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**INDENTURE OF TRUST**

**by and between**

**CITY OF SAN JOSE**

**and**

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

**as Trustee**

**Dated as of August 1, 2019**

**Relating to:**

**\$18,500,000**

**City of San Jose**

**Multifamily Housing Revenue Bonds  
(Lenzen Square) 2019 Series A-1**

**and**

**\$3,000,000**

**City of San Jose**

**Multifamily Housing Revenue Bonds  
(Lenzen Square) 2019 Series A-2**

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## TABLE OF CONTENTS

	<b>Page</b>
ARTICLE I DEFINITIONS .....	3
Section 1.1    Defined Terms .....	3
Section 1.2    Rules of Construction .....	25
ARTICLE II THE BONDS.....	26
Section 2.1    Authorized Amount of Bonds; Subordination of Series A-2 Bonds.....	26
Section 2.2    Issuance of Bonds .....	26
Section 2.3    Interest Rate on Bonds .....	27
Section 2.4    Execution; Limited Obligation .....	27
Section 2.5    Certificate of Authentication.....	28
Section 2.6    Form of Bonds .....	28
Section 2.7    Delivery of Bonds .....	28
Section 2.8    Mutilated, Lost, Stolen or Destroyed Bonds.....	30
Section 2.9    Exchangeability and Transfer of Bonds; Persons Treated as Owners .....	30
Section 2.10   Non-Presentation of Bonds .....	31
Section 2.11   Ratably Secured .....	31
Section 2.12   Redemption of Bonds .....	31
Section 2.13   Notice of Redemption .....	35
Section 2.14   Book-Entry System.....	36
ARTICLE III SECURITY .....	37
Section 3.1    Security .....	37
Section 3.2    Payment of Bonds and Performance of Covenants.....	37
Section 3.3    Authority.....	38
Section 3.4    No Litigation.....	38
Section 3.5    Further Assurances.....	38
Section 3.6    No Other Encumbrances; No Dissolution.....	38
Section 3.7    No Personal Liability .....	39
ARTICLE IV FUNDS .....	39
Section 4.1    Establishment of Funds and Accounts; Applications of Proceeds of the Bonds and Other Amounts .....	39
Section 4.2    Bond Fund.....	40

**TABLE OF CONTENTS**  
(CONTINUED)

	<b>Page</b>
Section 4.3 Project Fund .....	41
Section 4.4 Surplus Fund .....	42
Section 4.5 Use of Certain Additional Funds and Accounts .....	43
Section 4.6 Records .....	45
Section 4.7 Investment of Funds.....	45
Section 4.8 Yield Restriction .....	46
Section 4.9 Guaranties .....	46
ARTICLE V DISCHARGE OF LIEN.....	46
Section 5.1 Discharge of Lien and Security Interest.....	46
Section 5.2 Provision for Payment of Bonds .....	46
Section 5.3 Discharge of This Indenture.....	47
ARTICLE VI DEFAULT PROVISIONS AND REMEDIES .....	47
Section 6.1 Events of Default .....	48
Section 6.2 Acceleration .....	48
Section 6.3 Other Remedies; Rights of Holders .....	48
Section 6.4 Right of Controlling Person to Direct Proceedings .....	49
Section 6.5 Discontinuance of Default Proceedings.....	50
Section 6.6 Waiver.....	50
Section 6.7 Application of Moneys .....	50
Section 6.8 Default Interest and Acceleration Premium.....	52
ARTICLE VII THE TRUSTEE.....	52
Section 7.1 Appointment of Trustee .....	52
Section 7.2 Compensation and Indemnification of Trustee; Trustee’s Prior Claim.....	55
Section 7.3 Intervention in Litigation .....	56
Section 7.4 Resignation; Successor Trustees.....	56
Section 7.5 Removal of Trustee.....	57
Section 7.6 Instruments of Holders.....	57
Section 7.7 Power to Appoint Co-Trustees.....	57
Section 7.8 Filing of Financing Statements .....	59
ARTICLE VIII AMENDMENTS, SUPPLEMENTAL INDENTURES .....	60
Section 8.1 Supplemental Indentures.....	60

**TABLE OF CONTENTS**  
(CONTINUED)

	<b>Page</b>
Section 8.2 Amendments to Indenture; Consent of Majority Owner, Holders, and Borrower .....	61
Section 8.3 Amendments to the Loan Agreement or the Note Not Requiring Consent of Holders .....	61
Section 8.4 Amendments to the Loan Agreement or the Note Requiring Consent of Holders .....	62
Section 8.5 Notice to and Consent of Holders .....	62
ARTICLE IX CONTROLLING PERSON; SERVICING .....	63
Section 9.1 Majority Owner to Appoint Controlling Person .....	63
Section 9.2 Servicing .....	63
ARTICLE X MISCELLANEOUS .....	66
Section 10.1 Right of Trustee to Pay Taxes and Other Charges.....	66
Section 10.2 Limitation of Rights .....	66
Section 10.3 Severability .....	67
Section 10.4 Notices .....	67
Section 10.5 Payments Due on Non-Business Days.....	69
Section 10.6 Binding Effect.....	69
Section 10.7 Captions .....	69
Section 10.8 Governing Law; Venue.....	69
Section 10.9 Limited Liability of Issuer .....	69
Section 10.10 Notification of Issuer of Amount of Outstanding Bonds.....	69
Section 10.11 Tax Certificate.. .....	69
Section 10.12 Execution in Counterparts; Electronic Signatures .....	69
EXHIBIT A-1 FORM OF SERIES A-1 BOND	
EXHIBIT A-2 FORM OF SERIES A-2 BOND	
EXHIBIT B FORM OF INVESTOR LETTER	

## **INDENTURE OF TRUST**

This **INDENTURE OF TRUST** (as amended, modified or supplemented from time to time, this “Indenture”), dated as of August 1, 2019, made and entered into by and between **CITY OF SAN JOSE**, (together with its successors and assigns, the “Issuer”), a municipal corporation and charter city organized and existing under its Charter and the laws of the State of California, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee (together with any successor trustee hereunder and their respective successors and assigns (the “Trustee”).

### **WITNESSETH:**

**WHEREAS**, by virtue of the authority of the laws of the State of California (the “State”), and particularly the provisions of Chapter 5 of Division 7 of Title 1 of the California Government Code, together with the provisions of Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as the same may be amended (collectively, the “Act”), the Issuer is empowered to issue its revenue bonds and loan the proceeds thereof to finance or refinance, among other things, the acquisition, rehabilitation and development of multifamily rental housing to be occupied by persons of low and/or moderate income as determined by the Issuer pursuant to the Act; and

**WHEREAS**, the Issuer has determined to issue and sell its City of San Jose Multifamily Housing Revenue Bonds (Lenzen Square) 2019 Series A-1 in the original aggregate principal amount of \$18,500,000 (the “Series A-1 Bonds”) and its City of San Jose Multifamily Housing Revenue Bonds (Lenzen Square) 2019 Series A-2 in the original aggregate principal amount of \$3,000,000 (the “Series A-2 Bonds”) and together with the Series A-1 Bonds, the “Bonds”), for the purpose of financing the cost of the acquisition, renovation, installation and equipping of a multifamily rental housing facility, consisting of a total of eighty-eight (88) units (including one manager’s unit) and related personal property and equipment, and located in San Jose, California (the “Project Facilities”) all pursuant to this Indenture and the Loan Agreement, dated as of August 1, 2019 (as amended, modified or supplemented from time to time, the “Loan Agreement”), between the Issuer and Lenzen Square Community Partners, LP, a limited partnership duly organized and existing under the laws of the State (together with its permitted successors and assigns, the “Borrower”); and

**WHEREAS**, the Issuer is authorized to enter into this Indenture and to do or cause to be done all the acts and things herein provided or required to be done to finance the Project Costs by the issuance of the Bonds, all as hereinafter provided; and

**WHEREAS**, all acts, conditions and things required to happen, exist, and be performed precedent to and in the issuance of the Bonds and the execution and delivery of this Indenture have happened, exist and have been performed in order to make the Bonds, when issued, delivered and authenticated, valid obligations of the Issuer in accordance with the terms thereof and hereof, and in order to make this Indenture a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms; and

