

**Fixed Rate to Maturity  
Direct Pay (Immediate)**

**TRUST INDENTURE**

**between**

**CITY OF SAN JOSE,  
as Issuer**

**and**

**COMPUTERSHARE TRUST COMPANY, NATIONAL ASSOCIATION,  
as Trustee**

**relating to**

**\$44,856,000  
City of San José  
Multifamily Housing Revenue Refunding Bonds  
(La Moraga Apartments)  
Series 2025C**

**Dated as of September 1, 2025**

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EXHIBIT A – FORM OF BOND

EXHIBIT B – REQUISITION FORM – COSTS OF ISSUANCE

## **TRUST INDENTURE**

This **TRUST INDENTURE**, dated as of **September 1, 2025** (“**Indenture**”), is by the **CITY OF SAN JOSE** (together with its successors and assigns, the “**Issuer**”), a municipal corporation and chartered city, duly organized and existing under the Constitution and laws of the State of California (the “**State**”), and **COMPUTERSHARE TRUST COMPANY, NATIONAL ASSOCIATION**, a national banking association, organized and existing under the laws of the United States of America and authorized to accept and execute trusts of the character herein set forth, including such entity’s successors or any other corporation or association resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at any time serving as successor trustee hereunder (the “**Trustee**”).

The meaning of capitalized terms can be determined  
by reference to Article I of this Indenture.

### **RECITALS**

- A.** The Issuer is authorized by the Act to issue revenue bonds for the purpose of financing the development of multifamily rental housing for persons of low and moderate income.
- B.** The Issuer previously issued its Prior Bonds pursuant to the Prior Indenture;
- C.** The Prior Bonds remain outstanding in the aggregate principal amount of \$44,856,460.84 on the Closing Date.
- D.** The proceeds of the Prior Bonds were used by the Issuer to fund the Prior Loan to the Borrower in order to provide financing with respect to the Mortgaged Property owned by the Borrower.
- E.** In connection with the terms of the Prior Loan, the Borrower executed the Prior Mortgage.
- F.** The Borrower has requested that the Issuer refinance the Mortgaged Property by issuing the Bonds and by using the Bond Proceeds to fund the Loan, the proceeds of which will be used to prepay the Prior Loan, discharge the Prior Mortgage, and refund the Prior Bonds.
- G.** The Issuer has, pursuant to the Act and the Bond Resolution of the Issuer, authorized (i) the issuance of the Bonds in the Principal Amount for the purpose of providing refinancing for the Mortgaged Property, (ii) the execution and delivery of this Indenture to establish the terms of the Bonds and the security for the Bonds and (iii) the execution and delivery of the Financing Agreement to establish certain terms and conditions of the Loan.

**H.** By executing this Indenture, the Issuer is directing the deposit of the Bond Proceeds with the Trustee, to be used by the Trustee to fund the Loan to the Borrower. The proceeds of the Loan will be applied, together with other funds, to the prepayment, directly or indirectly, of the Prior Loan, and the refunding of the Prior Bonds in order to effect the refinancing of the Mortgaged Property.

**I.** The Issuer, the Trustee and the Borrower are concurrently entering into the Financing Agreement.

**J.** The Loan will be (i) made by the Issuer pursuant to the Financing Agreement, (ii) evidenced by the Note, (iii) secured by the Security Instrument and (iv) otherwise documented, evidenced and secured by the other Loan Documents.

**K.** Fannie Mae has agreed, subject to the satisfaction of certain conditions, to facilitate the refinancing of the Mortgaged Property by providing credit enhancement for the Bonds pursuant to the Credit Facility.

**L.** Pursuant to the Assignment, the Issuer will, except for its Reserved Rights, assign and deliver all of its right, title and interest in and to the Loan, including the Note, the Security Instrument and the other Loan Documents, to the Trustee and the Credit Provider, as their interests may appear.

**M.** The operation of the Mortgaged Property will be subject to the Regulatory Agreement.

**N.** The Issuer has determined that all things necessary to make the Bonds, when executed by the Issuer and authenticated by the Trustee and issued in accordance with this Indenture, the valid, binding and legal special and limited obligations of the Issuer and to constitute this Indenture a valid assignment and pledge of the Trust Estate as security for the payment of the principal of and interest and any premium on, the Bonds, have been done, and the creation, execution and delivery of this Indenture and the creation, execution and delivery of the Bonds, subject to the terms of this Indenture, have been duly authorized by the Issuer.

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

**NOW, THEREFORE,** the Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the holders and owners thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect, the provisions of the Reimbursement Agreement and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, does hereby

grant, bargain, sell, convey, pledge and assign a security interest, unto the Trustee, and its successors in trust and its and their assigns in and to the following (said property being herein referred to as the “**Trust Estate**”), to wit:

### **GRANTING CLAUSES**

To secure the payment of the principal of and interest and any premium on, and the purchase price of, the Bonds according to their tenor and effect, to secure, on a parity basis, all obligations owed to the Credit Provider under the Credit Facility Documents and the Loan Documents, and to secure the performance and observance by the Issuer of the covenants expressed or implied in this Indenture and in the Bonds, the Issuer absolutely and irrevocably pledges and assigns the property described in the following paragraphs (1) through (5) to the Trustee for the benefit of the Bondholders and to the Credit Provider, as their interests may appear, subject to the Assignment and the provisions of this Indenture permitting the application of such property for the purposes set forth in this Indenture:

(1) all right, title and interest of the Issuer in and to the Loan, including the Note, the Security Instrument and the other Loan Documents and in and to the Financing Agreement, reserving, however, the Reserved Rights;

(2) all rights to receive payments on the Note and under the other Loan Documents, including all proceeds of insurance or condemnation awards;

(3) all right, title and interest of the Issuer in and to the Revenues, the Bond Proceeds and the accrued interest, if any, derived from the sale of the Bonds, and all Funds and Accounts under this Indenture (including, without limitation, moneys, documents, securities, investments, Investment Income, instruments and general intangibles on deposit or otherwise held by the Trustee) but excluding all moneys in the Fees Account, the Rebate Fund and the Costs of Issuance Fund unless and to the extent funded with Bond Proceeds (including within such exclusion Investment Income retained in the Costs of Issuance Fund and the Rebate Fund);

(4) all funds, moneys and securities and any and all other rights and interests in property, whether tangible or intangible, from time to time conveyed, mortgaged, pledged, assigned or transferred by delivery or by writing of any kind to the Trustee as additional security under this Indenture for the benefit of the Bondholders and the Credit Provider; and

(5) all of the proceeds of the foregoing, including, without limitation, Investments and Investment Income (except as excluded above);

**TO HAVE AND TO HOLD** unto the Trustee and the Credit Provider, as their interests may appear;

**IN TRUST, NEVERTHELESS**, upon the terms set forth in this Indenture for the



equal and proportionate benefit, security and protection of (i) all Registered Owners of the Bonds, without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds and (ii) the Credit Provider to secure the payment of all amounts owed to the Credit Provider under the Credit Facility Documents;

**PROVIDED, FURTHER, HOWEVER**, that if the Issuer or its successors or assigns pay or cause to be paid to the Registered Owners of the Bonds the principal of and interest and any premium to become due on the Bonds at the times and in the manner provided in this Indenture, and if no amount is owing by the Borrower to the Issuer or the Trustee under the Financing Agreement or to the Credit Provider under the Credit Facility Documents, and if the Issuer keeps, performs and observes, or causes to be kept, performed and observed, all of its covenants, warranties and agreements contained in this Indenture, this Indenture and the estate and rights granted by this Indenture shall terminate and be discharged in accordance with its terms, upon which termination the Trustee shall execute and deliver to the Issuer such instruments in writing as shall be necessary to satisfy the lien of this Indenture, and, in accordance with Article IX, shall reconvey to the Issuer any property at the time subject to the lien of this Indenture which may then be in the Trustee's possession, except amounts held by the Trustee for the payment of principal of and interest and any premium on the Bonds, or moneys held in the Rebate Fund for payment to the United States Government or moneys held in the Fees Account for the payment of accrued and unpaid Third Party Fees; otherwise this Indenture shall be and remain in full force and effect, upon the trusts and subject to the covenants and conditions set forth in this Indenture; and

**FINALLY**, all Bonds issued and secured under this Indenture are to be issued, authenticated and delivered, and all property, rights and interests, including, but not limited to, the amounts payable under the Financing Agreement and any other amounts assigned and pledged by this Indenture are to be dealt with and disposed of under, upon and subject to, the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes expressed in this Indenture, and the Issuer has agreed and covenanted, and agrees and covenants with the Trustee and with the Registered Owners of the Bonds as set forth in this Indenture.

## **ARTICLE I DEFINITIONS AND INTERPRETATION**

**SECTION 1.1**      **Definitions.** All capitalized terms used in this Indenture have the meanings given to those terms in this Section 1.1 or elsewhere in this Indenture unless the context clearly indicates a different meaning.

“**Account**” means an account established within a Fund.

“**Act**” means Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code.

**“Act of Bankruptcy”** means any proceeding instituted under the Bankruptcy Code or other applicable insolvency law by or against the Issuer.

**“Advance”** means an advance made under the Credit Facility.

**“Affiliate”** as applied to any person, means any other person directly or indirectly controlling, controlled by, or under common control with, that person. For the purposes of this definition, “control” (including with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, partnership interests or by contract or otherwise.

**“as their interests may appear”** or **“as its interest may appear”** means, with reference to any of the Assigned Rights, the respective interests, exclusive of the Reserved Rights of the Issuer, of Fannie Mae and of the Trustee to such documents and rights as set forth in the Assignment.

**“Assigned Rights”** has the meaning given to that term in the Assignment.

**“Assignment”** means the Assignment and Intercreditor Agreement, dated as of the date of this Indenture, by and among the Issuer, the Trustee and Fannie Mae, and acknowledged and agreed to by the Borrower, as it may be amended, supplemented or restated from time to time.

**“Authorized Borrower Representative”** means any person who, at any time and from time to time, is designated as the Borrower’s authorized representative by written certificate furnished to the Issuer, the Loan Servicer, the Credit Provider and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by or on behalf of any authorized general partner of the Borrower if the Borrower is a general or limited partnership, by any authorized managing member of the Borrower if the Borrower is a limited liability company, or by any authorized officer of the Borrower if the Borrower is a corporation, which certificate may designate an alternate or alternates. The Trustee may conclusively presume that a person designated in a written certificate filed with it as an Authorized Borrower Representative is an Authorized Borrower Representative until such time as the Borrower files with it (with a copy to the Issuer, the Loan Servicer and the Credit Provider) a written certificate revoking such person’s authority to act in such capacity.

**“Authorized Denomination”** means \$5,000 or any integral multiple of \$1,000 in excess thereof. If the amount received for mandatory redemption is not a whole multiple of the Authorized Denomination, the Trustee shall redeem the nearest lower whole multiple and retain any excess in the Redemption Account.

**“Authorized Loan Servicer Representative”** means any person who, at any time and from time to time, is designated as the Loan Servicer’s authorized representative by

written certificate furnished to the Issuer, the Borrower, the Credit Provider and the Trustee containing the specimen signature of such person and signed on behalf of the Loan Servicer.

**“Authorized Officer”** means any “Authorized Officer” as such term is defined in the Bond Resolution.

**“Available Moneys”** means, as of any date of determination, any of:

- (a) the proceeds of the Bonds;
- (b) Reserved;
- (c) moneys received by the Trustee pursuant to a draw on the Credit Facility;
- (d) any other amounts, including the proceeds of refunding bonds, for which, in each case, the Trustee has received an Opinion of Counsel to the effect that the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code (or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court) or be avoidable as preferential payments under Section 544, 547 or 550 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code;
- (e) Reserved; and
- (f) Investment Income derived from the investment of moneys described in (a), (c) or (d).

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

**“Beneficial Owner”** means, for any Bond which is held by a nominee, the beneficial owner of such Bond.

**“Bond”** or **“Bonds”** means the Issuer’s Multifamily Housing Revenue Refunding Bonds (La Moraga Apartments) Series 2025C in the original aggregate principal amount of \$44,856,000.

**“Bond Counsel”** means (i) on the Closing Date, the law firm or law firms delivering the approving opinion(s) with respect to the Bonds or (ii) after the Closing Date, any law firm selected by the Issuer and acceptable to the Credit Provider, of nationally recognized standing in matters pertaining to the exclusion from gross income for federal income tax purposes of the interest payable on bonds issued by states and political subdivisions.

**“Bond Documents”** means the Assignment, the Bonds, the Bond Purchase Agreement, the Credit Facility, the Continuing Disclosure Agreement, the Financing

Agreement, this Indenture, the Regulatory Agreement (and any other agreement relating to rental restrictions on the Mortgaged Property), the Tax Certificate, and all other documents, instruments and agreements executed and delivered in connection with the issuance, sale, delivery and/or remarketing of the Bonds, as each such agreement or instrument may be amended, supplemented or restated from time to time.

**“Bond Proceeds”** means the total proceeds derived from the issuance, sale and delivery of the Bonds, representing the total purchase price of the Bonds at par, on the Bonds paid by the initial purchaser(s) of the Bonds.

**“Bond Purchase Agreement”** means the Bond Purchase Agreement, dated as of \_\_\_\_\_, 2025, among the Underwriter, the Issuer and the Borrower.

**“Bond Register”** means the Bond Register maintained by the Trustee pursuant to Section 2.16.

**“Bond Resolution”** means the resolution adopted by the City Council of the Issuer on [August 12], 2025, authorizing and approving the issuance and sale of the Bonds and the execution and delivery of this Indenture, the Assignment, the Bond Purchase Agreement, the Financing Agreement, the Regulatory Agreement and certain other documents, making certain appointments and determining certain details with respect to the Bonds.

**“Bondholder,” “holder,” “Owner,” “owner,” “Registered Owner,” or “registered owner”** means, with respect to any Bond, the owner of the Bond as shown on the Bond Register.

**“Book-Entry Bonds”** means that part of the Bonds for which a Securities Depository or its nominee is the Bondholder.

**“Book-Entry System”** means an electronic system in which the clearance and settlement of securities transactions are made through electronic book-entry changes.

**“Borrower”** means La Moraga San Jose L.P., a California limited partnership, duly organized, validly existing and in good standing under the laws of the State, together with any successor to its rights, duties and obligations.

**“Borrower Documents”** means the Bond Documents to which the Borrower is a party, the Credit Facility Documents to which the Borrower is a party and the Loan Documents and all other documents to which the Borrower is a party and which are being executed and delivered by the Borrower in connection with the transactions provided for in the Bond Documents, the Loan Documents and the Credit Facility Documents.

**“Business Day”** means any day other than:

- (a) a Saturday or a Sunday;

(b) any day on which banking institutions or trust companies located in the City of New York, New York, or St. Paul, Minnesota, are required or authorized by law or executive order to close;

(c) any day on which banking institutions or trust companies located in the city or cities in which the Designated Office of the Trustee is located are required or authorized by law or executive order to close;

(d) a day on which banking institutions located in the city in which the Designated Office of the Loan Servicer is located are required or authorized by law or executive order to close; or

(e) so long as a Credit Facility is in effect, any day on which the Credit Provider is closed.

**“Certificate of Borrower”** means the Certificate of Borrower dated September 2, 2025, as it may be amended, supplemented or restated from time to time.

**“Closing Date”** means the date on which the Bonds are issued and delivered to or upon the order of the Underwriter.

**“Code”** means the Internal Revenue Code of 1986, as amended; each reference to the Code is deemed to include (i) any successor internal revenue law and (ii) the applicable regulations whether final, temporary or proposed under the Code or such successor law. Any reference to a particular provision of the Code is deemed to include any successor provision of any successor internal revenue law and applicable regulations whether final, temporary or proposed under such provision or successor provision.

**“Conditional Redemption”** means a redemption where the Trustee has stated in the notice of redemption that the redemption is conditioned upon deposit of funds as further described in Section 3.4.

**“Continuing Disclosure Agreement”** means the Continuing Disclosure Agreement, dated as of September 1, 2025, by and between the Borrower and the Dissemination Agent.

**“Costs of Issuance”** means:

(a) the fees, costs and expenses of (i) the Issuer, the Issuer’s counsel and the Issuer’s financial advisor, if any, (ii) the Underwriter (including discounts to the Underwriter or other purchasers of the Bonds, other than original issue discount, incurred in the issuance and sale of the Bonds) and the Underwriter’s counsel, (iii) Bond Counsel, (iv) the Trustee and the Trustee’s counsel, (v) the Loan Servicer and the Loan Servicer’s counsel, if any, (vi) the Credit Provider and the Credit Provider’s counsel, (vii) the Borrower’s counsel and the Borrower’s financial advisor, if any, and (viii) the Rating Agency;

(b) costs of printing the offering documents relating to the sale of the Bonds;  
and

(c) all other fees, costs and expenses directly associated with the authorization, issuance, sale and delivery of the Bonds, including printing costs, costs of reproducing documents, filing and recording fees, and any fees, costs and expenses required to be paid to the Loan Servicer in connection with the origination of the Loan.

**“Costs of Issuance Deposit”** means the deposit to be made by the Borrower with the Trustee on the Closing Date pursuant to Section 5.2(b) to pay all or a portion of the Costs of Issuance.

**“Costs of Issuance Fund”** means the Costs of Issuance Fund created by Section 5.1.

**“Costs of the Project”** means the costs chargeable to the Mortgaged Property in accordance with generally accepted accounting principles, including, but not limited to, the costs of acquisition, construction, rehabilitation, reconstruction, restoration, repair, alteration, improvement and extension (in any of such events, “construction”) of any building, structure, facility or other improvement; stored materials for work in progress; the cost of machinery and equipment; the cost of the “Land” (as that term is defined in the Security Instrument), rights-in-lands, easements, privileges, agreements, franchises, utility extensions, disposal facilities, access roads and site development necessary or useful and convenient for the Mortgaged Property; financing costs, including, but not limited to, the Costs of Issuance, engineering and inspection costs; fees paid to the developer of the Mortgaged Property; organization, administrative, insurance, legal, operating, letter of credit and other expenses of the Borrower actually incurred prior to and during construction; and all such other expenses as may be necessary or incidental to the financing, acquisition, construction or completion of the Mortgaged Property or any part of it, including, but not limited to, the amount of interest expense incurred with respect to the Loan prior to the completion date; insurance premiums payable by the Borrower and taxes and other governmental charges levied on the Mortgaged Property.

**“Credit Facility”** means the direct pay irrevocable, transferable Credit Enhancement Instrument, dated the Closing Date, issued by Fannie Mae to the Trustee, as such facility may be amended, supplemented or restated from time to time.

**“Credit Facility Account”** means the Credit Facility Account of the Revenue Fund.

**“Credit Facility Documents”** means the Reimbursement Agreement, the Certificate of Borrower, all Collateral Agreements (as that term is defined in the Security Instrument), and all other agreements and documents securing the Credit Provider or otherwise relating to the provision of the Credit Facility, as any such agreement may be amended, supplemented or restated from time to time.

**“Credit Provider”** means Fannie Mae, and its successors and assigns.

**“Designated Office”** of the Trustee or the Loan Servicer means, respectively, the office of the Trustee or the Loan Servicer at the respective address set forth in Section 13.4 or at such other address as may be specified in writing by the Trustee or the Loan Servicer, as applicable, as provided in Section 13.4.

**“Dissemination Agent”** means initially Computershare Trust Company, National Association, and its successors and assigns.

**“DTC”** means The Depository Trust Company and any successor to it or any nominee of it.

**“DTC Participant”** has the meaning given to that term in Section 2.15(b).

**“Electronic Means”** means a facsimile transmission or any other electronic means of communication approved in writing by the Credit Provider.

**“Event of Default”** means, as used in any Transaction Document, any event described in that document as an Event of Default. Any “Event of Default” as described in any Transaction Document is not an “Event of Default” in any other Transaction Document unless that other Transaction Document specifically so provides.

**“Extraordinary Items”** means, with respect to the Trustee, reasonable compensation for extraordinary services and/or reimbursement for reasonable extraordinary costs and expenses including reasonable fees and expenses of its counsel.

**“Facility Fee”** has the meaning given to that term in the Reimbursement Agreement.

**“Fannie Mae”** means Federal National Mortgage Association, a corporation organized and existing under the Federal National Mortgage Association Charter Act, 12 U.S.C., § 1716 et seq., and its successors and assigns.

**“Fees Account”** means the Fees Account of the Revenue Fund.

**“Financing Agreement”** means the Financing Agreement, dated as of September 1, 2025, among the Issuer, the Trustee and the Borrower, as amended, supplemented or restated from time to time.

**“Fixed Rate”** means the rate or rates of interest borne by the Bonds as set forth in accordance with Section 2.7.

**“Fixed Rate Period”** means the period beginning on the Closing Date and ending on the last stated Maturity Date of the Bonds.

**“Fund”** means any fund created by Section 5.1.

**“Government Obligations”** means direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, the full faith and credit of the United States of America.

