b) hereof.

Section 17. Covenants of Society. Until all such amounts owing by the Society under this Agreement and the Bond have been paid in full in accordance with the terms hereof, the Society hereby covenants and agrees as follows:

(a) ***Access to Information.*** The Society agrees to furnish the Registered Owner and the City, promptly upon the receipt of a written request therefrom, any additional documents, information or data reasonably necessary to verify the truth and accuracy of any representation or statement made on behalf of the Society herein, in any of the Society's certificates or in any request made by the Society for the disbursement of Bond proceeds for the Project Fund.

(b) ***Financial Statements.*** Within 30 days after the end of each quarter of the Society's fiscal year, the Society shall furnish the Registered Owner with the Society's unaudited quarterly financial statements. Within 180 days after the end of each fiscal year of the Society, the Society shall furnish the Registered Owner with financial statements of the Society for such fiscal year, audited by an independent certified public accountant or a firm thereof.

(c) ***Liquidity Covenant.*** While the Bond is Outstanding, the Society shall maintain at least \$90,000,000 in marketable securities and/or cash, free of any lien or encumbrance.

(d) ***No Default Certificate.*** On or prior to July 1, 2002 and on or prior to each July 1 thereafter, the Society shall provide the City and the Registered Owner with a certificate of its Chief Financial Officer stating whether or not the Society is in default hereunder, and if the Society is in default, specifying in reasonable detail the nature of such default.

Section 18. Events of Default and Remedies.

(a) ***Events of Default.*** The following shall be "events of default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

(i) ***Payments of Principal and Interest.*** A default in the payment of principal of or interest on the Bond for 10 days after the due date thereof; or

(ii) ***Loan Payments.*** A default in the payment of any amounts due from the Society pursuant to Section 4(b) hereof for 10 days after the due date thereof; or

(iii) ***Other Representations and Covenants.*** The Society shall fail to observe and comply with any of the other representations, covenants or agreements made by it herein and such default shall have continued unremedied for a period of 30 days after written notice thereof to the Society by the Registered Owner of the Bond then Outstanding; provided, however, that if such default cannot reasonably be cured within said 30-day period, and the Society institutes within said 30-day period a course of action reasonably capable of

remedying such default and pursues such remedy diligently, then, in that event, the Society, with the written consent of the Registered Owner, shall have such additional time as may be deemed by the Registered Owner of the Bond to be reasonably necessary to cure such default, provided that the Society continues to pursue such remedy diligently; or

(iv) *Insolvency.* The voluntary initiation by the Society of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Society of any such proceeding which shall remain undismissed for 60 days, or failure by the Society to promptly have discharged any execution, garnishment or attachment of such consequence as would impair the ability of the Society to carry on its operations at the Project, or assignment by the Society for the benefit of creditors, or the entry by the Society into an agreement of composition with creditors or the failure generally by the Society to pay its debts as they become due; or

(v) *Defaults Under Other Agreements.* An event of default for nonpayment of principal and interest shall have occurred under any agreement or instrument for borrowed funds totaling at least \$1,000,000 to which the Society is a party, and shall have continued for at least 30 days; or

(vi) *Defaults by the City.* Failure by the City to observe or perform any covenant, condition, agreement or provision contained in this Agreement or the Bond.

(b) *Waiver and Cure of Defaults.* The Society shall not be deemed to be in default under this Agreement after the Event of Default has been cured; but if the City or the Registered Owner has commenced the exercise of any right or remedy under this Agreement with respect to the Event of Default after the termination of any applicable cure period provided in Section 18(a) of this Agreement, the subsequent curing of the Event of Default by the Society shall not affect the continued exercise of the right or remedy so commenced nor prevent the subsequent exercise of any other right or remedy of the City or the Registered Owner which was available with respect to the Event of Default. Any Event of Default and the consequences thereof, including any acceleration, may be waived in writing at any time by the Registered Owner of the Bond then Outstanding.

(c) *Remedies of Parties and Registered Owner.* If any Event of Default shall have occurred and is continuing, the parties hereto and the Registered Owner shall have the following rights and remedies hereunder:

(i) *Acceleration of Bond and Loan Payments.* The Registered Owner of the Bond at the time Outstanding may at his, her or its option, by written notice to the Society, declare an amount equal to the amount of the Bond then Outstanding, together with an amount equal to the interest accrued thereon, immediately due and payable under this Agreement, and may, in similar manner,

declare all amounts payable by the Society pursuant to Section 4(b) hereof immediately due and payable.

(ii) *Court Proceedings.* The Registered Owner of the Bond at the time Outstanding or the City or the Society may enforce the provisions of this Agreement by appropriate legal proceedings for the specific performance of any covenant or agreement contained in this Agreement or for the enforcement of any other appropriate legal or equitable remedy, and may recover damages caused by any breach of the provisions of this Agreement, including court costs, reasonable fees of counsel and other costs and expenses incurred in enforcing the obligations of the parties hereto; provided, however, that the obligations of the City are limited to the revenues derived pursuant to this Agreement.