**WHEREAS**, the Trustee has accepted the trusts created by this Indenture and has accepted its obligations hereunder, and in evidence thereof, this Indenture has been executed and delivered thereby.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE COVENANTS AND UNDERTAKINGS HEREIN EXPRESSED, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY AND RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES HERETO AGREE AS FOLLOWS:

### **GRANTING CLAUSES**

The Issuer, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Holders thereof, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the payment of the principal of, acceleration premium, if any, and interest on the Bonds according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby transfer, pledge and assign, without recourse, to the Trustee and its successors and assigns in trust forever, and does hereby grant a Security Interest unto the Trustee and its successors in trust and its assigns, in and to all and singular the property described in paragraphs (a), (b), (c) and (d) below (said property being herein referred to as the “Security”), to wit:

(a) All moneys from time to time paid by the Borrower pursuant to the terms of the Loan Agreement, the Note and the Bond Documents and all right, title and interest of the Issuer (including, but not limited to, the right to enforce any of the terms thereof) under and pursuant to and subject to the provisions of the Loan Agreement, the Bond Documents and the Note (but in each instance excluding the Reserved Rights, as defined herein); and

(b) All other moneys and securities from time to time held by the Trustee under the terms of this Indenture, excluding the Rebate Fund and excluding amounts required to be rebated to the United States Treasury under Section 148(f) of the Code, whether or not held in the Rebate Fund; and

(c) Any and all property, rights and interests (real, personal or mixed) of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder to the Trustee, which the Trustee is hereby authorized to receive at any and all times and to hold and apply the same subject to the terms of this Indenture; and

(d) All of the proceeds of the foregoing (except the amounts payable to or on behalf of the Issuer on account of its Reserved Rights), including, without limitation, investments thereof;

TO HAVE AND TO HOLD, all and singular, the Security with all rights and privileges hereby transferred, pledged, assigned and/or granted or agreed or intended so to be, to the Trustee and its successors and assigns in trust forever;

IN TRUST NEVERTHELESS, upon the terms and conditions herein set forth for the equal and proportionate benefit, security and protection of all present and future Holders of the Bonds Outstanding, without preference, priority or distinction as to participation in the lien, benefit and protection of this Indenture of one Bond over or from the others, except (i) for the subordination of the Series A-2 Bonds as provided herein, and (ii) as herein otherwise expressly provided;

PROVIDED, NEVERTHELESS, and these presents are upon the express condition, that if the Issuer or its successors or assigns shall well and truly pay or cause to be paid the principal of and premium, if any, on such Bonds with interest, according to the provisions set forth in the Bonds, or shall provide for the payment or redemption of such Bonds by depositing or causing to be deposited with the Trustee the entire amount of funds or securities requisite for payment or redemption thereof when and as authorized by the provisions of Article V (it being understood that any payment with respect to the principal of or interest on Bonds made by the Borrower shall not be deemed payment or provision for the payment of the principal of or interest on Bonds, except Bonds purchased and canceled by the Trustee, all such uncanceled Bonds to remain Outstanding and the principal of and interest thereon payable to the Holders thereof), and shall also pay or cause to be paid all other sums payable hereunder by the Issuer, then these presents and the estate and rights hereby granted shall cease, terminate and become void, and thereupon the Trustee, on payment of its lawful charges and disbursements then unpaid, on demand of the Issuer and upon the payment by the Issuer of the cost and expenses thereof, shall duly execute, acknowledge and deliver to the Issuer such instruments of satisfaction or release as may be necessary or proper to discharge this Indenture of record, and if necessary shall grant, reassign and deliver to the Issuer all and singular the property, rights, privileges and interests by it hereby granted, conveyed and assigned, and all substitutes therefor, or any part thereof, not previously disposed of or released as herein provided; otherwise this Indenture shall be and remain in full force;

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Security is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer does hereby agree and covenant with the Trustee, for the benefit of the respective Holders from time to time of the Bonds as follows:

## ARTICLE I DEFINITIONS

**Section 1.1 Defined Terms.** In addition to terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture and the preambles hereto shall have the following meanings unless the context or use clearly indicates another or different meaning or intent.

“**Accountant**” means Propp Christensen Caniglia LLP, or such other accounting firm approved in writing by the Controlling Person.

“**Accounts**” means all funds and accounts established under this Indenture, including the Bond Fund, the Surplus Fund, the Operating Reserve Fund, the Rebate Fund, the Project Fund, the Tax and Insurance Escrow Fund, the Replacement Reserve Fund and the Redemption Fund. [NOTE: TO BE CONFIRMED]

“**Act**” shall have the meaning given to such term in the recitals to this Indenture.

“**Additional Payments**” means the amounts required to be paid by the Borrower pursuant to the provisions of Section 6.35 of the Loan Agreement.

“**Advance**” means any disbursement from the Project Fund established under this Indenture made or to be made by the Trustee pursuant to the terms of the Loan Agreement.

“**Affiliate**” means, with respect to any designated Person, each Person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another designated Person, pursuant to the organizational document(s) of an entity or by other express, written agreement.

“**Annual Budget**” means, for any Fiscal Year, the capital and operating budget adopted by the Borrower and approved by the Controlling Person, or deemed approved, pursuant to Section 6.24 of the Loan Agreement.

“**Anti-Terrorism Regulations**” shall have the meaning ascribed to such term in Section 6.23 of the Loan Agreement.

“**Approved Buyer**” means (1) a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act, as in effect on the date hereof, or (2) an “accredited investor” as defined in Regulation D promulgated under the Securities Act or (3) any other transferee expressly permitted under the Investor Letter.

“**Architect**” means Irwin Partners Architects.

“**Architect’s Agreement**” means the contract dated January 8, 2019, between the Borrower and the Architect, providing for the design of the Improvements and the supervision of the renovation thereof, including ongoing monthly inspection of the Improvements, certification of Requisitions and certification of Final Completion, among other things, as the same may be amended, modified or supplemented from time to time.

“**Assignment of Capital Contributions**” shall have the meaning provided in Section 3.1 of the Loan Agreement.

“**Assignment of Management Agreement and Consent**” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.



“**Assignment of Project Documents**” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“**Assignment of Rents**” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“**Authorized Denomination**” means \$[100,000], and any whole dollar amount in excess of \$[100,000], but not in excess of the aggregate principal amount of Bonds then Outstanding.

“**Authorized Representative**” means one or more individuals duly authorized to bind the Borrower in connection with the administration of the Project Facilities. The initial Authorized Representatives of the Borrower are any authorized officer of the Borrower, including, but not limited to, Anand Kannan.

“**Authorized Signatory**” means any person as may be designated and authorized to sign on behalf of the Issuer pursuant to a resolution adopted thereby.

“**Bankruptcy Code**” means Title 11 of the United States Code, as amended, and any successor statute or statutes having substantially the same function.

“**Beneficial Owner**” means the Person in whose name a Bond is registered or, if the Bonds are held through a Book-Entry System of a Securities Depository, the Person in whose name a Bond is recorded as beneficial owner of such Bond by the Securities Depository or a DTC Participant or an Indirect Participant on the records of such Securities Depository, DTC Participant or Indirect Participant, as the case may be, or such Person’s subrogee.

“**Bond**” or “**Bonds**” shall have the meaning given to such term in the recitals to this Indenture.

“**Bond Counsel**” means Stradling Yocca Carlson & Rauth, P.C., or an attorney, or firm of attorneys, nationally recognized and experienced in legal work relating to the financing of facilities through the issuance of tax-exempt bonds, reasonably acceptable to the Controlling Person.

“**Bond Coupon Rate**” means (i) with respect to the Series A-1 Bonds, 5.00% per annum, and (ii) with respect to the Series A-2 Bonds, 8.00% per annum.

“**Bond Documents**” means, collectively, the Bonds, this Indenture, the Loan Agreement, the Note, the Land Use Restriction Agreement, the Tax Certificate, the Purchase Agreement, the Mortgage, the Environmental Indemnity, the Assignment of Management Agreement and Consent, the Continuing Disclosure Agreement, the Assignment of Rents, the Replacement Reserve Agreement, the Assignment of Project Documents, the General Partner Pledge, the Developer Fee Pledge, the Assignment of Capital Contributions, the Guaranty of Recourse Obligations, the Guaranty of Debt Service and Stabilization and the Guaranty of Completion, and all other agreements or instruments relating to, or executed in connection with the issuance and delivery of the Bonds, including all modifications, amendments or supplements thereto.