**“Highest Rating Category”** has the meaning, with respect to an Investment, given in this definition. If the Bonds are rated by a Rating Agency, the term “Highest Rating Category” means, with respect to an Investment, that the Investment is rated by each Rating Agency in the highest rating given by that Rating Agency for that general category of security. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the term “Highest Rating Category” means, with respect to an Investment, that the Investment is rated by S&P or Moody’s in the highest rating given by that rating agency for that general category of security. By way of example, the Highest Rating Category for tax-exempt municipal debt established by S&P is “A-1+” for debt with a term of one year or less and “AAA” for a term greater than one year, with corresponding ratings by Moody’s of “MIG-1” (for fixed rate) or “VMIG-1” (for variable rate) for one year or less and “Aa1” for greater than one year. If at any time (i) the Bonds are not rated, (ii) both S&P and Moody’s rate an Investment and (iii) one of those ratings is below the Highest Rating Category, then such Investment will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency. For example, an Investment rated “AAA” by S&P and “Aa3” by Moody’s is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that rating agency, then the Investment will be deemed to be rated below the Highest Rating Category. For example, an Investment rated “AAA” by S&P and “A1” by Moody’s is not rated in the Highest Rating Category.

**“Indenture”** means this Trust Indenture, as amended, supplemented or restated from time to time.

**“Initial Interest Payment Date”** means April 1, 2026.

**“Interest Account”** means the Interest Account of the Revenue Fund.

**“Interest Component”** has the meaning given that term in the Credit Facility.

**“Interest Deposit”** means any deposit to be made by the Borrower with the Trustee on the Closing Date pursuant to Section 5.2(c) to pay interest on the Bonds.

**“Interest Payment Date”** means (i) each April 1 and October 1 commencing on the Initial Interest Payment Date; (ii) for Bonds subject to redemption in whole or in part on any date, the date of such redemption, (iii) each Maturity Date; and (iv) for all Bonds, any date determined pursuant to Section 10.10(c).

**“Interest Requirement”** means for the period to and including the Initial Interest



Payment Date, [\_\_\_\_] days interest at the Fixed Rate and thereafter 183 days interest at the Fixed Rate, calculated on the basis of a 360-day year consisting of twelve 30-day months; or such other number of days as may be required by the Rating Agency.

**“Investment”** means any Permitted Investment and any other investment held under this Indenture that does not constitute a Permitted Investment.

**“Investment Income”** means the earnings, profits and accreted value derived from the investment of moneys pursuant to Article VI.

**“Issuer”** means City of San José, a municipal corporation and chartered city duly organized and validly existing under the Constitution and laws of the State, and its successors and assigns.

**“Issuer Documents”** means the Assignment, the Bonds, the Financing Agreement, this Indenture, the Loan Documents to which the Issuer is a party, the Regulatory Agreement and the Tax Certificate.

**“Issuer’s Fee”** means the “Annual Monitoring Fee” payable by the Borrower as provided under Section 7(a) of the Regulatory Agreement, being an annual amount, payable in semiannual installment on April 1 and October 1, equal to \$65,550 until the end of the Qualified Project Period (without giving effect to the proviso contained in the definition thereof), and thereafter, \$13,587. In the event of a conflict between this definition and the Regulatory Agreement, the provisions of the Regulatory Agreement shall control.

**“Letter of Representations”** means when all the Bonds are Book-Entry Bonds, the Letter of Representations executed by the Issuer and delivered to the Securities Depository, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

**“Loan”** means the loan made by the Issuer to the Borrower pursuant to the Financing Agreement for the purpose of providing funds to the Borrower to repay the Prior Loan and cause the refunding of the Prior Note.

**“Loan Documents”** means, collectively, the Note, the Security Instrument and all other documents, agreements and instruments evidencing, securing or otherwise relating to the Loan, as each such document, agreement or instrument may be amended, supplemented or restated from time to time. Neither the Financing Agreement nor the Regulatory Agreement is a Loan Document and neither document is secured by the Security Instrument.

**“Loan Fund”** means the Loan Fund created by Section 5.1.

**“Loan Servicer”** means the multifamily mortgage loan servicer designated from time to time by the Credit Provider, with the initial Loan Servicer being Berkadia Capital Mortgage LLC, a Delaware limited liability company, and its successors and assigns.

**“Maturity Date”** means October 1, 2035.

**“Moody’s”** means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns, if such successors and assigns shall continue to perform the functions of a securities rating agency.

**“Mortgaged Property”** means the real property described in the Security Instrument, together with all improvements, fixtures and personal property (to the extent of the Borrower’s interest therein) and located on such real property.

**“Note”** means the Multifamily Note (together with all addenda thereto) dated \_\_\_\_\_, 2025 executed by the Borrower in favor of the Issuer, as it may be amended, supplemented or restated from time to time or any mortgage note executed in substitution therefor in accordance with the Bond Documents, as such substitute note may be amended, supplemented or restated from time to time.

**“Opinion of Counsel”** means a written opinion of legal counsel, acceptable to the recipient(s) of such opinion. If the opinion is with respect to an interpretation of federal tax laws or regulations or bankruptcy matters, such legal counsel also must be an attorney or firm of attorneys experienced in such matters.

**“Outstanding”** means, when used with reference to the Bonds at any date as of which the amount of Outstanding Bonds is to be determined, all Bonds which have been authenticated and delivered under this Indenture except:

- (a) Bonds cancelled or delivered for cancellation at or prior to such date;
- (b) Bonds deemed to be paid in accordance with Article IX; and
- (c) Bonds in lieu of which others have been authenticated under Article II.

In determining whether the owners of a requisite aggregate principal amount of Outstanding Bonds have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions of this Indenture, Bonds which are owned or held by or for the account of the Borrower will be disregarded and deemed not to be Outstanding under this Indenture for the purpose of any such determination unless all Bonds are owned or held by or for the account of the Borrower. In determining whether the Trustee will be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which are registered in the name of or known by the Trustee to be held for the account of the Borrower will be disregarded.

**“Permitted Investments”** means, to the extent authorized by law for investment of moneys of the Issuer:

- (a) Government Obligations.

(b) Direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, any agency or instrumentality of the United States of America (other than the Federal Home Loan Mortgage Corporation) or direct obligations of the World Bank, which obligations are rated in the Highest Rating Category.

(c) Obligations, in each case rated in the Highest Rating Category, of (i) any state or territory of the United States of America, (ii) any agency, instrumentality, authority or political subdivision of a state or territory or (iii) any public benefit or municipal corporation the principal of and interest on which are guaranteed by such state or political subdivision.

(d) Any written repurchase agreement entered into with a Qualified Financial Institution whose unsecured short-term obligations are rated in the Highest Rating Category.

(e) Commercial paper rated in the Highest Rating Category.

(f) Interest bearing negotiable certificates of deposit, interest bearing time deposits, interest bearing savings accounts and bankers' acceptances, issued by a Qualified Financial Institution if either (A) the Qualified Financial Institution's unsecured short-term obligations are rated in the Highest Rating Category or (B) such deposits, accounts or acceptances are fully insured by the Federal Deposit Insurance Corporation.

(g) an agreement held by the Trustee for the investment of moneys at a guaranteed rate with (i) the Credit Provider or (ii) a Qualified Financial Institution whose unsecured long-term obligations, obligations for which a current insurer financial enhancement rating is available or obligations for which an insurer financial strength rating is available are rated in the Highest Rating Category, or whose obligations are unconditionally guaranteed or insured by a Qualified Financial Institution whose unsecured long-term obligations, obligations for which a current insurer financial enhancement rating is available or obligations for which an insurer financial strength rating is available are rated in the Highest Rating Category, provided, however, that:

(1) the agreement is an unconditional and general obligation of the provider, and if applicable the guarantee or insurance is an unconditional and general obligation of the guarantor or insurer of the agreement, and ranks *pari passu* with all other unsecured, unsubordinated obligations of the provider, and if applicable, the guarantor or insurer of the agreement;

(2) the Trustee receives an Opinion of Counsel, which may be subject to customary qualifications, that such agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms and, if applicable, an Opinion of Counsel that any guaranty or insurance policy provided by a guarantor or insurer is legal, valid, binding and enforceable upon the guarantor or insurer in accordance with its terms;

(3) the agreement provides that the invested funds will be available for withdrawal without penalty or premium, at any time that (A) the Trustee is required to pay moneys from any Fund established under this Indenture to which the agreement is applicable, or (B) subject to paragraph (4), any Rating Agency lowers, suspends or withdraws the rating on the Bonds on account of the rating of the Qualified Financial Institution providing, guaranteeing or insuring, as applicable, the agreement;

(4) the agreement provides that if during its term the rating of the Qualified Financial Institution providing, guaranteeing or insuring, as applicable, the agreement, is withdrawn, suspended by any Rating Agency or falls below the Highest Rating Category, the Provider must:

(A) within five days of such withdrawal, suspension or downgrade, the provider must notify the Trustee, the Borrower and the Credit Provider; and

(B) within 15 days of such withdrawal, suspension or downgrade and at the option of the Provider, either (i) collateralize the agreement (if the agreement is not already collateralized) with Permitted Investments described in paragraph (a) or (b) by depositing collateral with the Trustee or a third party custodian, such collateralization to be effected in a manner and in an amount reasonably satisfactory to the Credit Provider and sufficient to maintain the then current rating of the Bonds, or, if the agreement, is already collateralized, increase the collateral with Permitted Investments described in paragraph (a) or (b) by depositing collateral with the Trustee or a third party custodian, in an amount reasonably satisfactory to the Credit Provider and sufficient to maintain the then current rating of the Bonds or (ii) transfer the agreement, guarantee or insurance, as applicable, to a replacement provider, guarantor or insurer, as applicable, then meeting the requirements of a Qualified Financial Institution and whose unsecured long term obligations or claims paying ability are then rated in the Highest Rating Category.

(5) the agreement also provides that if during its term the rating of the Qualified Financial Institution providing, guaranteeing or insuring, as applicable, the agreement, is withdrawn, suspended by any Rating Agency or falls below the Highest Rating Category, and the Provider does not satisfy the requirements of paragraph (4) above within the required period of time, then the Trustee may or the Credit Provider may direct the Trustee to notify the provider that it intends to withdraw the entire balance of the agreement then on deposit, together with all of the accrued and unpaid earnings thereon. The provider will, if the requirements of paragraph (4) above have not been timely satisfied, repay the principal of and accrued but unpaid interest on the investment, with no penalty or premium unless required by law, to the Trustee within two (2) Business Days of receipt of such notice from the Trustee. Upon any such withdrawal the agreement shall terminate.

(h) Subject to the ratings requirements set forth in this definition, shares in any money market mutual fund (including those of the Trustee or any of its affiliates) registered under the Investment Company Act of 1940, as amended, that have been rated AAAM-G or AAAM by S&P or Aaa by Moody's so long as the portfolio of such money market

mutual fund is limited to Government Obligations and agreements to repurchase Government Obligations. If approved in writing by the Credit Provider, a money market mutual fund portfolio may also contain obligations and agreements to repurchase obligations described in paragraphs (b) or (c). If the Bonds are rated by a Rating Agency, the money market mutual fund must be rated AAAM-G or AAAM by S&P, if S&P is a Rating Agency, or Aaa by Moody's, if Moody's is a Rating Agency. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the money market mutual fund must be rated AAAM-G or AAAM by S&P or Aaa by Moody's. If at any time (i) the Bonds are not rated, (ii) both S&P and Moody's rate a money market mutual fund and (iii) one of those ratings is below the level required by this paragraph, then such money market mutual fund will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency.

(i) Any other investment authorized by the laws of the State, if such investment is approved in writing by the Credit Provider.

The Trustee shall be entitled to assume that any investment that at the time of purchase is a Permitted Investment remains a Permitted Investment thereafter, absent receipt of written notice or actual knowledge of a responsible officer in the corporate trust department of the Trustee to the contrary. The Trustee shall have no responsibility to monitor the ratings of Permitted Investments after the initial purchase of or investment in such Permitted Investments.

Permitted Investments shall not include any of the following:

(1) Except for any investment described in the next sentence, any investment with a final maturity or any agreement with a term greater than one year from the date of the investment. This exception (1) shall not apply to any obligation that provides for the optional or mandatory tender, at par, by the holder of such obligation at least once within one year of the date of purchase, Government Obligations irrevocably deposited with the Trustee for payment of Bonds pursuant to Section 9.3, and Permitted Investments listed in paragraphs (g) and (i)).

(2) Except for any obligation described in paragraph (a) or (b), any obligation with a purchase price greater or less than the par value of such obligation.

(3) Any asset-backed security, including mortgage backed securities, real estate mortgage investment conduits, collateralized mortgage obligations, credit card receivable asset-backed securities and auto loan asset-backed securities.

(4) Any interest-only or principal-only stripped security.

(5) Any obligation bearing interest at an inverse floating rate.

(6) Any investment which may be prepaid or called at a price less than

its purchase price prior to stated maturity.

(7) Any investment the interest rate on which is variable and is established other than by reference to a single index plus a fixed spread, if any, and which interest rate moves proportionately with that index.

(8) Any investment described in paragraph (d) or (g) with, or guaranteed or insured by, a Qualified Financial Institution described in clause (iv) of the definition of Qualified Financial Institution if such institution does not agree to submit to jurisdiction, venue and service of process in the United States of America in the agreement relating to the investment.

(9) Any investment to which S&P has added an “r” or “t” highlighter.

**“Person”** means a natural person, estate, trust, corporation, partnership, limited liability company, association, public body or any other organization or entity (whether governmental or private).

**“Potential Default”** means, as used in any Transaction Document, any event that has occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default as described in that document. Any “Potential Default” as described in any Transaction Document is not a “Potential Default” in any other Transaction Document unless that other Transaction Document specifically so provides.

**“Preference Claim”** has the meaning given that term in Section 8.8.

**“Principal Amount”** means \$44,856,000, the original principal amount of the Bonds on the Closing Date.

**“Principal Component”** has the meaning given that term in the Credit Facility.

**“Prior Bonds”** means the City of San José Multifamily Housing Revenue Bonds (La Moraga Apartments) Series 2012E issued by the Issuer pursuant to the Prior Indenture.

**“Prior Indenture”** means the Indenture, dated as September 1, 2012, between Issuer and Computershare Trust Company, National Association, as successor-in-interest to Wells Fargo Bank, National Association, as amended, supplemented or restated to the Closing Date, pursuant to which the Prior Bonds were issued.

**“Prior Loan”** means the loan with respect to the Mortgaged Property funded with proceeds of the Prior Bonds.

**“Prior Mortgage”** means that certain Construction to Permanent Deed of Trust (with Assignment of Leases and Rents, Security Agreement and Fixture Filing), dated September 1, 2012, executed by Borrower in favor of the Issuer on the Mortgaged Property granted to secure the Prior Loan.

**“Project”** means the 275-unit multifamily rental housing development known as La Moraga Apartments located in San José, California.

**“Qualified Financial Institution”** means any of: (i) bank or trust company organized under the laws of any state of the United States of America, (ii) national banking association, (iii) savings bank, a savings and loan association, or an insurance company or association chartered or organized under the laws of any state of the United States of America, (iv) federal branch or agency pursuant to the International Banking Act of 1978 or any successor provisions of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, (v) government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, (vi) securities dealer approved in writing by the Credit Provider the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation and (vii) any other entity which is acceptable to the Credit Provider. With respect to an entity which provides an agreement held by the Trustee for the investment of moneys at a guaranteed rate as set out in paragraph (g) of the definition of the term “Permitted Investments” or an entity which guarantees or insures, as applicable, the agreement, a “Qualified Financial Institution” may also be a corporation or limited liability company organized under the laws of any state of the United States of America.

**“Rating Agency”** means any nationally recognized statistical rating agency then maintaining a rating on the Bonds.

**“Rebate Analyst”** means a Person that is (i) qualified and experienced in the calculation of rebate payments under Section 148 of the Code and compliance with the arbitrage rebate regulations promulgated under the Code, (ii) chosen by the Borrower and (iii) engaged for the purpose of determining the amount of required deposits, if any to the Rebate Fund. Initially, the Rebate Analyst shall be Tiber Hudson LLC.

**“Rebate Fund”** means the Rebate Fund created by Section 5.1.

**“Record Date”** means, with respect to any Interest Payment Date, the fifteenth (15th) day of the month preceding the month in which the Interest Payment Date occurs.

**“Redemption Account”** means the Redemption Account of the Revenue Fund.

**“Redemption Date”** means any date upon which Bonds are to be redeemed pursuant to this Indenture.

**“Regulatory Agreement”** means the Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants relating to the Mortgaged Property, dated as of September 1, 2025, by and among the Issuer, the Trustee and the Borrower, as it may be amended, supplemented or restated from time to time.

**“Reimbursement Agreement”** means the Reimbursement Agreement, dated as of

September 1, 2025, by the Credit Provider and the Borrower, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

**“Replacement Credit Facility”** has the meaning given that term in Section 12.4.

**“Reserved Rights”** means those certain rights of the Issuer under the Financing Agreement to indemnification and to payment or reimbursement of fees and expenses of the Issuer, its right to receive notices and to enforce notice and reporting requirements, its right to inspect and audit the books, records and premises of the Borrower and of the Mortgaged Property, its right to collect attorneys’ fees and related expenses, its right to specifically enforce the Borrower’s covenant to comply with applicable federal tax law and State law (including the Act and the rules and regulations of the Issuer, if any), and its right to give or withhold consent to amendments, changes, modifications and alterations to the Financing Agreement relating to the Reserved Rights.

**“Revenue Fund”** means the Revenue Fund created by Section 5.1.

**“Revenues”** means all (i) payments made under the Credit Facility, (ii) Investment Income (excluding Investment Income earned from moneys on deposit in the Rebate Fund, the Fees Account and the Costs of Issuance Fund, but including Investment Income earned on Bond Proceeds deposited into the Costs of Issuance Fund and Investment Income on such Investment Income) and (iii) payments made under the Note (including without limitation prepayments, insurance proceeds and condemnation proceeds).

**“S&P”** means S&P Global Ratings, a division of Standard & Poor's Financial Services LLC, and its successors and assigns, if such successors and assigns shall continue to perform the functions of a securities rating agency.

**“Securities Depository”** means, initially, DTC and any replacement securities depository appointed under this Indenture.

**“Security”** means the Trust Estate and the Credit Facility.

**“Security Instrument”** means the Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of \_\_\_\_\_, 2025, together with all riders and exhibits, securing the Note and the obligations of the Borrower to the Credit Provider under the Credit Facility Documents, executed by the Borrower with respect to the Mortgaged Property, as it may be amended, supplemented or restated from time to time, or any security instrument executed in substitution therefor, as such substitute security instrument may be amended, supplemented or restated from time to time.

**“State”** means the State of California.

**“Tax Certificate”** means the Tax Certificate and Agreement, dated the Closing Date, executed and delivered by the Issuer and the Borrower, as amended, supplemented



or restated from time to time.

“**Tax Event**” has the meaning given to that term in Section 10.1(c).

“**Third Party Fees**” has the meaning given to that term in Section 5.7(a).

“**Transaction Documents**” means the Bond Documents, the Loan Documents and the Credit Facility Documents.

“**Title Company**” means Old Republic Title Company and its successors in trust hereunder.

“**Trust Estate**” means the property, interests, rights, money, securities and other amounts pledged and assigned pursuant to this Indenture and the property, rights, money, securities and other amounts pledged and assigned by the Issuer to the Trustee and the Credit Provider pursuant to the Assignment.

“**Trustee**” means Computershare Trust Company, National Association, duly organized and existing under the laws of the United States of America, or its successors or assigns, or any other corporation or association resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at any time serving as successor trustee under this Indenture.

“**Trustee’s Annual Fee**” means the annual continuing trust administration fee of the Trustee as provided in the Financing Agreement, payable semiannually in advance on each Interest Payment Date.

“**UCC**” means the Uniform Commercial Code of the State as in effect now or in the future, whether or not such Uniform Commercial Code is applicable to the parties or the transactions.

“**Underwriter**” means Stifel, Nicolaus & Company, Incorporated.

“**Wrongful Dishonor**” means an uncured failure by the Credit Provider to make an Advance to the Trustee upon proper presentation of documents that conform to the terms and conditions of the Credit Facility.

**SECTION 1.2      Rules of Construction.** The rules of construction set forth in this Section 1.2 apply to this Indenture.

(a) The singular form of any word includes the plural, and vice versa, unless the context otherwise requires. The use of a pronoun of any gender includes correlative words of the other genders.

(b) All references to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or other subdivisions of this Indenture; and the words “in this Indenture,” “of this Indenture,” “under this Indenture” and other words of similar

import refer to this Indenture as a whole and not to any particular Article, Section or subdivision.

(c) Any captions, headings or titles of the several Articles, Sections and other subdivisions, and the table of contents are solely for convenience of reference and do not limit or otherwise affect the meaning, construction or effect of this Indenture or describe the scope or intent of any provision.

(d) All accounting terms not otherwise defined have the meanings assigned to them in accordance with applicable generally accepted accounting principles as in effect from time to time.

(e) Every “request,” “order,” “demand,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent,” “direction” or similar action under this Indenture by any party must be in writing and signed by a duly authorized representative of such party with a duly authorized signature.