(d) *Remedies Cumulative.* The rights and remedies of the Registered Owner and of the City and the other parties hereto, provided herein, shall be cumulative and shall not exclude any other rights and remedies allowed by law. No failure of the Registered Owner or the City or any other party hereto to insist upon a strict performance of any obligation hereunder, or to exercise any remedy for any violation thereof, shall be taken as a waiver for the future of the right to insist upon strict performance of the same or any other obligation or to exercise any remedy for the violation thereof, except as provided in subsection (b) of this Section.

Section 19. Application of Moneys. All of the moneys realized through the exercise of the remedies provided in Section 18 hereof shall be used to pay principal of and interest on the Bond then due or overdue and costs incurred in the collection thereof (including attorneys' fees). If the available moneys are not sufficient on any payment date to pay principal of and interest on the Bond then due or overdue and costs incurred in the collection thereof (including attorneys' fees), they shall be applied first to the payment of costs incurred in the collection thereof (including attorneys' fees), second to interest then due on the Bond, in the order of maturity of the installments of such interest and third to the payment of the unpaid principal of the Bond which shall have become due.

Section 20. Society's Duty to Indemnify. The Society shall indemnify and hold harmless the City, the City, the Registered Owner and Wells Fargo (exclusive of clause (c) below as to Wells Fargo or the Registered Owner) against and from (a) any and all claims by or on behalf of any person arising from any cause whatsoever in relation to the Project; (b) any and all claims arising from any act or omission of the Society or any of its agents, contractors, servants, employees or licensees with respect to the Project or to this Agreement; (c) any and all claims arising from the issuance, sale, delivery or performance of the Bond or the execution or performance of the documents in connection therewith; and (d) all reasonable costs, counsel fees, expenses or liabilities incurred in connection with any such claim or action or proceeding brought thereon. In case any action or proceeding is brought against the City or Registered Owner by reason of any such claim, the Society, upon written notice from the City or Registered Owner, shall resist or defend such action or proceeding. Subject to the foregoing, the City and Registered Owner shall cooperate and join with the Society as may be required in connection with any action taken or defended by the Society. Any right to indemnity which the City, Wells

Fargo or Registered Owner may have under this Section, whether or not a claim is made against it, shall also extend to its members, officials, directors, officers, attorneys, agents and employees.

Section 21. Provisions of General Application. Notwithstanding any other provisions hereof: (a) no action or decision taken or made or consent given by the City hereunder, except (i) proceedings for indemnity against the liability of the City, (ii) proceedings for the collection or reimbursement of Administrative Expenses or any other amount due the City, or (iii) proceedings to enforce any other obligation to the City, including proceedings to enforce the Society's obligations under Section 4(b) hereof, shall be effective without the written consent of Registered Owner, but such concurrence may be given after the fact and shall not be unreasonably withheld; and (b) in addition to any other applicable remedies and immunities and except as otherwise provided, Registered Owner shall have the same remedies and immunities as the City.

Section 22. Actions by City; Limited Liability. Any action which may be taken by the City hereunder shall be deemed sufficiently taken if taken on its behalf by its Mayor or City Clerk or by any other director, officer or agency which the City Council may designate from time to time.

No failure of the City to comply with any term, condition, covenant or agreement herein or any other agreement, covenant or undertaking by the City contained in any document executed in connection with the issuance, sale and delivery of the Bond shall subject the City to liability for any claim for damages, costs or other financial or pecuniary charge except to the extent that the same can be paid or recovered from the rentals or other amounts derived from the leasing, sale or other disposition of the Project or revenues therefrom (including the Society's obligations hereunder) or proceeds of the Bond. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the City for any failure to comply with any term, condition, covenant or agreement, including this Agreement, executed in connection with the issuance, sale and delivery of the Bond; provided that no costs, expenses or monetary relief shall be recoverable from the City except as may be payable from the leasing, sale or other disposition of the Project or revenues therefrom (including the Society's obligations hereunder), or proceeds of the Bond. None of the elected or appointed directors, officers or agents of the City shall be liable for any claim for damages, costs or other financial or pecuniary charge with respect to any action taken or omitted to be taken in good faith in connection with this Agreement or any other agreement or document executed in connection with the issuance, sale and delivery of the Bond, except as may be recoverable from the rentals or other amounts derived from the leasing, sale or other disposition of the Project or revenues therefrom (including the Society's obligations hereunder) or from the proceeds of the Bond. The obligations of the City hereunder are special, limited obligations payable only as aforesaid, and the obligations of the City hereunder shall never constitute the debt or indebtedness of the City or the City within the meaning of the Constitution or statutes of the State, and shall never constitute a pecuniary liability of the City or the City or a charge against its general credit or taxing powers.