“**Bond Fund**” means the fund of that name created pursuant to Section 4.1(a) hereof.

“**Bondholder**” or “**Holder**” or words of similar import, when used with reference to the Bonds, means the registered owner or owners of the Bonds, or Beneficial Owner or Beneficial Owners of the Bonds, as applicable.

“**Book-Entry System**” means a book entry system established and operated for the recordation of Beneficial Owners of the Bonds pursuant to Section 2.14 hereof.

“**Borrower**” shall have the meaning given to such term in the recitals to this Indenture.

“**Business Day**” means any day on which the offices of the Trustee, are open for business and on which The New York Stock Exchange is not closed.

“**Capital Expenditures**” means the capital expenditures relating to any construction, rehabilitation, renovation, repair and replacement of the Improvements or made pursuant to the recommendations of the Engineering Consultant.

“**Capitalized Interest Account**” means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

“**Change Order**” means a change made to the Plans and Specifications relating to the Project Facilities, as evidenced by a written change order request made in accordance with the terms of the Construction Contract.

“**Code**” means the United States Internal Revenue Code of 1986, as amended, and the rulings and regulations (including temporary and proposed regulations) promulgated thereunder.

“**Collateral**” means all property of the Borrower in which the Trustee is granted a Security Interest to secure payment of the Bonds.

“**Completion Date**” means the date by which the renovation of the Improvements must achieve Final Completion. The initial Completion Date for the renovations is March 1, 2021; provided, however, that at the request of the Borrower and with the prior written approval of the Controlling Person, the Completion Date may be extended one or more times for such periods as the Controlling Person may approve in its sole discretion, upon delivery of such other information and funds as reasonably requested by the Controlling Person or the Holders. The approval of the Controlling Person shall not be unreasonably withheld, conditioned or delayed in connection with any reasonably required extension of the Completion Date as a result of any Force Majeure event.

“**Condemnation Award**” means the total condemnation proceeds actually paid by the condemnor as a result of the condemnation of all or any part of the property subject to the Mortgage less the actual costs incurred, including attorneys’ fees, in obtaining such award.

“**Construction Contract**” means the contract, dated on or about [\_\_\_\_], 2019, between the Borrower and the Contractor, providing for the renovation of the Improvements and certification of Requisitions, among other things, as the same may be amended, modified or supplemented from time to time.

**“Contamination”** means the uncontained release, discharge or disposal of any Hazardous Substances at, on, upon or beneath the Project Facilities, whether or not originating at the Project Facilities, or arising from the Project Facilities into or upon any land or water or air, or otherwise into the environment, which may require remediation under any applicable Legal Requirements.

**“Continuing Disclosure Agreement”** means the Continuing Disclosure Agreement dated as of August 1, 2019, between the Borrower and the Trustee, as dissemination agent, as the same may be amended, modified or supplemented from time to time.

**“Contractor”** means Katterra Affordable Housing.

**“Control”** (including, with the correlative meanings, the terms “controlling”, “controlled by” and “under common control with”) means, as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such other Person, or of the Person, whether through contract, stock ownership, partnership interests, membership, voting rights, governing boards, committees, divisions or other bodies with one or more common members, directors, trustees or other managers, or otherwise.

**“Controlling Person”** means any entity designated in writing by the Majority Owner to act as a Controlling Person hereunder, in accordance with Article IX hereof. If at any time a Controlling Person has not been designated by the Majority Owner, all references herein and in other Bond Documents to “Controlling Person” shall refer to the Majority Owner. The initial Controlling Person is Red Stone Servicer, LLC.

**“Counsel”** means an attorney, or firm of attorneys, admitted to practice law before the highest court of any state in the United States of America or the District of Columbia, including any Bond Counsel.

**“Default”** means an event or condition which is, or which after giving notice or lapse of time or both would be, an Event of Default.

**“Default Interest”** means interest payable at the Default Rate.

**“Default Rate”** means a rate per annum equal to ten percent (10%) per annum; provided that such rate shall in no event exceed the maximum rate allowed by law.

**“Determination of Taxability”** means a determination that the interest accrued or paid on any of the Bonds is included in gross income of the Holders or former Holders for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

- (i) the day on which the Borrower, the Issuer, the Trustee or any Holder is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that the interest on the Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

(ii) the day on which the Borrower receives notice from the Trustee in writing that the Trustee has received (1) a notice in writing by any Holder or former Holder that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to such Holder or former Holder that asserts in effect that the interest on the Bonds received by such Holder or former Holder is included in the gross income of such Holder or former Holder for federal income tax purposes, or (2) an opinion of Bond Counsel that concludes in effect that the interest on the Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

(iii) the day on which the Borrower, the Issuer, the Trustee or any Holder is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service or a technical advice memorandum issued by the national office of the Internal Revenue Service that the interest on the Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes; or

(iv) the day on which the Borrower, the Issuer, the Trustee or any Holder is advised in writing by Counsel that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Borrower has been given written notice and an opportunity to participate and defend that the interest on the Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

provided, however, no Determination of Taxability shall occur if the interest on any of the Bonds is included in the gross income of any Holder or former Holder for federal income tax purposes solely because such Bond was held by a Person who is a Substantial User or a Related Person.

“**Developer Fee**” means the payment of the developer fee in accordance with the terms of the Development Agreement.

“**Developer Fee Pledge**” shall have the meaning provided in Section 3.1 of the Loan Agreement.

“**Development Agreement**” means the Development Fee Agreement, dated on or about [\_\_\_\_], between the developer or developers named therein and the Borrower, as the same may be amended, modified or supplemented from time to time.

“**Development Budget**” means the budget for the implementation and completion of the acquisition, renovation and equipping of the Project Facilities, initially as attached to the Loan Agreement as Schedule 4, together with any modifications or amendments thereto made in accordance with the Loan Agreement and with the prior written consent of the Controlling Person.

“**DTC Participant**” means a broker-dealer, bank or other financial institution for which the Securities Depository holds the Bonds as a securities depository.

**“Effective Gross Revenues”** means, for the period being tested, the annualized aggregate revenues during such period generated from all tenants and others occupying or having a right to occupy or use the Project Facilities or any portion thereof pursuant to leases, including (at the Controlling Person’s reasonable discretion, taking into account whether such income is recurring and is appropriate for a stabilized property), vending machine income, cable TV revenues, laundry service and parking income, as adjusted in the Controlling Person’s judgment for factors including but not limited to: (i) seasonal fluctuation in the rental rate in the market in which the Project Facilities are located; (ii) evidence of rent deterioration; (iii) concessions, reductions, inducements or forbearances (such as any cash reduction in monthly rent during the term of a lease, any free rent before, during or after the term of a lease, any rent coupons, gift certificates and tangible goods or any other form of rent reduction or forbearance); (iv) economic vacancy at the higher of: (1) 2.0%, or (2) actual economic vacancy based on the annualized vacancies of the Project Facilities; (v) 30-day or more delinquencies; (vi) low-income restrictions required by any applicable federal, state or local subsidy program, any restrictive covenant or regulatory agreement; and (vii) other applicable adjustments as reasonably determined by the Controlling Person. Effective Gross Revenues shall exclude revenues from Section 8 vouchers to the extent such revenues cause the rent on any unit to exceed the maximum allowable tax credit rent designated for such unit.

**“Engineering Consultant”** means Partner Assessment Corporation or any other engineer licensed to practice in the State and chosen by the Controlling Person.

**“Environmental Audit”** means the written Phase I Environmental Site Assessment for the Project Facilities prepared by Partner Assessment Corporation, dated as of [\_\_\_\_], 2019.

**“Environmental Indemnity”** shall have the meaning ascribed to such term in Section 3.1 of the Loan Agreement.

**“Environmental Laws”** means all Legal Requirements governing or relating to the protection of the environment, natural resources or human health concerning (i) activities at any of the Project Facilities, (ii) repairs or renovation of any Improvements, (iii) handling of any materials at any of the Project Facilities, (iv) releases into or upon the air, soil, surface water or ground water from any of the Project Facilities, and (v) storage, distribution, use, treatment, transport or disposal of any waste at or connected with any activity at any of the Project Facilities, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 42 U.S.C. §§ 9601 et seq., as amended from time to time; the Hazardous Materials Transportation Act 49 U.S.C. §§ 5101 et seq., as amended from time to time; the Resource Conservation and Recovery Act 42 U.S.C. §§ 6901 et seq., as amended from time to time; the Federal Water Pollution Control Act 33 U.S.C. §§ 1251 et seq., as amended from time to time; and comparable State statutes.