(f) All references in this Indenture to “counsel fees,” “attorneys fees” or the like mean and include fees and disbursements allocable to in-house or outside counsel, whether or not suit is instituted, and including fees and disbursements preparatory to and during trial and appeal and in any bankruptcy or arbitration proceedings.

(g) Whenever the word “includes” or “including” is used, such word means “includes or including by way of example and not limitation.”

## **ARTICLE II THE BONDS**

**SECTION 2.1**      **Authorized Amount of Bonds.** No Bonds may be issued under this Indenture except as provided in this Article. The total principal amount of Bonds that may be issued and outstanding under this Indenture is expressly limited to the Principal Amount.

**SECTION 2.2**      **Issuance of Bonds.**

(a)      **Issuance of Bonds.** The Bonds are authorized to be issued pursuant to and in accordance with this Indenture, substantially in the form set forth in Exhibit A, with such appropriate variations, legends, omissions and insertions as permitted by this Indenture. The Bonds shall (i) be designated “City of San José Multifamily Housing Revenue Refunding Bonds (La Moraga Apartments) Series 2025C”, (ii) be issued in the Principal Amount, (iii) be dated the Closing Date, (iv) bear interest at the rate or rates determined as provided in Section 2.2(b), payable on each Interest Payment Date and (v) mature on the Maturity Date, subject to prior redemption as provided in Article III. The Bonds shall be issued as registered bonds without coupons in Authorized Denominations. The Bonds shall be numbered consecutively from R-1 upwards, bearing numbers not then contemporaneously outstanding (in order of issuance) according to the Bond Register.

(b) **Interest Rates.** The Bonds shall bear interest at the rates per annum and shall mature (subject to redemption prior to maturity) on the dates and in the principal amounts set forth below:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Fixed Rate</u>
[October 1, 2035]	\$44,856,000	[Rate]%

Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

(c) **Accrual of Interest.** The Bonds shall bear interest from the Interest Payment Date next preceding the date of authentication of the Bonds. If the date of authentication is an Interest Payment Date for which interest has been paid or is after the Record Date, but prior to the next Interest Payment Date, the Bonds shall bear interest from such Interest Payment Date. If the date of authentication is prior to the Record Date for the first Interest Payment Date, the Bonds shall bear interest from the Dated Date of the Bonds. Notwithstanding the foregoing, if at the time of authentication of any Bond, interest on the Bond is in default, the Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment, or if no interest has been paid on the Bond, from the Dated Date of the Bond.

**SECTION 2.3** **Payment of Principal and Interest.** The principal of and the interest and any premium on the Bonds are payable in lawful money of the United States of America to the Registered Owners at the close of business on the applicable Record Date. Payment of interest on the Bonds shall be made on each Interest Payment Date by check drawn upon the Trustee and mailed by first class mail, postage prepaid, to the addresses of the Registered Owners as they appear on the Bond Register or to such other address as may be furnished in writing by any Registered Owner to the Trustee prior to the applicable Record Date. Payment of the principal of any Bond and premium, if any, together with interest (other than interest payable on a regularly scheduled Interest Payment Date) shall be made by check only upon presentation and surrender of the Bond on or after its Maturity Date or date fixed for purchase, redemption or other payment at the office of the Trustee designated for that purpose. Notwithstanding the foregoing, payment of principal of and interest and any premium on any Bond shall be made by wire transfer to any account within the United States of America designated by a Registered Owner owning \$1,000,000 or more in aggregate principal amount of Bonds if a written request for wire transfer in form and substance satisfactory to the Trustee is delivered to the Trustee by any such Registered Owner not less than five Business Days prior to the Record Date for the applicable payment date. A request for wire transfer that specifies that it is effective with respect to all succeeding payments of principal, interest and any premium will be so effective unless and until rescinded in writing by the Registered Owner at least five Business Days prior to a Record Date. If interest on the Bonds is in default, the Trustee, prior to the payment of interest, shall establish a special record date (“**Special Record**

**Date”)** for such payment. A Special Record Date may not be more than 15 nor less than ten days prior to the date of the proposed payment. Payment of defaulted interest shall then be made by check or wire transfer, as permitted above, mailed or remitted to the Registered Owners in whose names the Bonds are registered on the Special Record Date.

**SECTION 2.4      Limited Obligations.** None of the Issuer, any Issuer member or any person executing the Bonds is liable personally on the Bonds or subject to any personal liability or accountability by reason of their issuance. The Bonds are limited obligations of the Issuer, payable solely from the Trust Estate. Neither the Issuer, its members, the State of California, nor any of its political subdivisions shall be directly, indirectly, contingently or morally obligated to use any other moneys or assets to pay all or any portion of the debt service due on the Bonds, to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. The Bonds are not a pledge of the faith and credit of the Issuer, its members, the State of California or any of its political subdivisions nor do they constitute indebtedness within the meaning of any constitutional or statutory debt limitation. The Issuer has no taxing power.

The Issuer shall not be liable for payment of the principal of, premium or interest on the Bonds or any other costs, expenses, losses, damages, claims or actions of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Indenture, the Bonds or any other documents, except only to the extent amounts are received for the payment thereof from the Borrower under the Financing Agreement.

**SECTION 2.5      Reserved.**

**SECTION 2.6      Reserved.**

**SECTION 2.7      Reserved.**

**SECTION 2.8      Reserved.**

**SECTION 2.9      Reserved.**

**SECTION 2.10     Reserved.**

**SECTION 2.11   Temporary Bonds.** If definitive Bonds are not ready for delivery on the Closing Date, the Issuer shall execute, and at the request of the Issuer, the Trustee shall authenticate and deliver, one or more temporary typewritten, printed or lithographed Bonds, in any Authorized Denomination, in fully registered form, and in substantially the form provided for definitive Bonds with appropriate omissions, insertions and variations. The Issuer shall cause definitive Bonds to be prepared and to be executed and delivered to the Trustee. Upon presentation to it of any temporary Bond, the Trustee shall cancel the same and authenticate and deliver in exchange therefor, without charge to the owner of such Bond, a definitive Bond or Bonds of an equal aggregate principal amount of Authorized Denominations, of the same maturity and series, and bearing interest at the same rate as the temporary Bond surrendered. Until so exchanged, the temporary Bonds

will in all respects be entitled to the same benefit and security of this Indenture as the definitive Bonds.

**SECTION 2.12 Execution.** The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of an Authorized Officer. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Bonds. In case any officer of the Issuer whose manual or facsimile signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until delivery, and also any Bond may bear the facsimile signatures of, or may be signed by, such Persons as at the actual time of the execution of such Bond shall be the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

**SECTION 2.13 Authentication.** Only such Bonds as have endorsed on them a certificate of authentication substantially in the form set forth in Exhibit A to this Indenture duly executed by the Trustee shall be entitled to any right or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication has been manually executed by the Trustee. Such executed certificate upon any Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized representative of the Trustee, but it shall not be necessary that the same person sign the certificates of authentication on all of the Bonds.

**SECTION 2.14 Mutilated, Lost, Stolen or Destroyed Bonds.** If any Bond is mutilated, lost, stolen or destroyed, the Issuer shall execute and the Trustee shall authenticate and deliver a new Bond of the same maturity, interest rate, principal amount, series and tenor in lieu of and in substitution for the mutilated, lost, stolen or destroyed Bond, provided, however, that in the case of any mutilated Bond, the mutilated Bond must first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there must be first furnished to the Trustee evidence satisfactory to it of the ownership of the Bond, and of the loss, theft or destruction, together with indemnity satisfactory to the Trustee and compliance with such other reasonable requirements as the Trustee may prescribe. If any such Bond will mature within the ensuing 60-days, or if such Bond has been called for redemption or a Redemption Date pertaining to such Bond has passed, instead of replacing the Bond, the Trustee may, upon receipt of such evidence of loss and indemnity, pay the Bond on such Maturity Date or Redemption Date. The Trustee shall cancel any mutilated Bond surrendered to it. In connection with any such substitution or payment, the Issuer and the Trustee may charge the holder of such Bond their reasonable fees and expenses, including attorneys' fees and expenses.

If, after the delivery of such replacement Bond, the original Bond in lieu of which such replacement Bond was issued is presented for payment or registration, the Trustee shall seek to recover such replacement Bond from the person to whom it was delivered or any

person taking therefrom and shall be entitled to recover from the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Trustee, the Borrower or the Issuer in connection therewith.

## **SECTION 2.15 Securities Depository Provisions.**

(a) **Registration in the Book-Entry System.** Initially, all Bonds shall be Book-Entry Bonds. All Bonds shall be registered initially in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”). The Issuer and the Trustee acknowledge that they have executed and delivered a Letter of Representations with DTC. All payments of principal of, redemption premium, if any, and interest on the Book-Entry Bonds and all notices with respect thereto, including notices of full or partial redemption, shall be made and given at the times and in the manner set out in the Letter of Representations. This Indenture shall govern in the event of any inconsistency between this Indenture and the Letter of Representations. The Letter of Representations may be amended without Bondholder consent.

(b) **Exculpation.** With respect to Book-Entry Bonds, neither the Issuer, the Trustee, the Credit Provider, the Loan Servicer nor the Borrower will have any responsibility or obligation to any broker-dealer, bank or other financial institution for which DTC holds Bonds from time to time as securities depository (“DTC Participant”) or to any person on behalf of whom such a DTC Participant directly or indirectly holds an interest in the Bonds (“Indirect Participant”). Without limiting the immediately preceding sentence, the Issuer, the Trustee, the Credit Provider, the Loan Servicer and the Borrower will have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any Indirect Participant or any other person, other than DTC, as Bondholder, of any notice with respect to the Bonds, including any notice of redemption, (iii) the payment to any DTC Participant or Indirect Participant or any other Person, other than DTC, as Bondholder, of any amount with respect to principal of, premium, if any, or interest on, the Bonds, (iv) any consent given by DTC or (v) selection of Bonds for redemption. The Issuer, the Borrower, the Credit Provider, the Loan Servicer and the Trustee shall treat DTC or any successor securities depository as, and deem DTC or any successor securities depository to be, the absolute owner of the Bonds for all purposes whatsoever and none of the Issuer, the Borrower, or the Trustee shall have any responsibility or obligation to any Beneficial Owner of any Book-Entry Bond. While in the DTC system, no Person other than DTC will receive a Bond certificate with respect to any Bond.

(c) **Successor Securities Depository; Transfers Outside Book-Entry System.** DTC may discontinue providing its services with respect to the Bonds at any time by giving written notice to the Issuer, the Trustee and the Borrower and by discharging its responsibilities with respect to the Bonds under applicable law. The Issuer or the Borrower, with the consent of the other, may terminate the services of DTC. If the Borrower is in default under any Bond Document or any Loan Document, the Issuer will not be required to obtain the consent of the Borrower to terminate the services of DTC. Upon the discontinuance or termination of the services of DTC, unless a substitute securities

depository is appointed to undertake the functions of DTC under this Indenture, the Issuer, at the expense of the Borrower, shall provide Bond certificates to the Trustee for delivery to the Beneficial Owners of the Bonds, and the Bonds may be registered in whatever name or names the Registered Owners transferring or exchanging Bonds designate to the Trustee in writing. The Trustee may appoint a successor depository operating a securities depository system, qualified to act as such under Section 17A of the Securities Exchange Act of 1934, as amended, as may be acceptable to the Issuer. In connection with any proposed transfer outside the book-entry only system, the Borrower or DTC shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

**SECTION 2.16 Bond Registrar; Exchange and Transfer of Bonds; Persons Treated as the Bondholders.**

(a) **Bond Registrar; Bond Register.** The Trustee shall act as the initial Bond Registrar and in such capacity shall keep the Bond Register for the registration of the Bonds and for the registration of transfer of the Bonds.

(b) **Transfers and Exchanges.** Any Bondholder or its attorney duly authorized in writing may transfer title to or exchange a Bond upon surrender of the Bond at the Designated Office of the Trustee together with a written instrument of transfer (in substantially the form of assignment, including signature guarantee, attached to the Bond) satisfactory to the Trustee executed by the Bondholder or its attorney duly authorized in writing. Upon surrender for registration of transfer of any Bond, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the Bondholder or its transferee or transferees a new Bond or Bonds of the same aggregate principal amount, rate of interest, maturity, series and tenor as the Bond surrendered and of any Authorized Denomination. The transferor shall also provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

(c) **Exceptions to Transfers and Exchanges.** The Trustee will not be required to register any transfer or exchange of any Bond (or portion of any Bond) during the 15-day period immediately before the selection of Bonds for redemption, and from and after notice calling such Bonds (or portion of such Bonds) for redemption or partial redemption has been given and prior to such redemption.

(d) **Charges.** Registrations of transfers or exchanges of Bonds shall be without charge to the Bondholders, but any taxes or other governmental charges required to be paid with respect to a transfer or exchange shall be paid by the Bondholder requesting the registration of transfer or exchange as a condition precedent to the exercise of such

privilege. Any service charge made by the Trustee for any such registration, transfer or exchange shall be paid by the Borrower.

(e) **Recognized Owners.** The person in whose name any Bond is registered on the Bond Register will be deemed the absolute owner of such Bond for all purposes, and payment of any principal, interest and premium will be made only to or upon the order of such person or its attorney duly authorized in writing, but such registration may be changed as provided above. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

(f) **Bonds Protected.** All Bonds issued upon any registration of transfer or exchange of Bonds will be legal, valid and binding limited obligations of the Issuer, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Bonds surrendered upon such transfer or exchange.

(g) **Issuer's Reliance.** In executing any Bond upon any exchange or registration of transfer provided for in this Section, the Issuer may rely conclusively on a representation of the Trustee that such execution is required.

**SECTION 2.17 Cancellation.** All Bonds that have been surrendered pursuant to Section 2.3 or Article III for payment upon maturity or redemption prior to maturity will be canceled by the Trustee and will not be reissued. Unless otherwise directed by the Issuer, the Trustee shall treat such Bonds in accordance with its document retention policies or as may be directed by the law of the State.

**SECTION 2.18 Conditions for Delivery of Bonds.** Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver to the Trustee, and the Trustee shall authenticate, the Bonds and deliver them to or for the account of the Underwriter or to such persons as the Underwriter specifies, in each case in the records of DTC, provided, however, that prior to delivery of the Bonds to the Underwriter each of the following must be delivered to the Trustee:

(a) a certified copy of the Bond Resolution authorizing the execution and delivery on behalf of the Issuer of the Bond Documents to which it is a party and related matters;

(b) executed original counterparts of the Bond Documents, the Loan Documents, and all other agreements, documents and instruments to be executed and delivered on the Closing Date by the parties to those agreements, documents and instruments, and the original executed Credit Facility;

(c) an opinion of Bond Counsel to the effect that the Bonds have been duly and validly authorized, issued and delivered and constitute legal, valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their terms, that the interest payable on the Bonds is excludable from gross income for federal income tax purposes (except with respect to the interest on any Bond for any period during which such Bond is



held by a “substantial user” of the Project or by a “related person” to such a “substantial user,” each within the meaning of Section 147(a) of the Code) and that the Issuer has the power to enter into the Bond Documents to which it is a party and each of the Bond Documents to which the Issuer is a party has been duly and validly authorized, executed and delivered by the Issuer and each constitutes the legal, valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms, subject to customary qualifications on enforceability;

(d) a written request and authorization by the Issuer (acting through an Authorized Officer) to the Trustee to authenticate and deliver the Bonds to or for the account of the Underwriter upon receipt from the Underwriter of the Bond Proceeds;

(e) receipt from the Underwriter of the Bond Proceeds;

(f) receipt from the Borrower of the Costs of Issuance Deposit;

(g) evidence, acceptable to the Credit Provider and the Loan Servicer, of proper recordation of the Security Instrument, the Regulatory Agreement and the Assignment or a title insurance binder acceptable to the Credit Provider and the Loan Servicer insuring the “gap” in a manner acceptable to the Credit Provider and the Loan Servicer;

(h) written evidence that the Bonds have been assigned a rating in the Highest Rating Category by the Rating Agency rating the Bonds; and

(i) the Letter of Representations if required by DTC.

### **ARTICLE III REDEMPTION OF BONDS**

**SECTION 3.1      Redemption.** The Bonds are subject to redemption prior to maturity only as set forth in this Article III. All redemptions must be in Authorized Denominations.

**SECTION 3.2      Optional Redemption.** On and after [April 1, 2035], the Bonds are subject to optional redemption in whole or in part on any Business Day from optional prepayment of the Loan by the Borrower, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus accrued interest, if any, to the Redemption Date.

**SECTION 3.3      Mandatory Redemption.** The Bonds are subject to mandatory redemption as provided in this Section 3.3 on the earliest practicable Redemption Date for which timely notice of redemption can be given pursuant to Section 3.4 following the occurrence of the event requiring such redemption. The principal of and accrued interest on any Bond being redeemed under this Section shall be paid from an Advance under the Credit Facility. Bonds will be redeemed at a redemption price equal to 100 percent of the principal amount of such Bonds plus accrued interest to the Redemption Date. Bonds subject to mandatory redemption in part shall be redeemed in Authorized Denominations or shall be redeemed in such amounts so that the Bonds Outstanding following the redemption are in Authorized Denominations. If the Trustee receives an amount for the mandatory redemption of Bonds which is not equal to a whole integral multiple of the Authorized Denomination, the Trustee shall redeem Bonds in an amount equal to the next lower whole integral multiple of the Authorized Denomination to the amount received by the Trustee and hold any excess amount in the Redemption Account.

(a)      **Casualty or Condemnation.** The Bonds shall be redeemed in whole or in part in the event and to the extent that proceeds of insurance from any casualty to, or proceeds of any award from any condemnation of, or any award as part of a settlement in lieu of condemnation of, the Mortgaged Property (“**Proceeds**”) are applied in accordance with the Security Instrument to the prepayment of the Loan.

(b)      **After an Event of Default under the Reimbursement Agreement.** The Bonds shall be redeemed in whole or in part in an amount specified by and at the direction of the Credit Provider requiring that the Bonds be redeemed pursuant to this

subsection following any Event of Default under the Reimbursement Agreement. The Redemption Date shall be the earliest practicable date, but in no event shall such redemption occur later than two Business Days prior to the date, if any, that the Credit Facility terminates on account of the Credit Provider's giving of written direction to the Trustee pursuant to this subsection to redeem all of the Bonds.

**SECTION 3.4      Notice of Redemption to Registered Owners.**

(a)      **Notice Requirement.** For any redemption of Bonds pursuant to:

(1)      Section 3.2 or 3.3(a), the Trustee shall give notice of redemption by first class mail, postage prepaid, not less than 20 days prior to the specified Redemption Date, to the Registered Owner of each Bond to be redeemed at the address of such Registered Owner as shown on the Bond Register. With respect to Book-Entry Bonds, if the Trustee sends notice of redemption to the Securities Depository pursuant to the Letter of Representations, the Trustee shall not be required to give the notice set forth in the immediately preceding sentence. The Dissemination Agent shall cause a copy of the notice of redemption to be posted on the Electronic Municipal Market Access website of the Municipal Securities Rulemaking Board.

(2)      Section 3.3(b), the Trustee shall give notice of redemption as soon as practicable taking into consideration business process requirements of the Trustee.

(3)      Reserved.

(4)      Section 3.2, the notice of redemption shall state that it is conditioned upon receipt by the Trustee of sufficient moneys to redeem the Bonds ("**Conditional Redemption**"), and such notice and optional redemption shall be of no effect if either (i) by no later than the scheduled Redemption Date, sufficient moneys to redeem the Bonds have not been deposited with the Trustee, or if such moneys are deposited, are not available on the Redemption Date or (ii) the Trustee at the direction of the Credit Provider rescinds such notice on or prior to the scheduled Redemption Date.

The Trustee shall cause a second notice of redemption to be sent by first class mail, postage prepaid, on or within ten days after the 30th day after the Redemption Date to any Bondholder who has not submitted its Bond to the Trustee for payment. The Trustee shall provide copies of all notices given under this Section and of all revocations of notices to the Credit Provider and the Loan Servicer at the same time it gives notices to Bondholders.

(b)      **Content of Notice.** Each notice of redemption must state: (i) the date of the redemption notice; (ii) the Closing Date and the complete official name of the Bonds,

including the series designation; (iii) for each Bond to be redeemed, the interest rate, Maturity Date and in the case of a partial redemption of Bonds, the principal amount of each Bond to be redeemed; (iv) the CUSIP numbers of all Bonds being redeemed; (v) the place or places where the Bonds to be redeemed must be surrendered for payment and where amounts due upon such redemption will be payable upon surrender of the Bonds to be redeemed; (vi) the Redemption Date and redemption price of each Bond to be redeemed; (vii) the name, address, telephone number and contact person at the office of the Trustee with respect to such redemption; (viii) that interest on all Bonds to be redeemed will not accrue from and after the Redemption Date; (ix) if a redemption is a Conditional Redemption, that redemption is conditional upon receipt by the Trustee of sufficient moneys to redeem the Bonds and (x) that the Credit Provider may direct the Trustee to cancel such redemption upon the occurrence of any Event of Default under the Reimbursement Agreement.