Section 23. Amendments to Agreement.

(a) *Amendments to Agreement Not Requiring Consent of Registered Owner.*

The City, Wells Fargo and the Society shall without the consent of or notice to the Registered Owner consent to any amendment, change or modification of this Agreement as may be required (i) by the express provisions of this Agreement; (ii) for the purpose of curing any ambiguity or formal defect or omission in this Agreement; or (iii) so as to more precisely identify the Project or any collateral.

(b) *Amendments to Agreement Requiring Consent of Registered Owner.*

Except for the amendments, changes or modifications as provided in Section 23(a) hereof, neither the City, Wells Fargo nor the Society shall consent to any other amendment, change or modification of this Agreement without the mailing of notice and the written approval or consent of the Registered Owner at the time Outstanding given as in this subsection provided. If at any time the City, Wells Fargo and the Society shall desire to so amend this Agreement, as the case may be, the Society shall cause notice and copies of such proposed amendment, change or modification to be given by registered or certified mail to the Registered Owner at the last address shown in the registration books of Wells Fargo.

Section 24. Sale and Purchase of Bond. The City agrees to sell Bond Number “1” to Wells Fargo Brokerage Services, LLC, at a purchase price of \$_____ (being the par amount of \$9,000,000, less an underwriter’s discount of \$_____, without any accrued interest). The purchase price shall be paid in immediately available funds.

Section 25. Further Assurances and Corrective Instruments. The City, Wells Fargo and the Society agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements to this Agreement and to other documents as may reasonably be required for correcting any inadequate or incorrect description of the Project or for carrying out the expressed intention of this Agreement.

Section 26. Notices. All notices and directions given hereunder shall be in writing, shall be deemed given when received and, except as otherwise provided, shall be sent by registered or certified mail return receipt requested or delivered and receipt thereof acknowledged, to the City at City of Rapid City, South Dakota, 224 West Ninth Street, Rapid City, South Dakota 57104, Attention: Controller; to the Society addressed to The Evangelical Lutheran Good Samaritan Society, 4800 W. 57th Street, Rapid City, SD 57106, Attention: Chief Financial Officer; and to Wells Fargo at Wells Fargo Brokerage Services, LLC, Northstar East Building, 9th Floor, 608 Second Avenue South, MAC-9303-095, Minneapolis, MN 55479, Attention: Richard Miller, Senior Vice President; or, as to all the foregoing, to such other address as the addressee shall have indicated by prior notice to the one giving the notice or direction in question. A duplicate copy of each notice, or direction given hereunder shall be given to each of the other parties to this Agreement. Notice under this Agreement may be waived in writing prospectively or retrospectively by the person entitled to the notice, but no waiver shall affect any notice requirement as to any other person. The rights or obligations resulting from notice properly given to one person shall not be affected by any insufficiency or absence of notice to the other person also entitled to notice.

Section 27. Miscellaneous.

(a) **Counterparts.** This Agreement may be executed and delivered in any number of counterparts, each of which shall be deemed to be an original; but such counterparts together shall constitute but one and the same instrument.

(b) **Severability.** In the event that any provision of this Agreement shall be held to be invalid in any circumstance, such invalidity shall not affect any other provisions or circumstances.

(c) **Governing Law.** This Agreement shall be governed by the laws of the State.

(d) **Payment Dates.** If any payment hereunder or under the Bond is required to be made on a day which is not a Business Day, such payment may be made on the immediately succeeding Business Day with the same force and effect as if paid on the nominal payment date provided in this Agreement.

Section 28. Term of This Agreement. This Agreement shall remain in effect from the date hereof until the Bond has been paid in full and all the other rights and obligations of the parties hereunder have been satisfied.

Section 29. Third Party Beneficiaries. The Registered Owner shall be a third party beneficiary of this Agreement, and as such also agrees and contracts with the parties hereto to carry out all of its obligations hereunder.

IN WITNESS WHEREOF, the City, the Society and Wells Fargo have caused this Agreement to be executed in their respective names by themselves or by their duly authorized officers or partners and have caused their respective corporate seals, if applicable, to be hereunto affixed, all as of the date first above written.

[SEAL]

CITY OF RAPID CITY, SOUTH DAKOTA

Attest:

By _____
City Clerk

By _____
Jerry Munson, Mayor

THE EVANGELICAL LUTHERAN GOOD
SAMARITAN SOCIETY

By _____
Thomas A. Peterson, Assistant Treasurer

WELLS FARGO BROKERAGE SERVICES,
LLC

By _____
Richard Miller, Senior Vice President

EXHIBIT A

PROJECT DESCRIPTION

The Project is Echo Ridge, a senior living complex consisting of the Lodge, a 59-unit congregate housing facility, and the Manor, a 28-unit assisted living facility, located in Rapid City, South Dakota.