**“Environmentally Sensitive Area”** means (i) a wetland or other “water of the United States” for purposes of Section 404 of the federal Clean Water Act or any similar area regulated under any State or local Legal Requirements, (ii) a floodplain or other flood hazard area as defined pursuant to any applicable state Legal Requirements, (iii) a portion of the coastal zone for purposes of the federal Coastal Zone Management Act, or (iv) any other area development of

which is specifically restricted under applicable Legal Requirements by reason of its physical characteristics or prior use.

“**EPA**” shall have the meanings ascribed to such term in Section 6.14(d) of the Loan Agreement.

“**Equity Account**” means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

“**ERISA**” shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

“**ERISA Affiliate**” shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

“**Event of Default**” means, with respect to this Indenture, any of the events specified in Section 6.1 hereof, or with respect to the Loan Agreement, any of the events specified in Section 7.1 thereof.

“**Exchange Act**” means the Securities and Exchange Act of 1934, as amended.

“**Expenses**” means the aggregate annualized operating expenses (including replacement reserves) of the Project Facilities as reasonably determined by the Controlling Person. In determining Expenses, the Controlling Person will take into account: (i) the actual amount of aggregate annualized Expenses, provided that such actual expenses reflect normalized/stabilized operations as reasonably determined by the Controlling Person; (ii) debt service payments on the Series A-1 Bonds; (iii) any fees payable to the Controlling Person, the Issuer or the Trustee, and (iv) the annual Expenses that the Controlling Person used in the original underwriting of the Project Facilities, as set forth on Schedule 11 of the Loan Agreement. Any expense adjustment as reasonably determined by the Controlling Person may result in a line item which may be more or less than the actual annual expense for that line item for the period covered by the financial statements submitted by the Borrower to the Controlling Person.

“**Favorable Opinion of Bond Counsel**” means an opinion of Bond Counsel, addressed to the Issuer, the Trustee, and the Holders, with a copy to the Controlling Person, opining that a proposed action, event or circumstance (i) does not affect any exclusion from gross income of interest on the Bonds for federal income tax purposes, and (ii) does not affect any treatment of interest on the Bonds as not being an item of tax preference for purposes of the federal alternative minimum tax, which opinion may be subject to customary assumptions and exclusions.

“**Final Completion**” means, with respect to the Project Facilities, that each of the following conditions has been satisfied:

- (i) the Controlling Person shall have received a copy of the final Plans and Specifications containing all Change Orders and there shall have been no Material Change Orders other than Material Change Orders approved by the Controlling Person;

(ii) the Borrower shall have obtained the Governmental Actions, if any, required by the Legal Requirements and all Governmental Authorities associated with the Project Facilities, including use and occupancy permits (if any are required), and shall have furnished true copies of all such Governmental Actions to the Controlling Person. Temporary certificates of occupancy, as opposed to final certificates of occupancy or their equivalent, shall be acceptable provided (A) that the Punchlist Items do not have a total cost to complete exceeding two percent (2%) of the contract price of the Work, nor an estimated time to complete, as reasonably determined by the Engineering Consultant, exceeding forty-five (45) days (except for items such as landscaping, the completion of which is subject to seasonal conditions), (B) such Punchlist Items do not substantially interfere with or prevent the use and occupancy of the Project Facilities, (C) such Punchlist Items do not include major appliances or materially affect the systems (including plumbing, electrical, HVAC, mechanical, roofing and sprinklers) serving the Project Facilities or major structural components of the Project Facilities, and (D) adequate reserves, in amounts equal to 110% of the cost of completion of such items as estimated by the Architect and approved by the Engineering Consultant (or 125%, with respect to the items described in subsection (A) as being subject to seasonal conditions) have been deposited into the Project Fund;

(iii) as to all such Governmental Actions, no appeal or other action or proceeding challenging any such Governmental Actions shall have been filed or, if filed and decided, there shall have been no appeal (or further appeal) taken and all other statutory appeal periods must have expired, and there shall be no claim, litigation or governmental proceeding pending against the Borrower or the Project Facilities challenging the validity or the issuance of any zoning, subdivision or other land use ordinance, variance, permit or approval, or any Governmental Action of the kind described in this subparagraph (iii). In addition, as to all of such permits, approvals and certificates having statutory, regulatory or otherwise expressly specified and determinable appeal periods, such periods, if any, must have expired without an appeal having been taken (or any such appeal shall have been denied or shall have affirmed the granting of such Governmental Action);

(iv) the Controlling Person shall have received from the Architect, and the Engineering Consultant shall have approved, a certificate of the Architect in the form customary for projects of the scope of the Work for the Project Facilities with respect to completion of the Work at the Project Facilities;

(v) all Work set forth in the Plans and Specifications for the Project Facilities shall have been substantially completed and incorporated into the Improvements at the Project Facilities;

(vi) except for Permitted Encumbrances and Impositions not then due and payable, the Project Facilities shall be free of any and all private or governmental charges, claims or Liens (filed or not) of any nature, excepting only the liens and security interests in favor of the Trustee and any other encumbrances approved by the Controlling Person in writing;

(vii) with respect to all contractors and subcontractors and materialmen (for contracts less than \$100,000, only as required by the Title Company; provided that the Title Company insures over any mechanics' and materialmen's liens arising from such excepted contractors, subcontractors or materialmen), either (i) the Borrower shall have obtained an unconditional waiver and release upon final payment of mechanics' and materialmen's liens if there are no Punchlist Items, or (ii) if there are Punchlist Items, the Borrower shall have obtained an unconditional waiver and release upon progress payment of mechanics' and materialmen's liens for all of the Improvements at the Project Facilities except for the Punchlist Items, and true copies thereof have been delivered to the Controlling Person;

(viii) the final complete use of proceeds and completion certificates in the form required under the Loan Agreement shall have been provided to the Controlling Person and shall be reasonably acceptable to the Controlling Person; and

(ix) the Trustee shall have received an ALTA/NSPS Survey certified to the Trustee and the Controlling Person and an endorsement down dating the Title Policy insuring the Mortgage as a first lien, subject to Permitted Encumbrances.

**“Financing Statements”** means any and all financing statements (including amendments and continuation statements) or other instruments filed or recorded to perfect the Security Interest created in this Indenture.

**“Fiscal Year”** means the annual accounting year of the Borrower, which currently begins on January 1 of each calendar year.

**“Fitch”** means Fitch Ratings, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the Issuer and the Trustee.

**“Force Majeure”** means any acts of God, strikes, walkouts or other labor disputes, riots, civil strife, war, acts of a public enemy, lightning, fires, explosions, storms or floods or shortages of labor or materials or other causes of a like nature beyond the control of the Borrower; provided, however, that the unavailability of sources of financing, the insufficiency of funds, the loss of a tenant or changes in market conditions shall not constitute Force Majeure.

**“GAAP”** means generally accepted accounting principles in effect in the United States from time to time, consistently applied.

**“General Partner”** means WNC – Lenzen Square Community Partners GP, LLC, a California limited liability company, authorized to conduct its business in the State, the co-general partner of the Borrower, together with its successors and assigns, as permitted by the Controlling Person and the restrictions described in the definition of “Permitted Transfer” herein.



“**General Partner Pledge**” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“**Government Obligations**” means (i) direct obligations of the United States of America for the full and timely payment of which the full faith and credit of the United States of America is pledged, and (ii) obligations issued by a Person controlled or supervised by and acting as an instrumentality of the United States of America, the full and timely payment of the principal of, premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (i) or (ii) issued or held in book-entry form on the books of the Department of the Treasury of the United States of America), which obligations, in either case, are not subject to redemption prior to maturity at less than par at the option of anyone other than the holder thereof.

“**Governmental Action**” means all permits, authorizations, registrations, consents, certifications, approvals, waivers, exceptions, variances, claims, orders, judgments and decrees, licenses, exemptions, publications, filings, notices to and declarations of or with any Governmental Authority and shall include all permits and licenses required to renovate, use, operate and maintain any of the Project Facilities.

“**Governmental Authority**” means any federal, state, or local governmental or quasi - governmental subdivision, authority, or other instrumentality thereof and any entity asserting or exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and having jurisdiction over the Borrower and/or the Project Facilities.