(c) **Validity of Proceedings for the Redemption of Bonds.** If notice is given as stated in subsection (a), failure of any Bondholder to receive such notice, or any defect in the notice, shall not affect the redemption or the validity of the proceedings for the redemption of the Bonds.

(d) **Rescission of Conditional Redemption; Cancellation of Optional Redemption.** The Trustee shall rescind any Conditional Redemption if the requirement of Section 3.4(b)(ix) has not been met on or before the Redemption Date, or if the Trustee has received a direction to cancel the Conditional Redemption from the Credit Provider. The Trustee shall give notice of rescission by the same means as is provided in this Section for the giving of notice of redemption or by Electronic Means confirmed in writing. The optional redemption shall be canceled once the Trustee has given notice of rescission. Any Bonds subject to Conditional Redemption where redemption has been rescinded shall remain Outstanding, and neither the rescission nor the failure of funds being made available in part or in whole on or before the Redemption Date shall constitute an Event of Default. Notwithstanding notice having been given in the manner provided above, any optional redemption of Bonds shall be canceled with the consent of or at the direction of the Credit Provider if the Credit Provider has notified the Trustee in writing that an Event of Default under the Reimbursement Agreement has occurred.

**SECTION 3.5 Redemption Payments.** If notice of redemption has been given and the conditions for such redemption, if applicable, have been met, the Bonds called for redemption shall become due and payable on the Redemption Date, interest on those Bonds will cease to accrue from and after the Redemption Date and the called Bonds will no longer be Outstanding. The holders of the Bonds so called for redemption shall thereafter no longer have any security or benefit under this Indenture except to receive payment of the redemption price for such Bonds upon surrender of such Bonds to the Trustee. All moneys held by or on behalf of the Trustee for the redemption of particular Bonds will be held in trust for the account of the holders of the Bonds to be redeemed. If less than the entire principal amount of a Bond is called for redemption, the Issuer shall execute, and the Trustee shall authenticate and deliver, upon the surrender of such Bond to the Trustee,

without charge by the Issuer or the Trustee to the Bondholder, in exchange for the unredeemed principal amount of such Bond, a new Bond or Bonds of the same interest rate, maturity and term, in any Authorized Denomination, in aggregate principal amount equal to the unredeemed balance of the principal amount of the Bond so surrendered.

**SECTION 3.6**            **Selection of Bonds to be Redeemed Upon Partial Redemption.** If less than all of the Outstanding Bonds are called for redemption, the Trustee shall select by lot, in such manner as it determines in its discretion, the Bonds, or portions of the Bonds in Authorized Denominations, to be redeemed. The portion of any Bond to be redeemed shall be an Authorized Denomination and in selecting Bonds for redemption, each Bond shall be considered as representing that number of Bonds which is obtained by dividing the principal amount of such Bond by the minimum Authorized Denomination. For the purposes of this Section, Bonds which have previously been selected for redemption will not be deemed Outstanding. If for any reason the principal amount of Bonds called for redemption would result in a redemption of Bonds less than the Authorized Denomination, the Trustee, to the extent possible within the principal amount of Bonds to be redeemed, is authorized to adjust the selection of Bonds for such purpose in order to minimize any such redemption. If a portion of a Bond is called for redemption, then, upon surrender of such Bond, the Issuer shall execute and the Trustee shall authenticate and deliver a new Bond in principal amount equal to the unredeemed portion thereof and with the same maturity, interest rate, series and tenor in any Authorized Denomination, without charge to the holder of such Bond. Notwithstanding the foregoing, the Securities Depository for Book-Entry Bonds shall select the Bonds for redemption within particular maturities according to its stated procedures.

**SECTION 3.7**            **Reserved.**

## **ARTICLE IV RESERVED**

## **ARTICLE V FUNDS AND ACCOUNTS**

**SECTION 5.1**            **Creation of Funds and Accounts.** The pledge and assignment of and the security interest granted in the Trust Estate pursuant to the Granting Clauses hereof shall attach, be perfected and be valid and binding from and after the time of the delivery of the Bonds by the Trustee or by any Person authorized by the Trustee to deliver the Bonds. The Trust Estate so pledged and then or thereafter received by the Trustee shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Issuer irrespective of whether such parties have notice thereof. The following Funds and Accounts are hereby created with the Trustee:

- (a)      the Loan Fund;

(b) the Revenue Fund and within the Revenue Fund, the Interest Account, the Principal Account, the Credit Facility Account, the Redemption Account, and the Fees Account;

(c) the Costs of Issuance Fund; and

(d) the Rebate Fund.

The funds and accounts established pursuant to this Section 5.1 shall be maintained in the corporate trust department of the Trustee as segregated trust accounts, separate and identifiable from all other funds held by the Trustee. The Trustee shall, at the written direction of an Authorized Officer of the Issuer, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Issuer or the Trustee may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Indenture with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

**SECTION 5.2**      **Initial Deposits.** On the Closing Date, the Trustee shall make the following deposits:

(a) \$\_\_\_\_\_ into the Loan Fund, representing the Bond Proceeds,

(b) \$\_\_\_\_\_ received from the Borrower, representing the Costs of Issuance Deposit into the Costs of Issuance Fund to be applied to pay Costs of Issuance, and

(c) \$0 received from the Borrower, representing the Interest Deposit into the Interest Account of the Revenue Fund.

**SECTION 5.3**      **Loan Fund.** Amounts on deposit in the Loan Fund shall be disbursed by the Trustee to fund the Loan upon satisfaction of the conditions to delivery of the Bonds as provided in Section 2.18. The full amount on deposit in the Loan Fund shall be transferred on the Closing Date to the Title Company for disbursement to the servicer for the Prior Note pursuant to certain Underwriter instructions. Upon completion of such transfer, the Loan Fund shall be closed.

**SECTION 5.4**      **Revenue Fund - Interest Account and Principal Account.**

(a) **Interest Account.** Deposits into, and disbursements from, the Interest Account shall occur as follows:

(1) **Deposits into the Interest Account.** The Trustee shall deposit each of the following amounts into the Interest Account:

(A) moneys provided by or on behalf of the Borrower relating to an interest payment under the Note;

(B) moneys provided by or on behalf of the Borrower relating to interest paid in connection with the prepayment of the Loan;

(C) all Investment Income on the Funds and Accounts (except that Investment Income earned on amounts on deposit in the Loan Fund, Rebate Fund and the Costs of Issuance Fund shall be credited to and retained in those respective Funds or Accounts); and

(D) any other moneys made available for deposit into the Interest Account from any other source.

(2) **Disbursements from the Interest Account.** The Trustee shall disburse or transfer, as applicable, moneys on deposit in the Interest Account at the following times and apply such moneys in the following manner and in the following order of priority:

(A) On each Interest Payment Date, Redemption Date and any date of acceleration of the Bonds, the Trustee shall disburse (i) to the Credit Provider, the amount of the Interest Component of any Advance under the Credit Facility for the payment of interest on the Bonds or (ii) in the event of a Wrongful Dishonor until such Wrongful Dishonor is cured, to the Bondholders, an amount equal to the interest due on the Bonds on such date;

(B) If the Credit Provider or the Loan Servicer gives a written notice to the Trustee at any time to the effect that there is any unreimbursed Advance under the Credit Facility or any other amount required to be paid by the Borrower to the Credit Provider under the Loan Documents, the Bond Documents or the Credit Facility Documents remains unpaid, then the Trustee shall transfer any Investment Income earned on the Interest Account and any Investment Income transferred to the Interest Account from any other Fund or Account from and after the preceding Interest Payment Date or the Closing Date, as applicable, to the Credit Provider but not in an amount which exceeds the amount stated as unpaid by the Credit Provider or the Loan Servicer, as the case may be, in its notice to the Trustee; and

(C) Unless there is (i) a deficiency in the Principal Account, the Fees Account or the Rebate Fund or (ii) other than as described in paragraph (B) above, an Event of Default under the Reimbursement Agreement or any Bond Document or a default under any Loan Document has occurred and is continuing, on each Interest Payment Date the Trustee shall disburse to the Borrower the Investment Income earned on, or otherwise on deposit in, the Interest Account from and after the preceding Interest Payment Date or the Closing Date, as applicable. If a deficiency exists in the Principal Account,

the Fees Account or the Rebate Fund, such Investment Income shall be transferred to the Principal Account, the Fees Account and/or the Rebate Fund, in that order of priority, prior to any payment to the Borrower.

(b) **Principal Account.** Deposits into, and disbursements from, the Principal Account shall occur as follows:

(1) **Deposits into the Principal Account.** The Trustee shall deposit each of the following amounts into the Principal Account:

(A) moneys provided by or on behalf of the Borrower relating to a principal payment under the Note if such moneys have not otherwise been remitted to the Credit Provider; and

(B) any other moneys made available for deposit into the Principal Account from any other source.

(2) **Disbursements from the Principal Account.** On each Redemption Date and any date of acceleration of the Bonds, the Trustee shall disburse (i) to the Credit Provider, if not otherwise remitted to the Credit Provider, the amount of the Principal Component of any Advance under the Credit Facility for the payment of principal on the Bonds or (ii) in the event of a Wrongful Dishonor until such Wrongful Dishonor is cured, to the Redemption Account, an amount equal to the principal due on the Bonds on such date.

## **SECTION 5.5      Revenue Fund - Redemption Account.**

(a) **Deposits into the Redemption Account.** The Trustee shall deposit each of the following amounts into the Redemption Account:

(1) Reserved;

(2) Reserved;

(3) moneys provided by or on behalf of the Borrower relating to a principal payment, including any prepayment under the Note;

(4) moneys transferred from the Principal Account pursuant to Section 5.4; and

(5) any other amount received by the Trustee and required by the terms of this Indenture or the Financing Agreement to be deposited into the Redemption Account.

(b) **Disbursements from the Redemption Account.** On each Redemption Date, date of acceleration of the Bonds and Maturity Date, the Trustee shall disburse from the Redemption Account (i) to the Credit Provider, the amount of the Principal Component



of any Advance under the Credit Facility for the payment of principal on the Bonds or (ii) in the event of a Wrongful Dishonor, to the Bondholders, an amount equal to the principal due on or Principal Component of the redemption price of the Bonds on such date.

#### **SECTION 5.6            Revenue Fund - Credit Facility Account.**

(a)     **Deposits into the Credit Facility Account.** The Trustee shall deposit into the Credit Facility Account all Advances under the Credit Facility. No other moneys will be deposited into the Credit Facility Account and the Credit Facility Account shall be maintained as a segregated account and moneys therein shall not be co-mingled with any other moneys held under this Indenture. The Credit Facility Account shall be closed at such time as the Credit Provider has no continuing liability under the Credit Facility.

(b)     **Transfers from the Credit Facility Account.** The Trustee shall cause amounts deposited into the Credit Facility Account to be applied on the date payment is due to the payments for which the Advance was made pursuant to the Credit Facility. In no event shall amounts in the Credit Facility Account be applied to the payment of principal of and interest and any premium on Bonds known by the Trustee to be held by the Borrower or any Affiliate of the Borrower. Any amounts remaining in the Credit Facility Account after making the payment for which the Advance was made pursuant to the Credit Facility shall be immediately refunded to the Credit Provider.

#### **SECTION 5.7            Revenue Fund - Fees Account.**

(a)     **Deposits into the Fees Account.** The Trustee shall deposit into the Fees Account all:

(1)     Third Party Fees. Payments made by the Borrower under the Financing Agreement attributable to the Third Party Fees;

(2)     Fees and Expenses. Payments made by the Borrower under the Financing Agreement attributable to the Fees and Expenses; and

(3)     [Reserved].

(b)     **Disbursements from the Fees Account.** On any date on which any amounts are required to pay any Third Party Fees, such amounts shall be withdrawn by the Trustee from the Fees Account for payment to the appropriate party. In the event the amount in the Fees Account is insufficient to pay such Third Party Fees, the Trustee shall make written demand on the Borrower for the amount of such insufficiency and, pursuant to the terms of the Financing Agreement, the Borrower shall be liable to promptly pay the amount of such insufficiency to the Trustee after the date of the Trustee's written demand. The Trustee will provide notice of the insufficiency to the Loan Servicer.

(c)     **No Other Claims to Trust Estate.** The Rebate Analyst shall not have any right to any moneys in any Fund or Account or otherwise in the Trust Estate other than

those moneys deposited pursuant to subsection (a) into the Fees Account specifically for the Rebate Analyst. Except as otherwise stated in Sections 5.17 and 9.2, the Issuer shall not have any right to any moneys in any Fund or Account or otherwise in the Trust Estate other than those moneys deposited pursuant to subsection (a) into the Fees Account specifically for the Issuer. Except as otherwise stated in Sections 5.17, 9.2 and 10.10, the Trustee shall not have any right to any moneys in any Fund or Account or otherwise in the Trust Estate other than those moneys deposited pursuant to subsection (a) into the Fees Account specifically for the Trustee.

**SECTION 5.8            Costs of Issuance Fund.**

(a)     **Deposits into the Costs of Issuance Fund.** On or before the Closing Date the Borrower shall deliver the Costs of Issuance Deposit to the Trustee. On the Closing Date, the Trustee shall deposit or transfer, as applicable, the Costs of Issuance Deposit into the Costs of Issuance Fund.

(b)     **Disbursements from the Costs of Issuance Fund.** The Trustee shall disburse moneys on deposit in the Costs of Issuance Fund, pursuant to requisitions in the form of Exhibit B attached to this Indenture, signed by an Authorized Borrower Representative, to pay Costs of Issuance. The Trustee may conclusively rely on such requisitions for purposes of making such disbursements. Moneys on deposit in the Costs of Issuance Fund shall not be part of the Trust Estate and will be used solely to pay Costs of Issuance.

(c)     **Disposition of Remaining Amounts.** Any moneys remaining in the Costs of Issuance Fund six months after the Closing Date and not needed to pay still unpaid Costs of Issuance will be returned to the Borrower. Upon final disbursement, the Trustee shall close the Costs of Issuance Fund.

**SECTION 5.9            Rebate Fund.** The Trustee shall hold and apply the Rebate Fund as provided in the Tax Certificate. Within 30 days after the end of every fifth Bond Year (as defined in the Tax Certificate), and within 55 days after the date on which no Bonds are Outstanding, the Borrower or the Trustee shall cause the Rebate Analyst to deliver to the Trustee and the Issuer a certificate stating whether any rebate payment is required to be made, as set forth in the Tax Certificate, and the Borrower shall deliver to the Trustee any amount so required to be paid. Any funds remaining in the Rebate Fund after redemption and payment of the Bonds and payment and satisfaction of any requirements for the payment of rebate under the Tax Certificate, if any, shall be remitted to the Borrower.

**SECTION 5.10           Reserved.**

**SECTION 5.11           Reserved.**

**SECTION 5.12           Moneys to be Held in Trust.** Except for (i) moneys deposited with or paid to the Trustee for the redemption of Bonds notice of the redemption of which has been duly given, and (ii) moneys on deposit in the Costs of Issuance Fund, the Rebate

Fund and the Fees Account, all moneys required to be deposited with or paid to the Trustee for the account of any Fund or Account will be held by the Trustee in trust and, while held by the Trustee, shall constitute part of the Trust Estate and be subject to the security interest created by this Indenture.

**SECTION 5.13     Records.** The Trustee shall keep and maintain accurate records with respect to the Funds and Accounts. The Trustee shall file at least an annual accounting of the Funds and Accounts and the payment history on the Bonds and the Loan with the Issuer, the Loan Servicer and the Borrower and, upon request, with the Credit Provider. Any notices, reports or other information delivered by the Trustee to the Loan Servicer with respect to any Fund or Account also will be delivered, upon request, to the Credit Provider.

**SECTION 5.14     Reports by the Trustee.** The Trustee shall, on or before the 20th day of each month, file with the Loan Servicer and the Borrower a statement setting forth in respect of the preceding calendar month:

(a) the amount withdrawn or transferred and the amount deposited within or on account of each Fund and Account under this Indenture, including the amount of Investment Income on each Fund and Account transferred to the Interest Account;

(b) the amount on deposit at the end of such month to the credit of each Fund and Account;

(c) a brief description of all obligations held as an investment of moneys in each Fund and Account;

(d) the amount applied to the purchase or redemption of Bonds and a description of the Bonds or portions of Bonds so purchased or redeemed; and

(e) any other information which the Borrower, the Credit Provider, the Loan Servicer or the Issuer may reasonably request.

No monthly statement for a Fund or Account need be rendered if no activity occurred in that Fund or Account during such month. Upon the written request of any Bondholder owning 25 percent or more in aggregate principal amount of Bonds then Outstanding, the Trustee, at the Borrower's expense, shall provide a copy of such statement to the Bondholder. All records and files pertaining to the Trust Estate will be open at all reasonable times during regular business hours of the Trustee to the inspection and audit of the Issuer, the Loan Servicer, the Borrower and the Credit Provider and their agents and representatives upon reasonable prior written notice and compliance with reasonable requirements of the Trustee.

**SECTION 5.15     Moneys Held for Particular Bonds.** The amounts held by the Trustee for payment of the interest, premium, if any, principal or redemption price due on any date with respect to particular Bonds, pending such payment, will be set aside and held in trust

by the Trustee for the Bondholders entitled to such payment. For the purposes of this Indenture such interest, premium, principal or redemption price, after the due date of payment, will no longer be considered to be unpaid. All money held by the Trustee for such purpose at any time pursuant to the terms of this Indenture shall be and hereby are assigned, transferred and set over unto the Trustee in trust for the benefit of the Bondholders and Credit Provider for the purposes and under the terms and conditions of this Indenture.

**SECTION 5.16 Nonpresentment of Bonds.** In the event any Bond is not presented for payment when the principal of such Bond becomes due, either at maturity or at the date fixed for redemption of such Bond or otherwise, if amounts sufficient to pay such Bond have been deposited with the Trustee for the benefit of the owner of the Bond and have remained unclaimed for two years after such principal has become due and payable, such amounts, to the extent amounts are owed to the Credit Provider as set forth in a written statement of the Credit Provider addressed to the Trustee, will be paid to the Credit Provider, with any excess to be paid to the Borrower. Upon such payment, all liability of the Issuer and the Trustee to the holder of any Bond for the payment of such Bond will cease and be completely discharged. The obligation of the Trustee under this Section to pay any such amounts to the Credit Provider or the Borrower will be subject to any provisions of law applicable to the Trustee or to such amounts providing other requirements for disposition of unclaimed property.

**SECTION 5.17 Disposition of Remaining Moneys.** Provided that the rebate requirements referenced in the Tax Certificate are first satisfied, any amounts remaining in the Revenue Fund after payment in full of the principal of and interest and any premium on the Bonds will be applied to pay (i) first, to the Credit Provider any unpaid amounts certified by the Credit Provider to be due and owing to the Credit Provider, (ii) second, to the person or persons entitled to be paid, all other unpaid amounts required to be paid under this Indenture or the Financing Agreement, and (iii) third, to the Borrower the balance upon the expiration or sooner cancellation or termination of the term of the Financing Agreement as provided in the Financing Agreement.

## **ARTICLE VI INVESTMENTS**

### **SECTION 6.1 Permitted Investments; Investment Limitations.**

(a) **Permitted Investments Generally.** Moneys held by the Trustee as part of any Fund or Account shall constitute trust funds for the purposes hereof and shall be invested or reinvested in Permitted Investments. Permitted Investments shall have maturities corresponding to, or shall be available for withdrawal without penalty no later than, the dates upon which such moneys shall be needed for the purpose for which such moneys are held.

(b) **Certain Limitations on Permitted Investments.** Moneys on deposit

in the:

(1) Interest Account and Principal Account shall be invested only in investments described in paragraphs (a), (b), (c) and (h) of the definition of Permitted Investments;

(2) Redemption Account shall be invested only in investments described in paragraph (a) of the definition of Permitted Investments, with a term not exceeding the earlier of 30 days from the date of investment of such moneys or the date or dates that such moneys are anticipated to be required for redemption;

(3) Credit Facility Account shall be held uninvested; and

(4) Costs of Issuance Fund, until disbursed or returned to the Borrower pursuant to Section 5.8, shall be invested only in investments described in paragraph (h) of the definition of Permitted Investments.

(c) **Selection of Permitted Investments.** Subject to subsections (a) and (b), the Borrower may select all Permitted Investments by written direction to the Trustee; but if the Borrower fails to provide direction to the Trustee, the Trustee shall invest such moneys in investments described in paragraph (h) of the definition of Permitted Investments or, in the case of the Redemption Account, in investments described in paragraph (a) of the definition of Permitted Investments, or, in the case of the Credit Facility Account, shall hold the moneys uninvested.

**SECTION 6.2 Investment Income.** Permitted Investments representing an investment of money attributable to any Fund or Account shall be deemed at all times to be a part of said Fund or Account. Investment Income from moneys held in the Loan Fund, the Rebate Fund and the Costs of Issuance Fund shall remain in the respective Fund where earned. All other Investment Income from moneys held in all other Funds and Accounts, upon receipt, shall be deposited into the Interest Account.

**SECTION 6.3 Trustee's Authority and Responsibilities.** All Permitted Investments shall be made by the Trustee in its name, as Trustee, and shall be held by or under the control of the Trustee. The Trustee shall take such actions as shall be necessary to assure that Permitted Investments purchased by it under this Indenture are held pursuant to the terms of this Indenture and are subject to the trusts and security interests created in this Indenture. The Trustee is authorized and directed to sell and reduce to cash a sufficient amount of Permitted Investments as it deems necessary whenever the cash balance is or will be insufficient to make a requested or required payment or disbursement. The Trustee shall not be accountable for any depreciation in the value of any Permitted Investment or for any loss resulting from any investment or sale of investment made pursuant to this Indenture. The Trustee is hereby authorized in making or disposing of any investment permitted by this Indenture to deal with itself (in its individual capacity) and its Affiliates in the purchase and sale of securities for investments and may transact purchases and sales through its investment department or through its Affiliates. The Trustee and its Affiliates

may act as principal, agent, sponsor, advisor or depository with respect to any investments. In computing the amount in any Fund or Account, Permitted Investments if purchased at par shall be valued at principal cost plus accrued interest, or, if purchased at other than par, at principal cost plus amortized discount or less amortized premium (amortization to be on a straight-line basis to the date of stated maturity without regard to redemptions or repayments of principal which may occur prior to maturity) plus accrued interest. The Issuer (and the Borrower by its execution of the Financing Agreement) acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Issuer or the Borrower the right to receive brokerage confirmations of security transactions as they occur, the Issuer and the Borrower specifically waive receipt of such confirmations to the extent permitted by law. The Issuer and the Borrower may receive brokerage confirmations at no additional cost upon their written request. The parties acknowledge that the Trustee is not providing investment supervision, recommendations, or advice.

## **ARTICLE VII**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE ISSUER**

**SECTION 7.1**      **Issuer's Representations and Warranties.** The Issuer represents and warrants that:

(a)      The Issuer is duly authorized under the Constitution and laws of the State, including the Act, to (i) issue the Bonds, (ii) execute and deliver this Indenture, the Financing Agreement, the Assignment and the Regulatory Agreement and to endorse the Note, (iii) assign its interest in the Financing Agreement (except the Reserved Rights) and (iv) pledge and assign the Trust Estate as set forth in this Indenture for the benefit of (A) the Bondholders, to secure the payment of the principal of and interest and any premium on the Bonds in accordance with the terms and provisions of this Indenture and the Bonds and (B) the Credit Provider to secure the payment of all amounts owing to the Credit Provider under the Credit Facility Documents.

(b)      All actions on the part of the Issuer for the issuance, sale and delivery of the Bonds and for the execution and delivery of this Indenture, the Financing Agreement, the Assignment and the Regulatory Agreement and the endorsement of the Note have been or will be taken duly and effectively.

(c)      The Bonds, together with all other indebtedness of the Issuer, are within all applicable debt limits.

(d)      The Bonds will be valid and enforceable special obligations of the Issuer according to their terms, subject to bankruptcy and equitable principles.

**SECTION 7.2**      **Issuer's Covenants.** In addition to all other covenants and agreements of the Issuer contained in this Indenture or the Financing Agreement, the Issuer further covenants and agrees with the Bondholders and the Trustee as follows:

(a) Except as provided in Article XII, the Issuer shall not alter, modify or cancel, or agree to alter, modify or cancel, any agreement which relates to or affects the Security.

(b) Except as otherwise provided in this Indenture, the Financing Agreement, the Assignment or the Credit Facility Documents, the Issuer shall not sell, convey, mortgage, encumber or otherwise dispose of any portion of the Security or create or authorize to be created any debt, lien or charge thereon.

(c) At the expense of the Borrower, the Issuer shall cooperate with the Borrower in the Borrower's performing the Borrower's obligation to cause this Indenture, or any related instruments or documents relating to the assignment made by the Issuer under this Indenture to secure the Bonds, to be recorded and filed in the manner and in the places that may be required by law in order to preserve and protect fully the security of the holders of the Bonds and the rights of the Trustee hereunder.

**SECTION 7.3      Limitations on Liability.** Notwithstanding any other provision of this Indenture to the contrary:

(a) The obligations of the Issuer with respect to the Bonds are not general obligations of the Issuer but are special, limited obligations of the Issuer payable by the Issuer solely from the Security.

(b) Nothing contained in the Bonds or in this Indenture shall be considered as assigning or pledging any funds or assets of the Issuer other than the Trust Estate.

(c) The Bonds are not and will not be a debt of the State, the Issuer or of any other political subdivision of the State, and neither the State, the Issuer nor any other political subdivision of the State is or will be liable for the payment of the Bonds.

(d) Neither the faith and credit of the Issuer, the State nor of any other political subdivision of the State are pledged to the payment of the principal of and interest and any premium on the Bonds.

(e) No failure of the Issuer to comply with any term, condition, covenant or agreement in this Indenture or in any document executed by the Issuer in connection with the Mortgaged Property, or the issuance, sale and delivery of the Bonds shall subject the Issuer to liability for any claim for damages, costs or other charges except to the extent that the same can be paid or recovered from the Trust Estate.

(f) The Issuer shall not be required to advance any moneys derived from any source other than the Trust Estate for any of the purposes of this Indenture, any of the other Bond Documents or any of the Loan Documents, whether for the payment of the principal or redemption price of, or interest on, the Bonds, the payment of Third Party Fees or administrative expenses or otherwise.

**SECTION 7.4 Further Assurances; Security Agreement.** The Issuer, to the extent permitted by law, shall execute, acknowledge and deliver such supplemental indentures and other instruments and documents, and perform such further acts, as the Trustee or the Credit Provider may reasonably require to perfect, and maintain perfected, the security interest in the Trust Estate or to better assure, transfer, convey, pledge, assign and confirm to the Trustee or the Credit Provider all of its respective interest in the property described in this Indenture and the revenues, receipts and other amounts pledged by this Indenture. The Issuer shall (at the expense of the Borrower) cooperate to the extent necessary with the Borrower, the Trustee and the Credit Provider in their defenses of the Trust Estate and the Security against the claims and demands of all Persons. In addition to the assignment by the Issuer of its rights in the Trust Estate to the Trustee, the Issuer hereby acknowledges that in order to more fully protect, perfect and preserve the rights of the Trustee, the Borrower and the Credit Provider in the Trust Estate, the Issuer grants to the Trustee a security interest in the Trust Estate and the proceeds thereof. Any and all interest in property hereafter acquired that is of any kind or nature herein provided to be and become subject to the lien hereof shall, and without any further conveyance, assignment or act on the part of the Issuer or the Trustee, become and be subject to the lien of this Indenture as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Issuer under this Section of this Indenture. The Issuer covenants and agrees that, except as herein otherwise expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Trust Estate or the revenues or receipts therefrom.

The Issuer will promptly notify the Trustee and, so long as Fannie Mae is the Credit Provider, the Loan Servicer in writing of the occurrence of any of the following:

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



**SECTION 7.5     Enforcement.** The Issuer agrees that the Trustee and, so long as a Credit Facility provided by the Credit Provider continues in effect, the Credit Provider, in its name or in the name of the Issuer, may enforce against the Borrower or any other Person any rights of the Issuer under the Bond Documents (other than the Reserved Rights) whether or not the Issuer is in default under this Indenture or under the Financing Agreement, but neither the Trustee nor the Credit Provider will be deemed to have assumed any of the obligations of the Issuer under the Bond Documents. The Issuer shall fully cooperate with the Trustee or the Credit Provider (at the expense of the Borrower) in the enforcement by the Trustee or the Credit Provider of any such rights. At the request of the Trustee or the Credit Provider, the Issuer, upon being indemnified to its satisfaction against all liability, costs and expenses that may be incurred in connection with such enforcement, shall (at the expense of the Borrower) in its name commence legal action or take such other actions as the Trustee or the Credit Provider reasonably requests to enforce the rights of the Issuer, the Trustee or the Credit Provider under or arising from the Bonds or the Bond Documents.

**SECTION 7.6     Tax Covenants.**

(a)     The Issuer covenants:

(i)     it shall neither make nor direct the Trustee to make any investment or other use of the proceeds of the Bonds that would cause the Bonds to be “arbitrage bonds” as that term is defined in Section 148(a) of the Code and that it shall comply with the requirements of the Code throughout the term of the Bonds.

(ii)    it shall not take or authorize to be taken any actions within its control that would adversely affect that status under the provisions of the Code.

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

(iv)    not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations, taking into account the exceptions of Section 149(b)(3)(C).

In furtherance of the covenants in this Section, the Issuer and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which is by this reference incorporated into this Indenture and made a part of this Indenture, and by its acceptance of this Indenture the Trustee acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Indenture by this reference and agrees to comply with the terms specifically applicable to it. The Trustee agrees that in those instances where it exercises discretion over the investment of funds, it shall not knowingly make any investment inconsistent with subsection (a). In the event of a conflict between the provisions of this

Section 7.6 and the Tax Certificate, the provisions of the Tax Certificate shall control.

(b) The Trustee covenants:

(i) it will invest funds held under this Indenture in accordance with the covenants and terms of this Indenture and the Tax Certificate (this covenant shall extend through the term of the Bonds, to all Funds and Accounts created under this Indenture and all money on deposit to the credit of any such Fund or Account).

(ii) to and for the benefit of the Bondholders that, notwithstanding any other provisions of this Indenture or of any other Transaction Document, it will not knowingly make or cause to be made any investment or other use of the money in the funds or accounts created hereunder which would cause the Bonds to be classified as “arbitrage bonds” within the meaning of Sections 103(b) and 148 of the Code or would cause the interest on the Bonds to be includable in gross income for federal income tax purposes; provided that the Trustee shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Issuer, the Bond Counsel or the Rebate Analyst. This covenant shall extend, throughout the term of the Bonds, to all funds created under this Indenture and all money on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Indenture, the Trustee obligates itself to comply throughout the term of the issue of the Bonds with the requirements of Sections 103(b) and 148 of the Code; provided that the Trustee shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Issuer, Bond Counsel or the Rebate Analyst. The Trustee further covenants that should the Issuer or the Borrower file written instructions with the Trustee (it being understood that neither the Issuer nor the Borrower has an obligation to so file), or should the Trustee receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Bonds would cause the Bonds to become “arbitrage bonds,” then the Trustee will comply with any written instructions of the Issuer, the Borrower or Bond Counsel regarding such investment (which shall, in any event, be a Permitted Investment) or use so as to prevent the Bonds from becoming “arbitrage bonds,” and the Trustee will bear no liability to the Issuer, the Borrower, the Bondholders or the Credit Provider for investments made in accordance with such instructions.

## **ARTICLE VIII CREDIT FACILITY**

**SECTION 8.1 Acceptance of the Credit Facility.** The Trustee shall hold the Credit Facility and shall enforce in its name all rights of the Trustee and all obligations of the Credit Provider under the Credit Facility for the benefit of the Bondholders. The Trustee shall not assign or transfer the Credit Facility except to a successor Trustee under this Indenture. The Issuer and the Trustee acknowledge that the obligations of Fannie Mae as the Credit Provider under the initial Credit Facility are not backed by the full faith and credit of the United States of America, but by the credit of Fannie Mae, a federally-

chartered corporation.

**SECTION 8.2      Requests for Advances Under Credit Facility.** The Trustee shall request Advances under the Credit Facility in accordance with its terms and cause the proceeds of each Advance to be applied so that full and timely payments are made on each date on which payment of principal, and/or interest is due on any Bond. The Trustee shall not request, and shall not apply the proceeds of, any Advance to pay (i) principal of, interest on or the purchase price of, any Bond known by the Trustee to be held by the Borrower or any Affiliate of the Borrower, (ii) premium that may be payable upon the redemption of any of the Bonds or (iii) interest that may accrue on any of the Bonds on or after the maturity of such Bond. Prior to requesting an Advance to pay principal of or interest on the Bonds on an Interest Payment Date, the Trustee shall determine the amount necessary to make such payment of principal or interest.

**SECTION 8.3      Reserved.**

**SECTION 8.4      Reserved.**

**SECTION 8.5      Reserved.**

**SECTION 8.6      Limitations on Rights of Credit Provider.** Notwithstanding anything contained in this Indenture to the contrary, all provisions in this Indenture regarding consents, approvals, directions, waivers, appointments, requests or other actions by the Credit Provider shall be deemed not to require or permit such consents, approvals, directions, waivers, appointments, requests or other actions and shall be read as if the Credit Provider were not mentioned in such provisions (i) if a Wrongful Dishonor has occurred and is continuing, or (ii) after the Credit Facility ceases to be valid and binding on the Credit Provider for any reason, or is declared to be null and void by final judgment of a court of competent jurisdiction; provided, however, that the Credit Provider's right to notices and the payment of amounts due to the Credit Provider shall continue in full force and effect. The foregoing shall not affect any other rights of the Credit Provider.

**SECTION 8.7      References to Credit Provider When No Credit Facility Is in Effect.** All provisions of this Indenture relating to the rights of the Credit Provider shall be of no force and effect if both: (i) there is no Credit Facility in effect; and (ii) all amounts owing to the Credit Provider under the Credit Facility Documents have been paid. In such event, all references to the Credit Provider shall have no force or effect.

**SECTION 8.8      Certain Notices to the Credit Provider and the Loan Servicer.** The Trustee and Issuer shall promptly notify the Credit Provider and the Loan Servicer of any of the following as to which it has actual knowledge: (i) the occurrence of any Event of Default under this Indenture or under any of the other Transaction Documents, or any event which, with the passage of time or service of notice, or both, would constitute such an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect to such event, (ii) an Act of Bankruptcy or a bankruptcy filing by or against the Borrower and (iii) the making of any

claim in connection with seeking the avoidance as a preferential transfer (“**Preference Claim**”) of any payment of principal of, or interest on, the Loan.

**SECTION 8.9      Credit Provider to Control Insolvency Proceedings.** Each Bondholder, by its purchase of Bonds, the Trustee and the Issuer agrees that the Credit Provider may at any time during the continuation of an insolvency proceeding of the Issuer or the Borrower (“**Insolvency Proceeding**”) direct all matters relating to the Bonds in any such Insolvency Proceeding, including, without limitation, (i) all matters relating to any Preference Claim, (ii) the direction of any appeal of any order relating to any Preference Claim and (iii) the posting of any surety, supersedeas or performance bond pending any such appeal. In addition, and without limitation of the foregoing, the Credit Provider shall be subrogated to the rights of the Issuer, the Trustee and the Bondholders in any Insolvency Proceeding to the extent it has performed its payment obligations under the Credit Facility, including any rights of any party to an adversary proceeding action with respect to any court order issued in connection with any such Insolvency Proceeding and rights pertaining to the filing of a proof of claim, voting on a reorganization plan and rights to payment thereunder.

## **ARTICLE IX DISCHARGE OF LIEN**

### **SECTION 9.1      Discharge of Lien and Security Interest.**

(a)      **Discharge.** Upon satisfaction of the conditions set out in subsection (b), the Trustee shall (i) cancel and discharge this Indenture and the pledge and assignment of the Security, (ii) execute and deliver to the Issuer such instruments in writing prepared by the Issuer or its counsel and provided to the Trustee and the Credit Provider as may be required to cancel and discharge this Indenture and the pledge and assignment of the Trust Estate, (iii) reconvey, assign and deliver to the Issuer so much of the Trust Estate as may be in its possession or subject to its control (except for (A) moneys and Government Obligations held for the purpose of paying Bonds and (B) moneys and Investments held in the Rebate Fund for payment to the United States Government) who shall, in turn, convey, assign and deliver the remaining Trust Estate to the Borrower and (iv) return the Credit Facility to the Credit Provider.

(b)      **Conditions to Discharge.** The conditions precedent to the cancellation and discharge of this Indenture and the other acts described in subsection (a) are (i) payment in full of all Bonds Outstanding; (ii) payment of the Trustee’s Annual Fee and the Trustee’s ordinary costs and expenses under this Indenture; (iii) receipt by the Trustee of a written statement from the Credit Provider stating that all obligations owed to the Credit Provider under the Credit Facility Documents have been fully paid; (iv) payment of all Extraordinary Items; (v) receipt by the Trustee of a written statement from the Issuer stating that all amounts owed to the Issuer in respect of Reserved Rights have been fully paid; (vi) return of the Credit Facility to the Credit Facility Provider; and (vii) receipt by the Trustee of an Opinion of Counsel, at the expense of the Borrower, stating that all conditions precedent to the satisfaction and discharge of this Indenture have been satisfied.

(c) **Survival of Rights and Powers.** The Reserved Rights of the Issuer and the rights and powers granted to the Trustee with respect to the payment, transfer and exchange of Bonds shall survive the cancellation and discharge of this Indenture.

**SECTION 9.2** **Payment of Outstanding Amounts.** If the Bonds are paid in full, but any one or more of the other conditions precedent set out in Section 9.1(b) are not satisfied because an amount has not been paid, the Trustee, prior to cancellation and discharge of this Indenture, shall pay to the persons listed below, in the strict order set out below, the amounts required to satisfy those conditions precedent:

(a) **Trustee's Annual Fee and Ordinary Costs and Expenses.** If any portion of the Trustee's Annual Fee or ordinary costs and expenses of the Trustee remain unpaid, the Trustee shall pay to itself so much of the Trust Estate as will fully pay such unpaid amounts. No Extraordinary Items may be included under this subsection (a).

(b) **Credit Provider.** If the Trustee receives a written statement from the Credit Provider stating that moneys are owed to the Credit Provider under the Credit Facility Documents or the Loan Documents, the Trustee shall pay to the Credit Provider so much of the remaining Trust Estate as will fully pay all amounts due and owing to the Credit Provider, as determined by the Credit Provider. The Trustee is authorized to rely on the written statement of the Credit Provider.

(c) **Trustee.** If any Extraordinary Items have not been paid to the Trustee, the Trustee shall pay to itself so much of the remaining Trust Estate as will fully pay all amounts owing to the Trustee for Extraordinary Items.

(d) **Issuer.** If the Trustee receives a written statement from the Issuer stating that moneys are owed to the Issuer in respect of the Reserved Rights, the Trustee shall pay to the Issuer so much of the remaining Trust Estate as will fully pay all amounts owing to the Issuer in respect of the Reserved Rights.

**SECTION 9.3** **Defeasance.**

(a) **Provision for Payment of Bonds.** Any Bond will be deemed paid within the meaning of Section 9.1 if each of the conditions set out in this Section is satisfied. The conditions are:

(1) The Issuer or the Borrower deposits with the Trustee (A) Available Moneys or (B) Government Obligations which are not subject to early redemption and which are purchased with Available Moneys, of such maturities and interest payment dates and bearing such interest as will be sufficient, without further investment or reinvestment of either the principal amount of such Government Obligations or the interest earnings on Government Obligations (the earnings to be held in trust also), together with any Available Moneys, for the payment on their respective Maturity Dates, or Redemption Dates prior to maturity, of the principal of such Bonds and redemption premium, if any, and interest to accrue on such

Bonds to such Maturity Dates or Redemption Dates.

(2) The Trustee receives, at the expense of the Borrower, and may rely upon: (A) a verification report of an independent certified public accountant or other firm nationally recognized in the certification of cash flow analyses; and (B) an Opinion of Bond Counsel to the effect that such deposit with the Trustee and consequent defeasance of the Bonds does not adversely affect the excludability from gross income for federal income tax purposes of the interest payable on the Bonds.

(3) All Third Party Fees due or to become due have been paid or sufficient additional moneys to make the required payments have been irrevocably deposited with the Trustee.

(4) For any such Bonds to be redeemed on any date prior to their maturity, the Trustee has received in form satisfactory to it irrevocable instructions to redeem such Bonds on a date on which the Bonds are subject to redemption, and either evidence satisfactory to the Trustee that all redemption notices required by this Indenture have been given or irrevocable power authorizing the Trustee to give such redemption notices.

The Trustee shall redeem the Bonds specified by such irrevocable instructions on the date specified by such irrevocable instructions.

(b) **Defeased Bonds No Longer Outstanding.** At such times as a Bond is deemed to be paid under this Indenture, it will no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of payment in accordance with this Indenture.

(c) **Release of Certain Income.** All income from all Government Obligations in the hands of the Trustee pursuant to this Section which is identified by an independent certified public accountant or other firm nationally recognized in the certification of cash flow analyses as not required for the payment of the Bonds and interest on such income with respect to which such moneys have been so deposited will be deposited with the Trustee as and when realized and collected for use and application as are other moneys deposited with the Trustee.

(d) **Particular Bonds.** Notwithstanding any other provision of this Indenture to the contrary, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Article IX for the payment of Bonds (including accrued interest on such Bonds) shall be applied to and used solely for the payment of the particular Bonds (including interest on such Bonds) with respect to which such moneys or Government Obligations have been so set aside in trust.