“**Guarantor**” means WNC Capital Partners, LLC, a California limited liability company.

“**Guaranty of Completion**” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“**Guaranty of Debt Service and Stabilization**” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“**Guaranty of Recourse Obligations**” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“**Hazardous Substances**” means any petroleum or petroleum products and their by-products, flammable explosives, radioactive materials, toxic chemicals and substances, radon, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyls (PCB), asbestos-containing materials (ACMs), lead-containing or lead-based paint (LBP), radon, medical waste and other bio-hazardous materials and any chemicals, pollutants, materials or substances defined as or included in the definition of “hazardous substances” as defined pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, “regulated substances” within the meaning of subtitle I of the federal Resource Conservation and Recovery Act and words of similar import under applicable Environmental Laws.

“**HUD**” means the United States Department of Housing and Urban Development.

**“Impositions”** means, with respect to the Project Facilities, all taxes including, without limitation, all real and personal property taxes, water charges and sewer rents, any special assessments, charges or claims and any other item which at any time may be or become a lien upon the Project Facilities.

**“Improvements”** means all buildings and other improvements included in the Project Facilities.

**“Indebtedness”** means, collectively, and includes all present and future indebtedness, liabilities and obligations of any kind or nature whatsoever of the Borrower to the Issuer, the Controlling Person, the Trustee or to the Holders from time to time of the Bonds, now existing and hereafter arising, under or in connection with this Indenture or any of the other Bond Documents, including future advances, principal, interest, indemnities, other fees, late charges, enforcement costs and other costs and expenses whether direct or contingent, matured or unmatured and all other obligations of the Borrower to the Controlling Person, the Trustee, the Issuer or the Holders from time to time of the Bonds.

**“Indemnified Parties”** shall have the meaning given to such term in Section 2.5 of the Loan Agreement.

**“Indenture”** shall have the meaning given to such term in the first paragraph hereof.

**“Indirect Participant”** means a broker-dealer, bank or other financial institution for which the Securities Depository holds the Bonds as a securities depository through a DTC Participant.

**“Insurance and Condemnation Proceeds Account”** means the account within the Project Fund created pursuant to Section 4.1(a) hereof.

**“Insurance Proceeds”** means the total proceeds of insurance actually paid or payable by an insurance company in respect of the required insurance on the Project Facilities, less the actual costs incurred, including attorneys’ fees, in the collection of such proceeds.

**“Interest Payment Date”** means the first Business Day of each month that the Bonds are Outstanding, beginning October 1, 2019.

**“Investor Letter”** means that certain Investor Letter, substantially in the form attached hereto as Exhibit B.

**“Investor Sponsor”** means WNC & Associates, Inc.

**“Issue Date”** means August [ ], 2019, the date on which the Bonds are issued and delivered to the purchaser or purchasers thereof.

**“Issuer”** means the City of San Jose, a municipal corporation and charter city organized and existing under its Charter and the laws of the State of California, including the Act, or any successor to its rights and obligations under the Loan Agreement and this Indenture.

**“Land Use Restriction Agreement”** means the [Regulatory Agreement and Declaration of Restrictive Covenants], dated as of August 1, 2019, among the Issuer, the Trustee and the Borrower, as the same may be amended, modified or supplemented from time to time.

**“Land Use Restriction Agreement Default”** shall have the meaning given to such term in Section 7.9(b) of the Loan Agreement.

**“Lease”** shall have the meaning assigned to such term in the Mortgage.

**“Legal Requirements”** means all statutes, codes, laws, ordinances, regulations, rules, policies, or other federal, state, local and municipal requirements of any Governmental Authority whether now or hereafter enacted or adopted, and all judgments, decrees, injunctions, writs, orders or like action of an arbitrator or a court or other Governmental Authority of competent jurisdiction (including those pertaining to the health, safety or the environment).

**“Lien”** means any lien, mortgage, security interest, tax lien, pledge, encumbrance, title exception, conditional sale or title retention arrangement, or any other interest in property designed to secure the repayment of indebtedness, whether arising by agreement or under any statute or law, or otherwise.

**“Loan”** means the loan of proceeds of the Bonds from the Issuer to the Borrower, as evidenced by the Note and pursuant to the terms of the Loan Agreement in the principal amount of \$21,500,000.

**“Loan Agreement”** shall have the meaning given to such term in the recitals to this Indenture.

**“Local Time”** means Pacific time (daylight or standard, as applicable) in Los Angeles County, California.

**“Majority Owner”** means any one Person that is the Beneficial Owner of the Outstanding Series A-1 Bonds; provided, however, if no one Person is the Beneficial Owner of all of the Outstanding Series A-1 Bonds, “Majority Owner” means the Beneficial Owner or Owners of at least fifty-one percent (51%) in aggregate principal amount of all Outstanding Series A-1 Bonds.

**“Management Agreement”** shall have the meaning ascribed to such term in Section 6.19 of the Loan Agreement.

**“Manager”** means FPI Management, Inc., a California corporation, together with any successor manager of the Project Facilities approved by the Controlling Person, its successors and assigns.

**“Managing General Partner”** means FFAH – Lenzen Square, LLC, a California limited liability company authorized to conduct business in the State, the managing general partner of the Borrower, together with its successors and assigns, as permitted by the Controlling Person and the restrictions described in the definition of “Permitted Transfer” herein.

**“Material Change Order”** means, with respect to the Project Facilities, a Change Order which (i) would result in an increase or decrease of \$75,000 in the aggregate contract price of the Work to be performed on the Project Facilities; (ii) when aggregated with other Change Orders previously effected, would result in an increase or decrease in excess of \$300,000 in the aggregate contract price for the Work to be performed on the Project Facilities; (iii) would reduce the number of apartment units in the Project Facilities; (iv) would materially reduce the aggregate useable square footage of the apartment units or the parking areas in the Project Facilities; (v) would change the number of one, two and three bedroom apartments in the Project Facilities; (vi) would alter the scope of the recreational facilities or ancillary facilities of the Project Facilities; (vii) would alter the number of apartment units in the Project Facilities designated for occupancy by low and moderate income tenants; (viii) makes a substitution for any material or product that is of lesser quality, in the Controlling Person’s determination, than that specified in the Plans and Specifications relating to the Project Facilities; or (ix) would materially adversely impair the value of the Project Facilities once the Work is completed.

**“Material Contract”** means each indenture, mortgage, agreement or other written instrument or contract to which the Borrower is a party or by which any of its assets are bound (including, without limitation, any employment or executive compensation agreement, collective bargaining agreement, agreement relating to an Obligation, agreement for the acquisition, renovation, repair or disposition of real or personal property, agreement for the purchasing or furnishing of services, operating lease, joint venture agreement, agreement relating to the acquisition or disposition of an Affiliate or agreement of merger or consolidation) which (i) evidences, secures or governs any outstanding obligation of the Borrower of \$100,000 or more per annum, or (ii) if canceled, breached or not renewed by any party thereto, would have a material adverse effect on the business operations, assets, condition (financial or otherwise) or prospects of the Borrower.

**“Maturity Date”** means August 1, 2059.

**“Moisture Management Program”** shall have the meaning ascribed to such term in Section 6.14(d) of the Loan Agreement.

**“Mold”** shall have the meaning ascribed to such term in Section 6.14(e) of the Loan Agreement.

**“Monthly Tax and Insurance Amount”** means an amount equal to the sum of (i) one-twelfth (1/12th) of the annual Impositions, plus (ii) one-twelfth (1/12th) of the annual insurance premiums for the insurance coverages for the Project Facilities required by Section 6.4 of the Loan Agreement, as any such amounts may be increased if the Controlling Person determines that funds in the Tax and Insurance Escrow Fund will be insufficient to pay Impositions and insurance premiums when due.

**“Moody’s”** means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the Issuer and the Trustee.

“**Mortgage**” shall have the meaning ascribed to such term in Section 3.1 of the Loan Agreement.

“**Net Project Revenues**” means amounts received in connection with operating the Project Facilities net of Expenses.

“**NOI**” means, for any period, (x) Effective Gross Revenues for such period less (y) Expenses for such period, as determined or approved by the Controlling Person.

“**Note**” means, collectively, the Series A-1 Note and the Series A-2 Note, each dated the Issue Date, as endorsed by the Issuer to the Trustee, in the form attached as Exhibit A-1 and Exhibit A-2 to the Loan Agreement, respectively.

“**Obligations**” means any and all obligations of the Borrower for the payment of money including, without limitation, any and all (i) obligations for money borrowed, (ii) the Indebtedness and all other obligations evidenced by bonds, debentures, notes, guaranties or other similar instruments, (iii) construction contracts, installment sale agreements and other purchase money obligations in connection with the performance of work, sale of property or rendering of services, (iv) leases evidencing the acquisition of capital assets, (v) obligations under any applicable ground lease, (vi) reimbursement obligations in connection with letters of credit and other credit enhancement facilities, (vii) obligations for unfunded pension liabilities, (viii) guaranties of any such obligation of a third party, and (ix) any such obligations of third parties secured by assets of the Borrower; but excluding obligations incurred in the ordinary course of Borrower’s business under contracts for supplies, services and pensions allocable to current Expenses during the current or future Fiscal Years in which the supplies are to be delivered, the services rendered or the pension paid.

“**OFAC Violation**” shall have the meanings ascribed to such term in Section 6.23 of the Loan Agreement.

“**Operating Reserve Fund**” means the fund of that name created pursuant to Section 4.1(a) hereof.

“**Outstanding**” means, when used with reference to the Bonds (or a series of Bonds) at any date as of which the amount of outstanding Bonds is to be determined, all Bonds that have been authenticated and delivered by the Trustee hereunder, except:

- (i) Bonds cancelled or delivered for cancellation at or prior to such date;
- (ii) Bonds deemed to be paid in accordance with Section 5.2 hereof;
- (iii) Bonds in lieu of which others have been authenticated under Sections 2.8 and 2.9 hereof; and
- (iv) For purposes of any consent, request, demand, authorization, direction, notice, waiver or other action to be taken by the Holders of a specified percentage of Outstanding Bonds hereunder, all Bonds held by or for the account of the Issuer, the Borrower or any Affiliate of the Borrower; provided, however, that for purposes of any

such consent, request, demand, authorization, direction, notice, waiver or action the Trustee shall be obligated to consider as not being outstanding only Bonds known by the Trustee by actual notice thereof to be so held; provided, further, that if all of the Bonds are at any time held by or for the account of the Borrower or any Affiliate of the Borrower, then such Bonds shall be deemed to be Outstanding at such time for the purposes of this subparagraph (iv).

“**Partnership Agreement**” means the Amended and Restated Agreement of Limited Partnership of the Borrower dated as of [August 1, 2019].

“**PBGC**” shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

“**Permitted Encumbrances**” means only:

- (i) the Land Use Restriction Agreement;
- (ii) the Mortgage and the other liens and security interests granted, and pledges made, under the Bond Documents;
- (iii) the Assignment of Rents;
- (iv) [that certain regulatory agreement [to be] executed by Borrower in favor of the California Tax Credit Allocation Committee after the renovation of the Improvements has been completed, as required by the California Tax Credit Allocation Committee for an allocation of federal low-income housing tax credits];
- (v) for Impositions not yet due and payable or being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted if such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided that the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Controlling Person, and any foreclosure, distraint, sale or other similar proceedings shall have been effectively stayed;
- (vi) statutory liens of landlords and liens of carriers, warehouseman, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or being contested by appropriate proceedings promptly initiated and diligently conducted if (1) such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided (2) such liens have been bonded or the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Controlling Person; and
- (vii) the exceptions listed in the Title Policy and any other matters affecting title which are approved in writing by the Controlling Person.

**“Permitted Investments”** means any one or more of the following investments, if and to the extent the same are then legal investments under the applicable laws of the State for moneys proposed to be invested therein:

- (i) Bonds or other obligations of the United States;
- (ii) Bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States;
- (iii) Direct obligations issued by the United States or obligations guaranteed in full as to principal and interest by the United States or repurchase agreements with a qualified depository bank or securities dealers fully collateralized by such obligations, maturing on or before the date when such funds will be required for disbursement;
- (iv) Obligations of state and local government and municipal bond issuers, which are rated investment-grade by Fitch, S&P or Moody’s or other non-rated obligations of such issuers guaranteed or credit enhanced by a Person whose long-term debt or long-term deposits or other obligations are rated investment-grade by either S&P or Moody’s;
- (v) Prime commercial paper rated either “A-1” by S&P or “P-1” by Moody’s and, if rated by both, not less than “A-1” by S&P and “P-1” by Moody’s;
- (vi) Bankers’ acceptances drawn on and accepted by commercial banks;
- (vii) Interests in any money market fund or trust, the investments of which are restricted to obligations described in clauses (i) through (vi) of this definition or obligations determined to be of comparable quality by the board of directors of such fund or trust, including, without limitation, any such money market fund or trust for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (a) the Trustee or an affiliate of the Trustee receives fees from such funds for services rendered, (b) the Trustee charges and collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (c) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or its affiliates; and
- (viii) Such other investments selected by the Borrower as may be authorized by applicable law and consented to by the Controlling Person, provided that the Trustee may require as a condition to the investment of funds under this clause (viii) there having first been delivered to the Trustee an opinion of Counsel to the effect that investment is permitted under any applicable laws of the State and, if deemed applicable, a Favorable Opinion of Bond Counsel.

**“Permitted Transfer”** means (i) a transfer by devise or descent or by operation of law upon the death of a direct or indirect owner in the Borrower, so long as such transfer does not result in a change of management or control of the affected entity, (ii) the transfer of a direct or

indirect ownership interest in the General Partner or the Managing General Partner for estate planning purposes, so long as such transfer does not result in a change of management or control of the General Partner or the Managing General Partner, as applicable, (iii) a transfer of partnership interests in Borrower to the Tax Credit Investor or another entity directly or indirectly controlled by the Investor Sponsor, and/or the Special Limited Partner, (iv) a transfer of the limited partner interests of the Tax Credit Investor and/or the Special Limited Partner in the Borrower to an Affiliate of such Tax Credit Investor and/or Special Limited Partner, (v) a transfer of the limited partner interests of the Tax Credit Investor and/or the Special Limited Partner in the Borrower to non-affiliates of such Tax Credit Investor and/or Special Limited Partner with the prior written consent of the Controlling Person, (vi) a transfer of any shares or direct or indirect ownership interests in the Tax Credit Investor so long as the Tax Credit Investor is directly or indirectly controlled by Investor Sponsor and/or Special Limited Partner, (vii) transfers of any interests in the General Partner or the Managing General Partner so long as the Guarantor, or one or more members of the Guarantor, controls the Borrower after such transfer occurs, (viii) the removal and replacement or transfer of any interest of the General Partner or the Managing General Partner pursuant to the terms and conditions of the Partnership Agreement, (ix) after the payment in full of the Required Equity Funds, any other transfer, assignment, pledge, hypothecation or conveyance of limited partner interests in, or change in the limited partners of, the Borrower (and the owners of such limited partners) not described above, in accordance with the terms of the Partnership Agreement, or (x) the extension, amendment or replacement of commercial leases approved by the Controlling Person.

“**Person**” means any individual, for-profit or not-for-profit corporation, partnership, joint venture, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“**Plans and Specifications**” means, with respect to the Project Facilities, the plans and specifications for the renovation of Improvements prepared by the Architect and more particularly identified on Schedule 5 attached to the Loan Agreement and approved by the Controlling Person, as the same may be amended, modified or supplemented as permitted under the Loan Agreement through Change Orders or otherwise.

“**Principal Payment Date**” means, the first (1<sup>st</sup>) Business Day of each month that the Series A-1 Bonds are Outstanding, beginning October 1, 2025.

“**Project Costs**” means the costs, fees, and expenses associated with the acquisition, renovation and equipping of the Project Facilities for use as affordable rental housing including, but not limited to, the cost of materials, appliances, equipment, and other items of tangible personal property, the fees and expenses of architects, contractors, engineers, attorneys, accountants, developers, surveyors, and the payment of certain costs and expenses incidental to the issuance of the Bonds.

“**Project Facilities**” means the land and the multifamily apartment housing facilities consisting of a total of eighty-eight (88) units (including one manager’s unit) and related improvements, personal property and equipment, located in San Jose, California, the acquisition, renovation and equipping of which are being financed by the proceeds of the Bonds.



**“Project Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Project Revenue Account”** means the account of that name in the Project Fund created pursuant to Section 4.1(a) hereof.