**ARTICLE X**  
**DEFAULT PROVISIONS AND REMEDIES**

**SECTION 10.1      Events of Default; Preliminary Notice.**

(a)      **Events of Default.** Each of the following constitutes an Event of Default under this Indenture:

(1)      default in the payment when due and payable of any interest due on any Bond;

(2)      default in the payment when due and payable of the principal of or any redemption premium on any Bond at maturity or upon any redemption;

(3)      written notice to the Trustee from the Credit Provider of a default by the Issuer in the observance or performance of any covenant, agreement, warranty or representation on the part of the Issuer included in this Indenture or in the Bonds (other than an Event of Default set forth in subsection (1) or (2) above) and the continuance of such default for a period of 30 days after the Trustee receives such notice;

(4)      written notice to the Trustee from the Credit Provider of an Event of Default under the Reimbursement Agreement;

(5)      written notice to the Trustee from the Credit Provider of an Act of Bankruptcy; or

(6)      a Wrongful Dishonor.

No default after expiration of all applicable cure periods by Borrower under the Loan Documents shall in and of itself constitute an Event of Default hereunder.

(b)      **Preliminary Notice.** The Trustee shall immediately notify the Issuer, the Loan Servicer, the Borrower and the Credit Provider after the Trustee obtains knowledge or receives notice of the occurrence of an Event of Default under this Indenture or an event which would become such an Event of Default with the passage of time, the giving of notice or both, identifying the paragraph in Section 10.1(a) under which the Event of Default has occurred or may occur.

(c)      **Non-Default and Prohibition of Mandatory Redemption Upon Tax Event.** The occurrence of any event (“**Tax Event**”) which results in the interest payable on the Bonds being includable, for federal income tax purposes, in the gross income of the Bondholders, including any violation of any provision of the Regulatory Agreement or any of the other Bond Documents, shall not (i) directly or indirectly constitute an Event of Default under this Indenture or permit any party (other than the Credit Provider) to accelerate, or require acceleration of, the Loan or the Bonds, unless the Credit Provider

provides written notice to the Trustee that such Tax Event constitutes a default under the Reimbursement Agreement, or (ii) give rise to a mandatory redemption of the Bonds, or (iii) give rise to the payment to the Bondholders of any amount, denoted as “supplemental interest,” “additional interest,” “penalty interest,” “liquidated damages,” “damages” or otherwise, in addition to the amounts payable to the owners of the Bonds prior to the occurrence of the Tax Event. Nothing contained in this subsection will be deemed to amend or supplement the terms of the Loan Documents. Promptly upon determining that a Tax Event has occurred, the Issuer or the Trustee, by notice in writing to the Credit Provider, the Loan Servicer and all Registered Owners of the Bonds, shall state that a Tax Event has occurred and whether the Tax Event is cured, curable within a reasonable period or incurable. Notwithstanding the availability of the remedy of specific performance to cure a Tax Event that is curable within a reasonable period, neither the Issuer nor the Trustee shall have, upon the occurrence of a Tax Event, any right or obligation to cause or direct acceleration of the Bonds or the Loan, to enforce the Note or to foreclose the Security Instrument, to accept a deed to the Mortgaged Property in lieu of foreclosure, or to effect any other comparable conversion of the Mortgaged Property.

**SECTION 10.2 Acceleration; Redemption.** The Bonds shall be subject to acceleration and redemption as set out in this Section.

(a) **Acceleration.** Upon:

(1) the occurrence and during the continuance of a Wrongful Dishonor, the Trustee may, and upon the written request of Bondholders owning not less than 51 percent in aggregate principal amount of Bonds then Outstanding must, by written notice to the Issuer, the Borrower, the Credit Provider and the Loan Servicer, declare the principal of all Bonds and the interest accrued, and to accrue on the Bonds to the date of payment immediately due and payable; or

(2) the occurrence of any other Event of Default under this Indenture, the Trustee may, upon receiving the prior written consent of the Credit Provider, and must upon the written direction of the Credit Provider requiring that the Bonds be accelerated pursuant to this subsection, by written notice to the Issuer, the Borrower, the Credit Provider and the Loan Servicer, declare the principal of all Bonds and the interest accrued, and to accrue on the Bonds to the date of declaration immediately due and payable.

(b) **Redemption.** Upon the occurrence of an Event of Default under Section 10.1(a)(4) of this Indenture, if the Credit Provider so directs pursuant to Section 3.3(b), the Bonds shall be redeemed in whole or in part in the amount specified by and at the direction of the Credit Provider. Notwithstanding anything to the contrary in this Indenture, if the Credit Provider directs that the Bonds be redeemed in part, the Credit Provider may further direct on one or more other occasions as described under this subsection that the Bonds be redeemed in whole or in part or that the Bonds be purchased in lieu of redemption.

(c) **Notice.**



(1) Acceleration. Upon any decision to accelerate payment of the Bonds, the Trustee shall notify the Bondholders of the declaration of acceleration, that, in the event of acceleration pursuant to Section 10.2(a)(2), interest on the Bonds will cease to accrue upon such declaration, and payment of the Bonds will be made upon presentment of the Bonds at the Designated Office of the Trustee. Such notice shall be sent by registered mail or overnight delivery service, postage prepaid, or, at the Trustee's option, may be given by Electronic Means to each Registered Owner of Bonds at such Registered Owner's last address appearing in the Bond Register. Any defect in or failure to give notice of such declaration will not affect the validity of such declaration.

(2) Redemption. Upon the direction of the Credit Provider to redeem the Bonds in whole or in part pursuant Section 3.3(b) and as provided in Section 3.4(a), immediate notice of redemption will be given.

(d) **Draw on Credit Facility**. Immediately upon acceleration or mandatory redemption of the Bonds, the Trustee shall request an Advance under the Credit Facility in accordance with its terms.

**SECTION 10.3 Other Remedies**. Upon the occurrence and continuance of an Event of Default under this Indenture, the Trustee may, with or without taking action under Section 10.2, but only with the prior written consent of the Credit Provider, and must at the direction of the Credit Provider if the Event of Default occurs under Section 10.1(a)(3), (4) or (5), pursue any of the following remedies:

(a) an action in mandamus or other suit, action or proceeding at law or in equity (i) to enforce the payment of the principal of and interest and any premium on the Bonds, (ii) for the specific performance of any covenant or agreement contained in this Indenture, the Financing Agreement or the Regulatory Agreement or (iii) to require the Issuer to carry out any other covenant or agreement with Bondholders and to perform its duties under the Act;

(b) the liquidation of the Trust Estate; or

(c) an action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders and to execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Trustee in order to have the respective claims of the Bondholders against the Issuer allowed in any bankruptcy or other proceeding.

Subject to the provisions of Section 10.7 and the requirement, if any, that the Credit Provider consent in writing to the exercise by the Trustee of any remedy, upon the occurrence and continuance of an Event of Default under this Indenture, the Trustee shall exercise such of the rights and powers conferred by this Section as the Trustee, being advised by counsel, deems most effective to enforce and protect the interests of the Bondholders and, unless a Wrongful Dishonor has occurred and is continuing, the Credit

Provider.

**SECTION 10.4 Preservation of Security and Remedies if Payment Under Credit Facility is Not Made or is Insufficient; Rights of Bondholders.** Upon the occurrence and during the continuance of a Wrongful Dishonor, the Trustee may proceed, and upon the written request of the holders of not less than 25 percent of the aggregate principal amount of the Bonds Outstanding and the receipt of indemnity reasonably satisfactory to the Trustee shall proceed, to protect and enforce its rights and the rights of the Bondholders under this Indenture by such suits, actions or special proceedings in equity or at law, whether for the specific performance of any covenant or agreement, or in aid of the execution of any power granted in this Indenture or by the Act, or for the enforcement of any legal or equitable right or remedy, as the Trustee, being advised by counsel, deems most effective to protect and enforce such rights or to perform any of its duties under this Indenture.

**SECTION 10.5 Remedies Not Exclusive; Delay or Omission.** No right or remedy conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other right or remedy, but each and every such right and remedy will be cumulative and in addition to any other right or remedy given to the Trustee or to the Bondholders under this Indenture or under the Financing Agreement, the Regulatory Agreement or the Credit Facility or now or later existing at law or in equity. No delay or omission to exercise any right or remedy provided in this Indenture will impair any such right or remedy or be construed to be a waiver of any Event of Default or acquiescence in it. Every such right and remedy may be exercised from time to time as often as may be deemed expedient.

**SECTION 10.6 Waiver.** Subject to the conditions precedent set out below, (i) the Trustee may waive, (ii) the Trustee shall waive if directed to do so by the Credit Provider in writing, and (iii) Bondholders owning not less than 51 percent in aggregate principal amount of Bonds then Outstanding may waive, by written notice to the Trustee, any Event of Default under this Indenture and its consequences and rescind any declaration of acceleration of maturity of principal. The conditions precedent to any waiver are:

(a) unless waiver is directed by the Credit Provider, the Credit Provider consent to such waiver in writing;

(b) the principal and interest on the Bonds in arrears, together with interest thereon (to the extent permitted by law) at the applicable rate or rates of interest borne by the Bonds has been paid or provided for by the Borrower in Available Moneys or by the Credit Provider and all fees and expenses of the Trustee have been paid or provided for by the Borrower or the Credit Provider; and

(c) after the waiver, the Credit Facility remains in effect in an amount equal to the aggregate principal amount of the Bonds Outstanding plus the Interest Requirement, provided, however, that such waiver will be permitted without the Credit Facility remaining in effect if (i) the Issuer consents to the waiver, (ii) the Rating Agency then

rating the Bonds is notified and the Trustee gives written notice to the Bondholders that the ratings on the Bonds may be reduced or withdrawn upon the occurrence of such waiver, and (iii) 100 percent of the Bondholders consent to the waiver.

Upon any such waiver, the default or Event of Default shall be deemed cured and shall cease to exist for all purposes and the Issuer, the Borrower, the Trustee and the Bondholders will be restored to their former positions and rights under this Indenture. No waiver of any default or Event of Default shall extend to or affect any subsequent default or Event of Default or shall impair any right or remedy consequent thereto.

**SECTION 10.7 Rights of the Credit Provider and the Bondholders to Direct Proceedings; Rights and Limitations Applicable to Bondholders, Issuer and Trustee.**

(a) **Rights to Direct Proceedings.** Notwithstanding anything contained in this Indenture to the contrary, the Credit Provider itself or Bondholders owning not less than 51 percent in aggregate principal amount of Bonds then Outstanding, but only with the prior written consent of the Credit Provider, shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture or any other proceedings under this Indenture, provided, however, that such direction will not be otherwise than in accordance with the provisions of law and of this Indenture, and provided that the Trustee will be indemnified to its reasonable satisfaction (except for actions required under Section 10.2(c) and (d)).

(b) **Limitations on Bondholders' Rights.** No Bondholder has or shall have the right to enforce the provisions of this Indenture or the Financing Agreement, or to institute any proceeding in equity or at law for the enforcement of this Indenture or the Financing Agreement, or to take any action with respect to an Event of Default under this Indenture or an Event of Default under the Financing Agreement, or to institute, appear in or defend any suit or other proceeding with respect to this Indenture or the Financing Agreement upon an Event of Default unless (i) such Event of Default is a Wrongful Dishonor, (ii) such Bondholder has given the Trustee, the Issuer, the Credit Provider, the Loan Servicer and the Borrower written notice of the Event of Default, (iii) the holders of not less than 51 percent in aggregate principal amount of Bonds then Outstanding have requested the Trustee in writing to institute such proceeding, (iv) the Trustee has been afforded a reasonable opportunity to exercise its powers or to institute such proceeding, (v) the Trustee has been offered security or indemnity satisfactory to the Trustee (in its sole and absolute discretion), where required, and (vi) the Trustee has thereafter failed or refused to exercise such powers or to institute such proceeding within a reasonable period of time. No Bondholder has or shall have any right in any manner whatever to affect, disturb or prejudice the pledge of revenues or of any other moneys, Funds, Accounts or securities under this Indenture. Except as provided in this subsection, no Bondholder has or shall have the right, directly or indirectly, individually or as a group, to seek to enforce, collect amounts available under, or otherwise realize on, the Credit Facility.

**SECTION 10.8      Discontinuance of Proceedings.** If the Trustee or any Bondholder has instituted any proceeding or remedy under this Indenture, and such proceedings have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case the Issuer, the Credit Provider and the Trustee will be restored to their former positions and rights under this Indenture, and all rights, remedies, powers, duties and obligations of the Issuer, the Trustee and the Credit Provider shall continue as if no such proceedings had been taken, subject to the limits of any adverse determination.

**SECTION 10.9      Possession of Bonds.** All rights under this Indenture or upon any of the Bonds enforceable by the Trustee may be enforced by the Trustee without the possession of any of the Bonds, or the production of the Bonds at trial or other proceedings. Any suit, action or proceeding instituted by the Trustee may be brought in its name for itself or as representative of the Bondholders without the necessity of joining Bondholders as parties, and any recovery resulting from such proceedings shall, subject to Section 10.10, be for the ratable benefit of the Bondholders.

**SECTION 10.10      Application of Moneys.** Amounts derived from payments under the Credit Facility shall be deposited into the Credit Facility Account and applied solely to pay the principal of and interest on the Bonds. All other moneys received by the Trustee pursuant to any action taken under this Article X shall be deposited into the Interest Account and the Redemption Account, as applicable, after payment of the outstanding fees, costs and expenses of the Trustee. The balance of such moneys, less such amounts as the Trustee determines may be needed for possible use in paying future fees and expenses and for the preservation and management of the Mortgaged Property (as identified by the Credit Provider), shall be applied as set out in the following subsections.

(a)      **Principal on Bonds Not Declared Due and Payable.** Unless the principal on all Bonds has become or been declared due and payable, all such moneys will be applied:

**First** - to the payment of all interest then due on the Bonds, in the order of the maturity of such interest and, if the amount available shall not be sufficient to pay in full said amount, then to the payment ratably, of the amounts due, without any discrimination or privilege;

**Second** - to the payment of the unpaid principal of any of the Bonds which have become due (other than Bonds matured or called for redemption for the payment of which moneys are held pursuant to this Indenture), in the order of due dates, with interest upon the principal amount of the Bonds from the respective dates upon which they become due at the rate or rates borne by the Bonds, to the extent permitted by law, and, if the amount available shall not be sufficient to pay in full the principal of such Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled to such payment without any discrimination or privilege;

**Third** - to the payment of amounts owed to the Credit Provider under the Credit

Facility Documents and the Loan Documents, and then to any amounts due to the Trustee for Extraordinary Items, for this purpose including the costs and expenses of any proceedings resulting in the collection of such moneys and of advances incurred or made by the Trustee.

(b) **Principal of Bonds Declared Due and Payable.** If the principal of all the Bonds has become or been declared due and payable, all such moneys shall be applied **first**, to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably according to the amounts due respectively for principal and interest to the persons entitled to payment, until all such principal and interest has been paid; **second**, to pay the Credit Provider amounts owed to it under the Credit Facility Documents and the Loan Documents; and **third**, to any other amounts due and payable under this Indenture.

(c) **General.** Whenever moneys are to be applied pursuant to this Section, such moneys shall be applied at such times, and from time to time, as the Trustee determines, having due regard for the amount of such moneys available for application, the likelihood of additional moneys becoming available for such application in the future, and potential expenses relating to the exercise of any remedy or right conferred on the Trustee by this Indenture. Whenever the Trustee applies such moneys, it shall fix the date (which will be an Interest Payment Date unless it deems an earlier date more suitable) upon which such application is to be made, and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue, unless interest has already ceased to accrue in accordance with Section 10.2(c). The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the owner of any Bond until such Bond is presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

## **ARTICLE XI THE TRUSTEE**

**SECTION 11.1 Appointment of Trustee; Duties.** The Trustee is appointed and agrees to act in such capacity and to perform the duties of the Trustee under this Indenture, the Financing Agreement, the Assignment and the Regulatory Agreement upon the express terms and conditions of this Indenture. These duties shall be deemed purely ministerial in nature, and the Trustee shall not be liable except for the performance of such duties, and no implied covenants or obligations shall be read into the Indenture or any of the other foregoing documents against the Trustee. The Trustee shall have no liability for any action taken, or errors in judgment made, in good faith by it or any of its officers, employees or agents, unless it shall have been grossly negligent in ascertaining the pertinent facts.

(a) **Attorneys, Agents or Receivers.** The Trustee may execute any of its trusts or powers under this Indenture and perform any of its duties by or through attorneys, agents or receivers and shall not be responsible for the acts or omissions of any such attorney, agent or receiver appointed with due care. The Trustee shall be entitled to advice of counsel

concerning all matters of trust under this Indenture and its duties under this Indenture. The Trustee may in all cases pay such reasonable compensation to such attorneys, agents and receivers and shall be entitled to reimbursement from the Borrower for all such compensation paid. The Trustee shall be entitled to rely on and may act upon the opinion or advice of counsel, accountants, or such other professionals as the Trustee deems necessary and selected by it in the exercise of reasonable care, and shall not be liable for any action taken or omitted to be taken by the Trustee in accordance with the advice of counsel or other professionals retained or consulted by the Trustee. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction based on its good faith reliance upon such opinion or advice which is not contrary to the express terms of this Indenture, any of the other Bond Documents or the Loan Documents.

(b) **Limitation of Responsibility.** The Trustee shall not be responsible for any recital in this Indenture (other than Recital O) or in the Bonds (other than in the certificates of authentication on the Bonds), or for insuring the Mortgaged Property, or for the sufficiency of any insurance, or for collecting any insurance moneys, or for the validity of this Indenture or of any supplements to this Indenture or instruments of further assurance, or for the sufficiency of the security for the Bonds issued under this Indenture or intended to be secured by this Indenture, or for the value or condition of or title to the Mortgaged Property or the Security. The Trustee may require (but shall be under no duty to require) of the Borrower full information and advice as to the performance of the covenants, conditions and agreements aforesaid as to the condition of the Mortgaged Property. The Trustee shall not be liable for any loss suffered in connection with any investment of amounts made by it in accordance with this Indenture. The Trustee is not accountable for the use (i) of any Bonds delivered in accordance with instructions of the Issuer, (ii) by the Borrower of the proceeds of the Loan, or (iii) for the use or application of any moneys paid out by the Trustee in accordance with this Indenture. Under no circumstances shall the Trustee be individually liable for the obligations evidenced by the Bonds.

(c) **Reliance.** The Trustee may, at the expense of the Borrower, request, rely on and act in accordance with officer's certificates and/or Opinions of Counsel, and shall incur no liability and shall be fully protected in acting or refraining from acting upon any Opinion of Counsel, notice, request, consent, direction, requisition, certificate, order, judgment, decree, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons (not only as to due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein) and which is not contrary to the express terms of this Indenture, the other Bond Documents or the Loan Documents. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond as shown on the Bond Register will be conclusive and binding upon all future owners or holders of the same Bonds and upon Bonds issued in exchange therefor or in place of such Bonds. The Trustee shall be entitled to request and receive written instructions from the Issuer and the Borrower and shall have no responsibility or liability for any losses or damages of any nature that may arise from any action taken or not taken

by the Trustee in accordance with the written direction thereof.

(d) **Right Not Duty Until Undertaken.** The permissive right of the Trustee to do things enumerated in this Indenture or in the other Bond Documents to which the Trustee is a party shall not be construed as duties until specifically undertaken by the Trustee. Prior to an Event of Default under this Indenture, the Trustee shall only be responsible for the performance of the duties expressly set forth in this Indenture and in the other Bond Documents to which it is a party and shall not be answerable for other than its gross negligence or willful misconduct in the performance of those express duties.

(e) **No Personal Liability.** The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts, relating to the Mortgaged Property.

(f) **No Bond or Surety Required.** The Trustee shall not be required to give any bond or surety in respect of the execution of its trusts and powers or otherwise in respect of the premises.

(g) **Security or Indemnity.** Before taking any action requested by Bondholders under Article X (except for acceleration of the Bonds), the Trustee may require security or indemnity reasonably satisfactory to it from such Bondholders for the payment and reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated by a court of competent jurisdiction to have resulted from its own gross negligence or willful misconduct by reason of any such action so taken.

(h) **Not Bound to Inquire.** The Trustee is not required to take notice or deemed to have notice of any default or Event of Default under this Indenture, except Events of Default under Section 10.1(a) (1), (2) or (6), unless a responsible officer of the Trustee has actual knowledge thereof or has received notice in writing of such default or Event of Default from the Issuer, the Borrower, the Credit Provider, the Loan Servicer, or the holders of at least 25 percent in aggregate principal amount of the Outstanding Bonds, and in the absence of any such notice, the Trustee may conclusively assume that no such default or Event of Default exists. The Trustee may nevertheless require the Issuer and the Borrower to furnish information regarding performance of their respective obligations under the Financing Agreement, the Regulatory Agreement and this Indenture, but is not obligated to do so.

(i) **Standard of Care.** The Trustee, during the existence and continuation of any Event of Default under this Indenture, shall exercise such of the rights vested in it by this Indenture, the Financing Agreement and the Regulatory Agreement, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. The foregoing will not limit the Trustee's obligations under Article VIII or Section 10.2(a).