**“Proposed Budget”** shall have the meaning given to such term in Section 6.24 of the Loan Agreement.

**“Punchlist Items”** means any items necessary at the time of the issuance of a temporary certificate of occupancy to complete fully the renovation of the Project Facilities in accordance with the Plans and Specifications for the Project Facilities, or required for the issuance of a final certificate of occupancy or its equivalent.

**“Purchase Agreement”** means, collectively, the Series A-1 Purchase Agreement and the Series A-2 Purchase Agreement.

[**“Qualified Project Costs”** means “Good Costs” as defined in the Tax Certificate.]

**“Ratings Agencies”** means any of the three primary bond rating agencies: S&P, Moody’s or Fitch, or any other nationally recognized securities rating agency designated by the Controlling Person by written notice to the Borrower, the Issuer and the Trustee.

**“Rebate Amount”** shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement.

**“Rebate Analyst”** shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement and shall be reasonably acceptable to the Controlling Person.

**“Rebate Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Rebate Report”** shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement.

**“Record Date”** means with respect to each Interest Payment Date, the Trustee’s close of business on the day before such Interest Payment Date occurs, regardless of whether such day is a Business Day.

**“Redemption Fund”** means the account of that name created pursuant to Section 4.1(a) hereof.

**“Register”** means the register of the record Holders of Bonds maintained by the Trustee.

**“Related Person”** with reference to any Substantial User, means a “related person” within the meaning of Section 147(a)(2) of the Code.

**“Rents”** shall have the meaning assigned to such term in the Mortgage.

“**Repayments**” means all payments of principal, premium if any, and interest on the Loan required to be paid by the Borrower to the Trustee, as the assignee of the Issuer pursuant to the Loan Agreement.

“**Replacement Reserve Agreement**” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“**Replacement Reserve Fund**” means the fund of that name created pursuant to Section 4.1(a) hereof.

“**Required Equity Funds**” means \$[\_\_\_\_], comprised of the [\_\_\_\_] ([\_\_\_\_]) separate installments of equity contributions to be made to the Borrower by the Tax Credit Investor, subject to and in accordance with the terms and conditions of the Partnership Agreement.

“**Requisition**” means a requisition in the form attached to the Loan Agreement as Exhibit B, together with all invoices, bills of sale, schedules, applications for payment, certifications and other submissions required for the disbursement of the proceeds of the Bonds from the Project Fund pursuant to the terms hereof.

“**Reserved Rights**” means the rights of the Issuer pursuant to Sections 2.5, 4.2, 6.10, 6.35, 10.5, 10.13, 10.17 and 10.18 of the Loan Agreement and the rights of the Issuer pursuant to other sections of the Loan Agreement providing that notices, reports and other statements be given to the Issuer.

“**Retainage**” means a holdback of ten percent (10%) of the hard costs of renovation of the Improvements under each contract or subcontract.

“**Sale**” means the direct or indirect sale, agreement to sell, assignment, transfer, conveyance, hypothecation, lien, mortgage, grant of a security interest in or a deed to secure debt or deed of trust with respect to, encumbrance, lease, sublease or other disposition of the Project Facilities, or any part thereof or interest therein whether voluntary, involuntary, by operation of law or otherwise, other than (i) the leasing of individual residential units to tenants, (ii) the extension, amendment, renewal or replacement of commercial leases currently in effect, and (iii) the grant of easements for utilities and similar purposes in the ordinary course provided, such easements do not impair the use of the Project Facilities or diminish the value of the Project Facilities. “**Sale**” shall also include the direct or indirect sale, transfer, assignment, pledge, hypothecation or conveyance of legal or beneficial ownership of (a) equity ownership interests in the Borrower, (b) a controlling interest in the aggregate, at any time or times, of the equity ownership interests in the General Partner or the Managing General Partner, or (c) the substitution of a new general partner or managing general partner in the Borrower without the Controlling Person’s written consent, which it may withhold in its sole discretion; provided, however, that “**Sale**” shall not include a Permitted Transfer.

“**S&P**” means S&P Global Ratings, a limited liability company organized and existing under the laws of the State of New York, its successors and assigns and, if such company shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency,

“S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the Issuer and the Trustee.

“**Secondary Market Transaction**” shall have the meaning given to such term in Section 10.13(a) of the Loan Agreement.

“**Securities**” shall have the meaning given to such term in Section 10.13(a) of the Loan Agreement.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Securities Depository**” means The Depository Trust Company and any substitute for or successor to such securities depository that shall maintain a Book-Entry System with respect to the Bonds.

“**Securities Depository Nominee**” means the Securities Depository or the nominee of such Securities Depository in whose name there shall be registered on the Register the Bonds to be delivered to such Securities Depository during the continuation with such Securities Depository of participation in its Book-Entry System.

“**Securities Parties**” shall have the meaning given to such term in Section 10.13(c) of the Loan Agreement.

“**Security**” shall have the meaning given to such term in the Granting Clauses of this Indenture.

“**Security Interest**” or “**Security Interests**” means the security interests created herein and shall have the meanings set forth in the U.C.C.

“**Series A-1 Bonds**” shall have the meaning given to such term in the recitals to this Indenture.

“**Series A-2 Bonds**” shall have the meaning given to such term in the recitals to this Indenture.

“**Series A-1 Note**” means the promissory note of the Borrower securing the Series A-1 Bonds.

“**Series A-2 Note**” means the promissory note of the Borrower securing the Series A-2 Bonds.

“**Series A-1 Purchase Agreement**” means the Bond Purchase Agreement, dated August 1, 2019, among the Issuer, the Borrower and the Underwriter, relating to the initial sale of the Series A-1 Bonds.

“**Series A-2 Purchase Agreement**” means the Bond Purchase Agreement, dated August 1, 2019, among the Issuer, the Borrower and the Series A-2 Purchaser, relating to the initial sale of the Series A-2 Bonds.

“**Series A-2 Purchaser**” means Arc70 Fund I, LP, Series A, as purchaser of the Series A-2 Bonds.

“**Sole Member**” means Foundation for Affordable Housing V, a California nonprofit public benefit corporation, the sole member of the General Partner.

“**Special Limited Partner**” means WNC Housing, L.P., a California Limited Partnership, and its successors and assigns in such capacity pursuant to the Partnership Agreement.

“**Stabilization**” means the point at which (i) the Improvements have been ninety percent (90%) occupied by tenants meeting the requirements of the Bond Documents in each of the prior three (3) consecutive months; (ii) the ratio of NOI in each of the prior three (3) consecutive months to maximum principal, interest, Issuer fees and Trustee fees payable in any month on the amount of the Series A-1 Bonds Outstanding equals or exceeds 1.15 to 1.0; (iii) no Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be then continuing under the Bond Documents; (iv) the Project Facilities shall have achieved Final Completion; (v) the Borrower shall have deposited an amount equal to \$[354,000], or such other amount as approved by the Controlling Person, in the Operating Reserve Fund; and (vi) the Borrower shall have deposited with the Trustee such amounts as may be necessary to redeem up to \$[2,250,000] aggregate principal amount of the Series A-1 Bonds, all as determined or approved by the Controlling Person.

“**Stabilization Date**” means September 1, 2021

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

“**Substantial User**” means, with respect to any “facilities” (as the term “facilities” is used in Section 144(a) of the Code), a “substantial user” of such “facilities” within the meaning of Section 147(a) of the Code.

“**Surplus Bond Proceeds**” means all moneys and any unliquidated investments remaining in the Bond Proceeds Account of the Project Fund upon Final Completion and after payment in full of the Project Costs (except for proceeds of the Bonds being retained to pay for Project Costs not then due and payable for which the Trustee shall have retained amounts pursuant to the Loan Agreement).

“**Surplus Fund**” means the fund of that name created pursuant to Section 4.1(a) hereof.

“**Tax and Insurance Escrow Fund**” means the fund of that name created pursuant to Section 4.1(a) hereof.

“**Tax Certificate**” means the Tax Certificate and Agreement dated the Issue Date between the Issuer and the Borrower, as it may be amended, modified or supplemented from time to time.

“**Tax Credit Investor**” means initially, WNC Holding, LLC, and, as its successor, WNC Institutional Tax Credit Fund X California Series 17, L.P., a California limited partnership, and its successors and assigns in such capacity pursuant to the Partnership Agreement.