(j) **Notice to Rating Agency.** At any time that the Bonds are rated by a Rating Agency, the Trustee shall give notice by mail to that Rating Agency at its address (as specified in Section 13.4) promptly upon the occurrence of any of: (i) the appointment of any successor trustee, or separate trustee or co-trustee, (ii) any amendment of or supplement to this Indenture, the Financing Agreement, the Credit Facility or any Loan Document, (iii) the termination of the Credit Facility or the extension or expiration of the Credit Facility, (iv) an Event of Default under this Indenture, (v) a redemption, acceleration or defeasance of the Bonds in whole or in part, (vi) execution by the Trustee of an agreement for the investment of moneys at a guaranteed rate as an Investment, (vii) any change in the provider of an agreement in the Trust Estate for the investment of moneys at a guaranteed rate; and (viii) any other event of which notice reasonably is requested by the Rating Agency. In addition, the Trustee shall supply to each Rating Agency such information as such Rating Agency may reasonably request from time to time in connection with its ongoing surveillance of its rating on the Bonds. Notwithstanding the foregoing, it is expressly understood and agreed that failure to provide any such notice to any Rating Agency or any defect in any such notice will not affect the validity of any action with respect to which notice is to be given or the effectiveness of any such action.

(k) **Notice to Loan Servicer.** The Trustee shall give prompt written notice to the Loan Servicer of the non-payment of any fee, cost or expense payable under the Financing Agreement.

(l) **Authority to Execute.** The Trustee is authorized and directed by the Issuer to execute or accept and acknowledge and to perform its obligations under, as applicable, in its capacity as Trustee, the Financing Agreement, the Assignment, the Regulatory Agreement and any financing statements.

(m) **No Disclosure Responsibility.** The Trustee shall have no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds, except for any information provided by the Trustee. Neither the Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Issuer or the Borrower or any of their directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Trustee may assume performance by all such Persons of their respective obligations. The Trustee shall have no enforcement or notification obligations relating to breaches of representations or warranties of any other Person.

(n) **No Financial Obligation.** No provision of this Indenture or any other Bond Document or any Loan Document shall require the Trustee to risk, advance or expend its own funds or otherwise incur any financial liability in the performance of its duties or the exercise of its rights under this Indenture.

(o) **No Liability for Directions.** The Trustee will not be liable for any action taken or not taken by it in accordance with the direction of the Credit Provider or



Bondholders pursuant to this Indenture except for the Trustee's own grossly negligent action, its own negligent failure to act, or its own willful misconduct.

(p) **No Liability for Loan Servicer.** The Trustee shall not be responsible for the actions or omissions of the Loan Servicer and shall have no duty or responsibility to monitor the performance of the Loan Servicer.

(q) **Books, Records and Accounts.** The Trustee, on behalf of the Issuer, shall keep and maintain, or cause to be kept and maintained, proper books, records and accounts in which complete and accurate entries shall be made of all of its transactions relating to the Bonds, this Indenture, the Financing Agreement, the Regulatory Agreement, the Loan, the Credit Facility, the Funds and Accounts, Permitted Investments and Investment Income, all of which, at all reasonable times, and upon reasonable prior written notice and compliance with reasonable requirements of the Trustee, will be subject to the inspection and audit by the Issuer, the Credit Provider, the Borrower, the Loan Servicer and Bondholders owning not less than 25 percent in aggregate principal amount of Bonds then Outstanding or any of their accountants or agents duly authorized in writing, each of whom will have the right, at its expense, to make copies of any such books of record and accounts.

(r) **List of Bondholders.** The Trustee shall keep the Bond Register available for inspection by any Bondholder or its attorney duly authorized in writing during normal business hours upon reasonable prior written notice and compliance with reasonable requirements of the Trustee.

**SECTION 11.2 Qualification.** The Trustee and any successor Trustee shall at all times be a bank or trust company organized under the laws of the United States of America or any state, authorized under such laws to exercise corporate trust powers, having a combined capital stock, surplus and undivided profits of at least \$50,000,000 (or an affiliate of a corporation or banking association meeting that requirement which guarantees the obligations and liabilities of the Trustee) and subject to supervision or examination by federal or state banking authority.

**SECTION 11.3 Fees; Expenses.** The Trustee is entitled to payment and reimbursement from the Borrower, or from the Trust Estate to the extent otherwise permitted in this Indenture, for reasonable fees for its ordinary services rendered under this Indenture and the other Bond Documents and its ordinary costs and expenses reasonably incurred in connection with its services under this Indenture and the other Bond Documents. In the event that it should become necessary that the Trustee perform extraordinary services, it shall be entitled to Extraordinary Items; provided however, that if such Extraordinary Items are incurred as a result of the gross negligence or willful misconduct of the Trustee, it will not be entitled to compensation or reimbursement for such services or expenses. The Borrower's failure to pay amounts owed to the Trustee shall not excuse the performance of its obligations. The Trustee recognizes that all fees, charges and other compensation to which it may be entitled under this Indenture are required to be paid by the Borrower under the Financing Agreement, and, accordingly, the Trustee agrees that except for moneys that

the Issuer may derive from the Borrower for purposes of the foregoing, the Issuer shall not be liable for any such fees, charges and other compensation. The terms of this Section shall survive termination of this Indenture and/or the earlier resignation or removal of the Trustee.

**SECTION 11.4 Merger; Consolidation.** Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, merger or consolidation, provided such corporation or association otherwise qualifies under Section 11.2, shall be and become the successor Trustee under this Indenture with all the estates, properties, rights, powers and duties of the predecessor Trustee without the execution or filing of any instrument or any further act, deed or conveyance (other than the provision of notice to the Issuer, the Credit Provider and the Loan Servicer).

**SECTION 11.5 Resignation or Removal of Trustee.** The Trustee may resign and be discharged from its duties and obligations hereunder at any time by giving 60 calendar days prior written notice to the Issuer, the Credit Provider, the Loan Servicer, the Borrower and to each Registered Owner of Bonds then Outstanding as shown on the Bond Register. The Trustee may be removed at any time upon 60 calendar days prior written notice to the Trustee, (i) by the Issuer, with the prior written consent of the Credit Provider, (ii) by the owners of not less than 51 percent in aggregate principal amount of Bonds then Outstanding, which written instrument shall designate a successor Trustee approved by the Credit Provider, or (iii) by the Credit Provider. Such resignation or removal shall not be effective until a successor Trustee satisfying the requirements of Section 11.2 is appointed and has accepted its appointment.

**SECTION 11.6 Appointment of Successor Trustee.** Upon the resignation or removal of the Trustee, a successor Trustee, satisfying the requirements of Section 11.2, shall be appointed by the Borrower with the prior written consent of the Issuer, and the Credit Provider (unless appointed by the Bondholders as provided in Section 11.5), provided, however, that if the Borrower is then in default under any Bond Document or any Loan Document or if an event has occurred and is continuing which, with notice or the passage of time or both, would constitute such a default, such appointment will be made by the Issuer with the prior written consent of the Credit Provider. If, in the case of resignation or removal of the Trustee, no successor is appointed within 30 calendar days after the notice of resignation or within 30 calendar days after removal, as the case may be, then, in the case of a resignation, the resigning Trustee shall be entitled to appoint a successor with the prior written consent of the Issuer and the Credit Provider or shall be entitled, at its sole discretion (at the sole cost and expense of the Borrower, including with respect to reasonable attorneys' fees and expenses) to apply to a court of competent jurisdiction for the appointment of a successor Trustee and for other appropriate relief, and, in the case of a removal, the Credit Provider shall have the right to appoint a successor Trustee or to apply to a court of competent jurisdiction for the appointment of a successor Trustee. The successor Trustee must accept in writing its duties and responsibilities under this Indenture,

the Financing Agreement, the Assignment and the Regulatory Agreement. The successor Trustee shall give notice of such succession by first-class mail, postage prepaid, to each Bondholder, the Issuer, the Credit Provider, the Loan Servicer, and the Borrower.

**SECTION 11.7 Transfer of Rights and Mortgaged Property to Successor Trustee.**

The successor Trustee, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of the predecessor Trustee, but the former Trustee shall nevertheless, on the written request of the Issuer, the Credit Provider or the successor Trustee, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may be reasonably required for more fully and certainly vesting and confirming in the successor Trustee all the right, title and interest of the predecessor Trustee in and to any properties held by it under this Indenture, and shall pay over, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions set forth in this Indenture. The former Trustee shall execute and deliver a certificate of transfer or such other certificate or document as may be required by the Credit Facility for its transfer to a successor Trustee and do such other things as may be reasonably required to transfer all of its right, title and interest in and to the Credit Facility to the successor Trustee. Should any deed, conveyance or instrument in writing from the Issuer be required by the successor Trustee for more fully and certainly vesting in and confirming to the successor Trustee any such moneys, estates, properties, rights, powers and duties, any and all such deeds, conveyances and instruments in writing, shall, on request, and as may be authorized by law, be executed, acknowledged and delivered by the Issuer.

**SECTION 11.8 Power To Appoint Co-Trustees and Separate Trustees.**

(a) **Appointment of Co-Trustees.** At any time or times, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Mortgaged Property is located, the Issuer (at the request of the Borrower, unless the Borrower is then in default under any Bond Document or any Loan Document or if an event has occurred and is continuing which, with notice or the passage of time or both, would constitute such a default) shall have the power, subject to the approval of the Credit Provider, to appoint one or more persons approved by the Trustee either to act as co-trustee jointly with the Trustee or as separate trustee of all or any part of the Mortgaged Property, and to vest in such person, in such capacity, such title to the Mortgaged Property or any part of it, and/or such rights, powers, duties, trusts or obligations as the Issuer and the Trustee may consider necessary or desirable. If the Issuer is in default under this Indenture, the Trustee alone will have the power to make such appointment with the prior written consent of the Credit Provider. The Issuer shall execute, acknowledge and deliver all such instruments as may be required by any such co-trustee or separate trustee for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-trustee or separate trustee. Any co-trustee shall give prompt written notice of such appointment to the Loan Servicer.

(b) **Effect of Death, Incapacity, Resignation or Removal of Co-Trustee or Separate Trustee.** In case any co-trustee or separate trustee dies, becomes incapable of

acting, resigns or is removed, the pledge and assignment of the Security and all rights, powers, trusts, duties and obligations of the co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee is appointed in the same manner as provided in subsection (a).

(c) **Approval of the Issuer.** No co-trustee or separate trustee may assume its duties under this Indenture without the prior written approval of the Issuer, unless the Issuer is in default under this Indenture or has failed to respond timely as otherwise provided in this Article XI.

**SECTION 11.9 Filing of Financing Statements.** At the expense of the Borrower, the Trustee shall file or record or cause to be filed or recorded all continuation statements (but not initial financing statements) which are required to be filed or recorded in order to protect and preserve the security interests relating to and the priority of (i) the Trust Estate and the Security, (ii) at the direction of the Credit Provider or the Loan Servicer, the Loan and (iii) the rights and powers of the Issuer, the Trustee and the Credit Provider in connection with such security interests, including, but not limited to, all continuation statements for the purpose of continuing without lapse the effectiveness of those financing statements which have been filed at or prior to the Closing Date in connection with the security for the Bonds pursuant to the authority of the UCC, and any previously filed continuation statements which have been filed as required by this Indenture; provided, however, that (a) if the Credit Provider or the Loan Servicer gives written notice to the Trustee that it has filed or recorded all applicable financing statements, the Trustee shall be entitled to rely on such written notice and (b) the Trustee shall only be obligated to file continuation statements for financing statements for which it is the secured party or the assignee of the secured party and filed copies of which have been provided to the Trustee. The Issuer shall sign, and the Trustee shall obtain from the Borrower, the Loan Servicer or the Credit Provider, all such financing statements as may be required for such purposes. Upon the filing of any such continuation statement the Trustee shall immediately notify the Issuer, the Borrower, the Credit Provider and the Loan Servicer that the same has been done. If direction is given by the Loan Servicer or the Credit Provider, the Trustee shall file all continuation statements in accordance with such directions.

## **ARTICLE XII SUPPLEMENTAL INDENTURES; AMENDMENTS**

**SECTION 12.1 Supplemental Indentures Not Requiring Bondholder Consent.** The Issuer and the Trustee, without the consent of or notice to any Bondholder, may enter into an indenture or indentures supplemental to this Indenture for one or more of the following purposes:

(a) to cure any ambiguity or to correct or supplement any provision contained in this Indenture or in any supplemental indenture which may be defective or inconsistent with any other provision contained in this Indenture or in any supplemental indenture;

(b) to amend, modify or supplement this Indenture in any respect if such amendment, modification or supplement is not materially adverse to the interests of the Bondholders;

(c) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee, or to grant or pledge to the Trustee for the benefit of the Bondholders any additional security other than that granted or pledged under this Indenture;

(d) to modify, amend or supplement this Indenture in such manner as to permit qualification under the Trust Indenture Act of 1939, as amended, or any similar federal statute then in effect, or to permit the qualification of the Bonds for sale under the securities laws of any of the States of the United States;

(e) to appoint a successor trustee, separate trustee or co-trustee, or a separate Bond Registrar;

(f) to make any change requested or consented to by the Credit Provider which is not materially adverse to the interests of the Bondholders, including, but not limited to, provision of a Credit Facility other than or in substitution for the initial Credit Facility, provided that the provision of such other Credit Facility does not adversely affect the rating then in effect for the Bonds;

(g) to make any changes in this Indenture or in the terms of the Bonds necessary or desirable in order to maintain the then existing rating awarded to the Bonds by the Rating Agency or otherwise to comply with requirements of any Rating Agency then rating the Bonds;

(h) to comply with the Code and the regulations and rulings issued with respect to the Code, to the extent determined as necessary in the Opinion of Bond Counsel; or

(i) to subject to the lien and pledge of this Indenture additional revenues, properties or collateral;

(j) to make such additions, deletions or modifications as may be, in the opinion of Bond Counsel delivered to the Issuer, the Trustee and the Credit Provider, necessary to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds;

(k) to implement or modify any secondary market disclosure requirements;  
and

(l) to modify, amend, alter or supplement this Indenture in any other respect, which is not materially adverse to the holders of the Bonds to be Outstanding after the effective date of the change.

If the Trustee has received written confirmation from the Rating Agency to the effect that such supplemental indenture will not result in the suspension, withdrawal or reduction of the then current rating on the Bonds and all conditions precedent in this Section 12.1 and in Sections 12.5 and 12.6 have been satisfied, the Trustee shall join the Issuer in the execution of any such supplemental indenture. The Trustee promptly shall furnish a copy of any such supplemental indenture to the Credit Provider, the Loan Servicer and the Borrower.

**SECTION 12.2 Supplemental Indentures Requiring Bondholder Consent.** The Issuer and the Trustee may, with the consent of Bondholders owning not less than 51 percent in aggregate principal amount of Bonds then Outstanding, from time to time, execute indentures supplemental to this Indenture for the purpose of modifying or amending any of the provisions of this Indenture provided, however, that nothing in this Section 12.2 permits, or shall be construed as permitting:

- (a) an extension of the maturity of the principal of or interest on, or the mandatory Redemption Date of, any Bond, without the consent of the owner of such Bond;
- (b) a reduction in the principal amount of, or the rate of interest on, any Bond, without the consent of the owner of such Bond;
- (c) a preference or priority of any Bond or Bonds over any other Bond or Bonds, without the consent of the owners of all such Bonds;
- (d) the creation of a lien prior to or on parity with the lien of this Indenture, without the consent of the owners of all of the Bonds then Outstanding;
- (e) a change in the percentage of Bondholders necessary to waive an Event of Default under this Indenture or otherwise approve matters requiring Bondholder approval under this Indenture, including consent to any supplemental indenture, without the consent of the owners of all the Bonds then Outstanding;
- (f) a transfer, assignment or release of the Credit Facility (or modification of the provisions of this Indenture governing such transfer, assignment or release), other than as permitted by this Indenture or the Credit Facility, without the consent of the owners of all of the Bonds then Outstanding;
- (g) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indenture, without the consent of the holders of all of the Bonds then Outstanding;
- (h) the creation of any lien other than a lien ratably securing all of the Bonds at any time Outstanding under this Indenture, without the consent of the holders of all of the Bonds then Outstanding; or
- (i) the amendment of this Section 12.2, without the consent of the holders of

all of the Bonds then Outstanding.

The Trustee shall promptly furnish a copy of any such supplemental indenture to the Credit Provider, the Loan Servicer and the Borrower. Notice of any amendment pursuant to this Section shall be given to the Bondholders promptly following the execution thereof.

**SECTION 12.3 No Bondholder Consent Required for Amendment to Loan Documents.** Unless a Wrongful Dishonor has occurred and is continuing, the Credit Provider alone may consent to any amendment to the Loan Documents and no consent of the Bondholders is required; provided, however, that any amendment of the payment terms of the Note shall occur only following written confirmation of the Rating Agency that such amendment will not result in a reduction or withdrawal of the rating on the Bonds.

**SECTION 12.4 Amendments to the Credit Facility.** The Credit Facility may only be amended, supplemented or otherwise changed in accordance with the following:

(a) **Replacement Credit Facility.** At the request of the Credit Provider, the Trustee shall exchange the Credit Facility with the Credit Provider for a new Credit Facility (a “**Replacement Credit Facility**”) issued by the Credit Provider, provided that there is delivered to the Trustee (i) a written confirmation from the Rating Agency to the effect that such exchange shall not adversely affect the rating then in effect for the Bonds and (ii) a written opinion of Bond Counsel to the effect that such exchange will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes. No such exchange shall require the approval of the Issuer, the Trustee or any of the Bondholders or constitute or require a modification or supplement to this Indenture.

(b) **Amendment of the Credit Facility.** The Trustee may consent, without the consent of the owners of the Bonds, to any amendment of the Credit Facility not addressed in subsection (a) which does not prejudice in any material respect the interests of the Bondholders.

(c) **Other Amendments of the Credit Facility.** Except as provided in subsections (a) and (b), the Credit Facility may be amended only with the consent of the Trustee and the owners of a majority of the owners of all Outstanding Bonds. No amendment may be made to the Credit Facility which would reduce the amounts required to be paid under the Credit Facility or change the time for payment of such amounts; provided, however, that any such amounts may be reduced without such consent solely to the extent that such reduction represents a reduction in any fees payable from such amounts.

**SECTION 12.5 Notice to and Consent of Bondholders.** If consent of the Bondholders is required for any supplement, amendment or modification to this Indenture or for any other similar purpose, the Trustee shall give notice of the proposed supplement, amendment or modification by first class mail, postage prepaid, to the Bondholders. Such notice will be conclusively presumed to have been duly given and received when given in such manner, whether or not any holder actually receives the notice. Such notice shall briefly set forth the nature of the proposed supplement, amendment or modification, and

shall state that copies of any such supplement, amendment or modification are on file at the Designated Office of the Trustee for inspection by the Bondholders. The consent of the holder of any Bond will be binding on any transferee and successor transferees of such Bond.

**SECTION 12.6     Required Approvals.** Subject to the provisions of Section 8.6, no amendment, supplement or modification may be made to any Transaction Document without the prior written consent of the Credit Provider. Anything in this Indenture to the contrary notwithstanding, a supplement or amendment or other document described under this Article XII which materially and adversely affects any rights or obligations of the Borrower will not become effective unless and until the Borrower (if the Borrower is not then in default under any Bond Document or any Loan Document and if no event which, with notice or the passage of time or both, would constitute such a default has occurred and is continuing) has consented in writing to the execution of such supplemental indenture, amendment or other document. The Trustee shall not be required to enter into any supplement or amendment which adversely affects the Trustee's rights, duties and immunities under this Indenture.

**SECTION 12.7     Opinions of Counsel.** Subject to the provisions of Section 11.1, the Trustee may obtain and will be fully protected in relying upon an Opinion of Counsel as conclusive evidence that any supplement or amendment to this Indenture is authorized and permitted by this Indenture and, if applicable, is not materially adverse to the interests of the Bondholders. No supplement or amendment with respect to this Indenture will be effective until the Issuer and the Trustee have received an opinion of Bond Counsel to the effect that such supplement or amendment will not adversely affect the exclusion from gross income, for federal income tax purposes, of the interest payable on the Bonds.

**SECTION 12.8     Notation of Modification on Bonds; Preparation of New Bonds.** Bonds authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article may bear a notation, in form approved by the Trustee and the Issuer as to any matter provided for in such supplemental indenture, and if such supplemental indenture so provides, new Bonds, so modified as to conform, in the opinion of the Trustee and the Issuer, to any modification of this Indenture contained in any such supplemental indenture, may be prepared by the Issuer, authenticated by the Trustee and delivered without cost to the Bondholders, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

## **ARTICLE XIII MISCELLANEOUS**

**SECTION 13.1     Consents, Etc., of Bondholders.** Any consent, request, direction, or other instrument required to be signed by the Bondholders may be in any number of concurrent writings of similar tenor and may be signed by any Bondholder in person or by an authorized agent appointed in writing. The fact and date of the execution by any person of any such request, consent, direction, approval, objection or other instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take



acknowledgments within such jurisdiction that the person signing such writing acknowledged before such officer its execution, or by an affidavit of any witness to such execution. Such proof of execution or of the writing appointing any agent will be sufficient for any of the purposes of this Indenture and will be conclusive in favor of the Trustee with regard to any action taken by it under such consent, request, direction or other instrument. In the event that the Trustee receives conflicting directions from two groups of Bondholders, each with combined holdings of not less than 25 percent in aggregate principal amount of all Bonds then Outstanding, the directions given by the group of Bondholders which hold the largest percentage of Bonds Outstanding will be controlling and the Trustee shall follow such directions as elsewhere required in this Indenture.

**SECTION 13.2 Limitation of Rights.** With the exception of rights expressly conferred in this Indenture, nothing expressed in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the Issuer, the Trustee, the Bondholders, the Credit Provider, the Loan Servicer and the Borrower any legal or equitable right, remedy or claim under or in respect of this Indenture. This Indenture and all of the covenants, conditions and provisions in this Indenture are intended to be for the sole and exclusive benefit of the parties to this Indenture, the Bondholders, the Credit Provider, the Loan Servicer and the Borrower as provided in this Indenture. The Credit Provider is a third-party beneficiary of this Indenture with the right to enforce its provisions.

**SECTION 13.3 Entire Agreement; Severability.** This Indenture, the Bond Documents and the exhibits hereto set forth the entire agreement and understanding of the parties related to this transaction and supersedes all prior agreements and understandings, oral or written. If any provision of this Indenture is held to be in conflict with any applicable constitution or statute or rule of law, or is otherwise held to be unenforceable for any reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other part or circumstance, or of rendering any other provision or provisions contained in this Indenture invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or Sections of this Indenture will not affect the remaining portions of this Indenture.

**SECTION 13.4 Notices.** Unless otherwise specified in this Indenture, it shall be sufficient service or giving of any notice, request, certificate, demand or other communication if the same is sent by (and all notices required to be given by mail will be given by) first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery, or sent by Electronic Means which produces evidence of transmission, confirmed by first-class mail, postage prepaid, and in each case will be deemed to have been given on the date evidenced by the postal or courier receipt or other written evidence of delivery or electronic transmission. Unless a different address is given by any party as provided in this Section, all such communications will be addressed as follows:

To the Issuer: City of San José  
Department of Finance  
200 East Santa Clara Street, 13<sup>th</sup> Floor  
San José, CA 95113-1905  
Attention: Debt Management  
Email: [debt.management@sanjoseca.gov](mailto:debt.management@sanjoseca.gov)

With a copy to: City of San José  
Department of Housing  
200 East Santa Clara Street, 12<sup>th</sup> Floor  
San José, CA 95113-1905  
Attention: Director of Housing

With a copy to: City of San José  
City Attorney's Office  
200 East Santa Clara Street, 16<sup>th</sup> Floor  
San José, CA 95113-1905  
Attention: Housing Attorney

To the Trustee: Computershare Trust Company, National Association, as  
Trustee  
1505 Energy Park Drive  
St. Paul, MN 55018  
Attention: Corporate Trust Services  
Telephone: (667) 786-1072

To the Borrower: La Moraga San Jose L.P.  
c/o St. Anton Communities, LLC  
1801 I Street, Suite 200  
San Francisco, California 95811  
Attn: [\_\_\_\_]  
Telephone: [\_\_\_\_]  
Facsimile: [\_\_\_\_]

To the Rating Agencies:

To the Credit Provider:  
Standard & Poor's Rating Services  
55 Water Street  
38th Floor  
New York, NY 10041-0003  
Attention: Public Finance Surveillance Group  
Email: [pubfin\\_housing@standardandpoors.com](mailto:pubfin_housing@standardandpoors.com)

Moody's Investors Service, Inc.

7 World Trade Center  
250 Greenwich Street, 16<sup>th</sup> Floor  
New York, NY 10007  
Attention: Public Finance Group – Housing Team  
Email: Housing@moodys.com

To the Credit Provider:

Fannie Mae  
1100 15<sup>th</sup> Street, NW  
Drawer AM  
Washington, D.C. 20005  
Attention: Vice President, Multifamily Asset Management  
Telephone: (703) 833-3438  
Facsimile: (301) 280-2065

With a copy to:

Fannie Mae  
1100 15<sup>th</sup> Street, NW  
Drawer AM  
Washington, DC 2005  
Attention: Director Multifamily Operations  
Telephone: (301) 204-8422  
Facsimile: (202) 752-8369

RE: City of San José Multifamily Housing Revenue  
Refunding Bonds (La Moraga Apartments) Series  
2025C/Berkadia

To the Loan Servicer:

Berkadia  
5960 Berkshire Lan, Suite 1000  
Dallas, TX 75225  
Attention: Asset Management  
E-Mail: \_\_\_\_\_

RE: City of San José Multifamily Housing Revenue  
Refunding Bonds (La Moraga Apartments) Series  
2025C/Berkadia

Copies of all notices given to the Credit Provider must be given concurrently to the Loan Servicer. By notice given under this Indenture, any entity whose address is listed in this Section may designate any different addresses to which subsequent notices, certificates, requests, demands or other communications shall be sent, but no notice directed to any one such entity (except for Credit Provider) will be required to be sent to more than two addresses. All approvals required under this Indenture will be given in writing.

The Trustee agrees to accept and act upon written instructions and/or directions pursuant to this Indenture; provided, however, that subsequent to such instructions delivered by electronic means with respect to written instructions and/or directions, the originally executed instructions and/or directions shall be provided to the Trustee in a timely manner.

The Trustee shall provide to the Rating Agency notice of (i) any change in Trustee hereunder (ii) any material amendment to any of the Transaction Documents, (iii) any termination, expiration or extension of the Credit Facility and (iv) any mandatory acceleration or redemption in whole or defeasance of the Bonds. The Trustee shall give prompt written notice to the Loan Servicer of the non-payment of any fee, cost or expense payable under the Financing Agreement.

**SECTION 13.5      Action Required to be taken on a Non-Business Day.** If the date for making any payment or any date on which action is required to be taken is not a Business Day, then any action required to be taken or any payment required to be made may be taken or made on the following Business Day with the same force and effect as if made or taken on the date otherwise provided for in this Indenture and, in the case of any payment date, no interest will accrue for the period from and after such date.

**SECTION 13.6      Binding Effect.** From and after the Closing Date, this Indenture shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained in this Indenture.

**SECTION 13.7      Governing Law.** This Indenture and the Bonds are contracts made under the laws of the State and shall be governed by and construed in accordance with the Constitution and laws applicable to contracts made and performed in the State. This Indenture and the Bonds shall be enforceable in the State, and any action arising out of this Indenture or the Bonds shall be filed and maintained in Santa Clara County, California, unless the Issuer waives this requirement.

**SECTION 13.8      No Personal Liability; No Recourse.** No member, officer, agent, employee or attorney of the Issuer, including any person executing this Indenture or the Bonds, will be liable personally on the Bonds or for any reason relating to the issuance of the Bonds. No recourse will be had for the payment of the principal of or the interest on the Bonds, or for any claim based on such Bonds, or otherwise in respect of such Bonds, or based on or in respect of this Indenture or any indenture supplemental to this Indenture, against any member, officer, employee or agent, as such, of the Issuer or any successor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance of this Indenture and as part of the consideration for the issue of the Bonds, expressly waived and released.

**SECTION 13.9      Counterparts.** This Indenture may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

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The Issuer has caused this Indenture to be executed in its name and on its behalf by its duly authorized officer, and the Trustee has caused this Indenture to be executed in its name by its duly authorized officer, all as of the date set forth above.

**CITY OF SAN JOSE, as Issuer**

By: \_\_\_\_\_  
Maria Öberg  
Director of Finance

Approved as to form:

By: \_\_\_\_\_  
Jessica Holden  
Deputy City Attorney

**COMPUTERSHARE TRUST COMPANY,  
NATIONAL ASSOCIATION,**  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**  
**FORM OF BOND**

NOTICE: Unless this certificate is presented by an authorized representative of The Depository Trust Company to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

REGISTERED  
NO. R-1

REGISTERED

CITY OF SAN JOSE MULTIFAMILY HOUSING REVENUE  
REFUNDING BONDS (LA MORAGA APARTMENTS), Series 2025C

INTEREST RATE	MATURITY DATE	DELIVERY DATE	CUSIP
[Rate]%	[October 1, 2035]	September 2, 2025	[_____]

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: FORTY-FOUR MILLION EIGHT HUNDRED FIFTY-SIX THOUSAND DOLLARS

City of San José (the “Issuer”), for value received, promises to pay to the Registered Owner specified above or registered assigns, but solely from the sources and in the manner referred to herein, the Principal Amount specified above on the Maturity Date specified above (subject to the rights of redemption set forth herein), and to pay from those sources interest on the unpaid principal balance of said Principal Amount calculated at the aforesaid Interest Rate on (a) April 1 and October 1 of each year beginning April 1, 2026, (b) each Redemption Date, and (c) each Maturity Date (the “Payment Dates”) until the principal amount is paid or duly provided for. This Bond will bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from its date.

The principal of this Bond is payable upon presentation and surrender hereof at the designated corporate trust office of the trustee, presently Computershare Trust Company, National Association (the “Trustee”). Interest is payable on each Payment Date by check drawn upon the Trustee and mailed by first class mail, postage prepaid, to the addresses of the person in whose name this Bond is registered (the “Registered Owner” or the “Holder”) on the first day of the month preceding the month in which that Payment Date occurs (the



“Record Date”) on the registration books for this issue maintained by the Trustee, or to such other address as may be furnished in writing by any Registered Owner to the Trustee prior to the applicable Record Date. Notwithstanding the foregoing, payment of principal of and interest and any premium on any Bond shall be made by wire transfer to any account within the United States of America designated by a Registered Owner owning \$1,000,000 or more in aggregate principal amount of Bonds provided such Registered Owner provides wire transfer instructions to the Trustee not later than five Business Days prior to the applicable Record Date and otherwise complies with the procedures set forth in the Indenture. Notwithstanding the foregoing, payments of the principal of, premium, if any, and interest on any Bonds that are subject to the Book- Entry System will be made as provided in the Indenture.

NONE OF THE ISSUER, ANY ISSUER MEMBER OR ANY PERSON EXECUTING THE BONDS IS LIABLE PERSONALLY ON THE BONDS OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THEIR ISSUANCE. THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY FROM THE TRUST ESTATE. NEITHER THE ISSUER, ITS MEMBERS, THE STATE OF CALIFORNIA, NOR ANY OF ITS POLITICAL SUBDIVISIONS SHALL BE DIRECTLY, INDIRECTLY, CONTINGENTLY OR MORALLY OBLIGATED TO USE ANY OTHER MONEYS OR ASSETS TO PAY ALL OR ANY PORTION OF THE DEBT SERVICE DUE ON THE BONDS, TO LEVY OR TO PLEDGE ANY FORM OF TAXATION WHATEVER THEREFOR OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT. THE BONDS ARE NOT A PLEDGE OF THE FAITH AND CREDIT OF THE ISSUER, ITS MEMBERS, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS NOR DO THEY CONSTITUTE INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION. THE ISSUER HAS NO TAXING POWER.

THE ISSUER SHALL NOT BE LIABLE FOR PAYMENT OF THE PRINCIPAL, PREMIUM OR INTEREST ON THE BONDS OR ANY OTHER COSTS, EXPENSES, LOSSES, DAMAGES, CLAIMS OR ACTIONS OF ANY CONCEIVABLE KIND ON ANY CONCEIVABLE THEORY, UNDER OR BY REASON OF OR IN CONNECTION WITH THIS INDENTURE, THE BONDS OR ANY OTHER DOCUMENTS, EXCEPT ONLY TO THE EXTENT AMOUNTS ARE RECEIVED FOR THE PAYMENT THEREOF FROM THE BORROWER UNDER THE FINANCING AGREEMENT.

This Bond is one of a duly authorized issue of Multifamily Housing Revenue Refunding Bonds (La Moraga Apartments), Series 2025C (the “Bonds”), issuable under the Trust Indenture dated as of September 1, 2025 (the “Indenture”), between the Issuer and the Trustee, aggregating in the principal amount \$44,856,000 and used for the purpose of financing a loan (the “Loan”) to be made to La Moraga San Jose L.P., a California limited partnership (the “Borrower”). The Loan will be used by the Borrower to refinance the costs of acquisition, construction and development of the Project, as further provided in the Financing Agreement (the “Financing Agreement”), dated as of

September 1, 2025, among the Issuer, the Trustee, and the Borrower. Capitalized terms used herein and not otherwise defined shall have the meanings assigned in the Indenture.

The Bonds are special obligations of the Issuer, issued or to be issued under, and to be secured and entitled equally and ratably to the protection given by, the Indenture.

The Bonds are subject to redemption prior to their stated maturity in whole or in part, on the dates, under the terms and conditions and at the redemption prices set forth in the Indenture, all of the provisions of which are, by this reference, incorporated into this Bond. Notice of redemption shall be given in the manner set forth in the Indenture.

Reference is made to the Indenture for a more complete description of the Project, the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the holders of the Bonds, and the terms and conditions upon which the Bonds are issued and secured. Each Holder assents, by its acceptance hereof, to all of the provisions of the Indenture.

The Bonds are equally and ratably secured as to principal, premium, if any, purchase price and interest by the Indenture. Reference is made to the Indenture for a description of the Trust Estate, the nature and extent of the Security for the Bonds, the terms and conditions upon which the Bonds are secured, and the rights of the owners of the Bonds. The Security includes a Credit Enhancement Instrument (the “Credit Facility”), dated as of the Closing Date, issued by Fannie Mae to the Trustee.

**FANNIE MAE’S OBLIGATIONS WITH RESPECT TO THE LOAN AND THE BONDS ARE SOLELY AS PROVIDED IN THE CREDIT FACILITY. THE OBLIGATIONS OF FANNIE MAE UNDER THE CREDIT FACILITY WILL BE OBLIGATIONS SOLELY OF FANNIE MAE, A FEDERALLY CHARTERED STOCKHOLDER-OWNED CORPORATION. FANNIE MAE’S OBLIGATIONS ARE NOT BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA. THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, OR ANY AGENCY OF THE UNITED STATES OF AMERICA, OR OF FANNIE MAE, AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA, ANY AGENCY OF THE UNITED STATES OF AMERICA OR FANNIE MAE. FANNIE MAE HAS NO OBLIGATION TO PURCHASE, DIRECTLY OR INDIRECTLY, ANY OF THE BONDS.**

In the Indenture, the Issuer has assigned to the Trustee, to provide for the payment of the principal of, premium, if any, purchase price and interest on the Bonds, the Issuer’s right, title and interest in and to the Financing Agreement, except for Reserved Rights as defined in the Indenture. To secure its compliance with certain covenants in the Financing Agreement, the Borrower will execute and deliver the Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants (the “Regulatory Agreement”) among itself, the Issuer and the Trustee.

Copies of the Indenture, the Financing Agreement and the Regulatory Agreement are on file in the designated corporate trust office of the Trustee.

The Bonds are issuable only as fully registered bonds and, except as hereinafter provided, in printed or typewritten form, registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York (“DTC”), which shall be considered to be the Holder for all purposes of the Indenture, including, without limitation, payment by the Issuer of Bond service charges, and receipt of notices to, giving of consents by and exercise of rights of, Holders. There shall be a single Bond representing each maturity, and all Bonds shall be immobilized in the custody of DTC with the owners of beneficial interests in those Bonds (the “book-entry interests”) having no right to receive from the Issuer Bonds in the form of physical securities or certificates. Ownership of book-entry interests in the Bonds shall be shown by book entry on the system maintained and operated by DTC, its participants (the “Participants”) and certain persons acting through the Participants, and transfers of ownership of book-entry interests shall be made only by that book-entry system, the Issuer and the Trustee having no responsibility therefor. DTC is to maintain records of the positions of Participants in the Bonds, and the Participants and persons acting through Participants are to maintain records of the purchasers and owners of book-entry interests in the Bonds. The Bonds as such shall not be transferable or exchangeable, except for transfer to another Depository (as defined in the Indenture) or to another nominee of a Depository, without further action by the Issuer and otherwise at the expense of the Borrower.

If any Depository determines not to continue to act as a Depository for the Bonds for use in a book-entry system, the Issuer may attempt to have established a securities depository/book-entry system relationship with another qualified Depository under the Indenture. If the Issuer does not or is unable to do so, the Issuer and the Trustee, after the Trustee has made provision for notification of the owners of book-entry interests by the then Depository, shall permit withdrawal of the Bonds from the Depository, and authenticate and deliver Bond certificates in fully registered form (in denominations of \$5,000, or any integral multiple of \$5,000 in excess thereof) to the assignees of the Depository or its nominee, all at the cost and expense (including costs of printing or otherwise preparing and delivering replacement Bond certificates) of those persons requesting such authentication and delivery, if the event is not the result of Issuer action or inaction (including action at the request of the Borrower).

The Indenture permits certain amendments or supplements to the Indenture, the Financing Agreement, the Regulatory Agreement and the Note not prejudicial to the Holders to be made without the consent of or notice to the Holders, and certain other amendments or supplements thereto to be made with the consent of the holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding.

The Holder of each Bond has only those remedies provided in the Indenture.

The Bonds shall not constitute the personal obligation, either jointly or severally, of the members of the Governing Board or of any other officer or official of the Issuer.

This Bond shall not be entitled to any security or benefit under the Indenture or be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed.

It is certified and recited that there have been performed and have happened in regular and due form, as required by law, all acts and conditions necessary to be done or performed by the Issuer or to have happened (a) precedent to and in the issuing of the Bonds in order to make them legal, valid and binding special obligations of the Issuer, and (b) precedent to and in the execution and delivery of the Indenture and the Financing Agreement; that payment in full for the Bonds has been received; and that the Bonds do not exceed or violate any constitutional or statutory limitation.

This Bond shall not be entitled to any security or benefit under the Indenture or be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed.

**IN WITNESS WHEREOF**, the City of San José has caused this Bond to be executed with the manual or facsimile signature of an Authorized Officer.

**CITY OF SAN JOSE, as Issuer**

By: \_\_\_\_\_  
Maria Öberg  
Director of Finance

**[FORM OF TRUSTEE’S CERTIFICATE OF AUTHENTICATION]**

This Bond is one of the bonds described in the within mentioned Indenture.

Date of Authentication:

COMPUTERSHARE TRUST COMPANY,  
NATIONAL ASSOCIATION, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

## ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond and irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer that Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
Signature guarantee shall be made by a guarantor institution participating in the Securities Transfer Agent Medallion Program or in such other guarantee program acceptable to the Registrar.

Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

Please insert social security number or other tax identification number of transferee

\_\_\_\_\_  
\_\_\_\_\_

## DTC FAST RIDER

Each Bond shall remain in the Trustee's custody subject to the provisions of the FAST Balance Certificate Agreement currently in effect between the Trustee and DTC.

**EXHIBIT B**

**FORM OF REQUISITION  
(Costs of Issuance Fund)**

STATEMENT NO. \_\_\_\_\_ REQUESTING DISBURSEMENT OF FUNDS FROM  
THE COSTS OF ISSUANCE FUND  
PURSUANT TO SECTION 5.8 OF THE TRUST INDENTURE

Ladies and Gentlemen:

Pursuant to Section 5.8 of the Trust Indenture (the “Indenture”) dated as of September 1, 2025, between the City of San José (the “Issuer”) and Computershare Trust Company, National Association, as trustee (the “Trustee”), the undersigned Authorized Borrower Representative, as an authorized representative of La Moraga San Jose L.P., a California limited partnership (the “Borrower”), hereby requests and authorizes the Trustee, as depositary of the Costs of Issuance Fund created by the Indenture, to make a disbursement out of the money deposited in the Costs of Issuance Fund. Capitalized terms used in this Requisition but not defined herein shall have the meaning set forth in the Indenture.

- (1) The amount of this disbursement shall be \$\_\_\_\_\_.
- (2) The expected disbursement date is   [date of disbursement]  .
- (3) Disbursement is to be made in accordance with the following wire instructions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (4) The undersigned certifies that:
  - (i) the expenditures for which moneys are requisitioned by this Requisition represent proper charges against the Costs of Issuance Fund, have not been included in any previous requisition, have been properly recorded on the Borrower’s books and are set forth in Schedule I attached to this Requisition;
  - (ii) the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the Borrower for its funds actually advanced for Costs of Issuance; and,



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(iii) the Borrower is not in default under the Financing Agreement, the Regulatory Agreement or the Loan Documents and nothing has occurred to the knowledge of the Borrower that would prevent the performance of its obligations under the Financing Agreement, the Regulatory Agreement or the Loan Documents.

This statement constitutes the approval of La Moraga San Jose L.P., as Borrower, of each disbursement hereby requested and authorized.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

LA MORAGA SAN JOSE L.P.,  
a California limited partnership

By: PH La Moraga Holdings, LLC,  
a California limited liability company,  
its Managing General Partner

By: Pacific Housing, Inc.,  
a California nonprofit public benefit corporation,  
its Manager

By: \_\_\_\_\_  
Mark A. Wiese, President

By: Anton La Moraga, LLC,  
a California limited liability company,  
its Co-General Partner

By: \_\_\_\_\_  
Steven L. Eggert, Manager