“**Third Party Costs**” means the ongoing fees of the Issuer, the Trustee the Rebate Analysts or any other third party in connection with the Bonds.

“**Title Company**” means Chicago Title Insurance Company, or such other title company approved by the Borrower and Controlling Person.

“**Title Policy**” means the mortgagee’s title insurance policy relating to the Project Facilities issued by the Title Company to the Trustee, effective on the date of recording of the Mortgage, as the same may be subsequently down-dated or endorsed from time to time, with the approval of the Controlling Person.

“**Trustee**” shall have the meaning given to such term in the first paragraph of this Indenture.

“**U.C.C.**” means the Uniform Commercial Code of the State as now in effect or hereafter amended.

“**Underwriter**” means FMSbonds, Inc.

“**Underwriter Group**” shall have the meaning given to such term in Section 10.13(c) of the Loan Agreement.

“**Work**” means the items of renovation of the Improvements required to be performed under the Plans and Specifications for the Improvements.

**Section 1.2 Rules of Construction.** Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Indenture:

(a) All terms defined in the Loan Agreement and not defined herein shall have the meaning given to such terms in the Loan Agreement.

(b) Words importing the singular number shall include the plural number and vice versa.

(c) The table of contents, captions, and headings herein are for convenience of reference only and shall not constitute a part of this Indenture nor shall they affect its meaning, construction or effect.

(d) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

(e) All references in this Indenture to particular Articles or Sections are references to Articles or Sections of this Indenture, unless otherwise indicated.

## **ARTICLE II THE BONDS**

### **Section 2.1 Authorized Amount of Bonds; Subordination of Series A-2 Bonds.**

(a) No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The Bonds shall be designated as the “City of San Jose Multifamily Housing Revenue Bonds (Lenzen Square) 2019 Series A-1” in the aggregate principal amount of \$18,500,000 and the “City of San Jose Multifamily Housing Revenue Bonds (Lenzen Square) 2019 Series A-2” in the aggregate principal amount of \$3,000,000. The form of Series A-1 Bond attached as Exhibit A-1 and the form of Series A-2 Bond attached as Exhibit A-2 to this Indenture shall be the form of Bonds referred to herein.

(b) Notwithstanding anything to the contrary set forth herein or in any other Bond Document, the Series A-2 Bonds shall be subordinate to the Series A-1 Bonds in priority of payment and claims against the Security hereunder or under any other Bond Document with respect to the collateral pledged for the Bonds; provided however, on the Maturity Date, so long as no Event of Default has occurred and is then continuing and provided that all principal of and interest on the Series A-1 Bonds has been paid in full, the Holders of the Series A-2 Bonds shall be entitled to payment of all unpaid interest and principal on the Series A-2 Bonds. The Holders of the Series A-2 Bonds shall not have the right to grant approvals or give consents (except to the limited extent set forth in Section 8.2 hereof) under the Bond Documents, to vote the Series A-2 Bonds, to declare an Event of Default, make demand for payment, cause or declare any acceleration, enforce or exercise remedies under, or direct the Trustee or the Controlling Person in the enforcement or exercise of remedies hereunder or under any of the Bond Documents unless and until the Series A-1 Bonds have been paid in full. Any breach, non-compliance, failure (including failure to pay) or default with respect to the Series A-2 Bonds shall not constitute an Event of Default so long as any Series A-1 Bonds remain Outstanding hereunder.

### **Section 2.2 Issuance of Bonds.**

(a) The Bonds shall bear interest from the Issue Date until paid or exchanged, as applicable, at the rates set forth in Section 2.3 hereof computed on the basis set forth in the form of the Bonds, and the Bonds shall mature, unless sooner paid, on the Maturity Date, on which date all unpaid principal of, premium if any, and interest on the Bonds shall be due and payable.

(b) The Bonds shall be issued as fully registered bonds without coupons in Authorized Denominations only. The Series A-1 Bonds shall be numbered from R-1 upwards bearing numbers not then contemporaneously outstanding (in order of issuance) according to the records of the Trustee and the Series A-2 Bonds shall be numbered from [ ]-1 upwards, bearing numbers not then contemporaneously outstanding (in order of issuance) according to the records of the Trustee.

(c) The Bonds shall be dated the Issue Date and initially issued as provided herein and in the written instructions from the Issuer. Interest on the Bonds shall be computed from the most recent Interest Payment Date to which interest has been paid or duly provided for

or if no interest has been paid or provided for, from the Issue Date. The Bonds shall mature on the Maturity Date, on which date all unpaid principal of and interest on the Series A-1 Bonds, and thereafter on the Series A-2 Bonds, shall be due and payable. The Series A-1 Bonds are subject to mandatory sinking fund redemption as provided in Section 2.12(c) hereof.

(d) The principal of, premium if any, and the interest on the Bonds shall be payable in lawful currency of the United States. The principal of the Bonds shall be payable at the principal office of the Trustee upon presentation and surrender of the Bonds; provided, however, that Bonds need not be presented for payment upon redemption pursuant to Section 2.12(c) of this Indenture. Payments of interest on the Bonds will be mailed to the persons in whose names the Bonds are registered on the Register at the close of business on the Record Date next preceding each Interest Payment Date; provided that, any Holder of a Bond or Bonds in an aggregate principal amount of not less than \$250,000 may, by prior written instructions filed with the Trustee (which instructions shall remain in effect until revoked by subsequent written instructions), instruct that interest payments be made by wire transfer to an account in the continental United States or other means acceptable to the Trustee.

**Section 2.3 Interest Rate on Bonds.** The Bonds shall bear interest at the applicable Bond Coupon Rate from the Issue Date to the date of payment in full of the Bonds, calculated in the manner set forth in the form of the Bonds.

(a) Interest accrued on the Series A-1 Bonds shall be paid on each Interest Payment Date and on the Maturity Date and any date of redemption prior to the Maturity Date; provided however, that in the event that principal of, premium if any, or interest payable on the Bonds is not paid when due or when any other Event of Default shall occur and be continuing, there shall be payable on the Series A-1 Bonds or on any amount not timely paid, interest at the Default Rate, as more fully set forth in Section 6.8 hereof.

(b) Interest on the Series A-2 Bonds shall be paid on each Interest Payment Date and on the Maturity Date and any date of redemption prior to the Maturity Date; provided, however, that interest on the Series A-2 Bonds shall be payable only out of NOI (provided, however, NOI will be used first to pay any principal or interest due on the Series A-2 Bonds and the remainder divided equally to pay (i) interest due on the Series A-2 Bonds and (ii) the deferred Developer Fee) and, in the event that interest payable on the Series A-2 Bonds is not paid when due, such interest will accrue, but not compound, until payable on the next Interest Payment Date, on the Maturity Date or upon redemption.

**Section 2.4 Execution; Limited Obligation.**

(a) The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of an Authorized Signatory of the Issuer. In case any Authorized Signatory whose manual or facsimile signature shall appear on the Bonds shall cease to be such Authorized Signatory before the delivery of such Bonds, such manual or facsimile signatures shall nevertheless be valid and sufficient for all purposes. At the Closing, the Issuer will direct the Trustee to deliver (i) the Series A-1 Bonds to or upon the order of the Underwriter in book-entry form, pursuant to the DTC FAST System and (ii) the Series A-2 Bonds to the Series A-2

Purchaser in physical certificated form, in each case in definitive form, duly executed by the Issuer and authenticated by the Trustee.

(b) The Bonds shall be limited obligations of the Issuer. The Bonds and the interest thereon and acceleration premium, if any, shall not be deemed to constitute or create an indebtedness, liability or obligation of the Issuer, the State or any political subdivision or agency thereof within the meaning of any State constitutional provision or statutory limitation or a pledge of the faith and credit or the taxing power of the State or any such political subdivision or agency. The Bonds and the interest thereon are payable solely from and secured by the Security, all as described in and subject to limitations set forth in this Indenture, for the equal and ratable benefit of the Holders, from time to time, of the Bonds subject, however, to the subordination of the Series A-2 Bonds, as set forth herein.

**Section 2.5 Certificate of Authentication.** No Bonds shall be secured hereby or entitled to the benefit hereof or shall be or become valid or obligatory for any purpose unless there shall be endorsed thereon a certificate of authentication, substantially in the form as set forth in the form of Bond referred to in Section 2.1 hereof, executed by an authorized representative of the Trustee and such certificate on any Bond issued by the Issuer shall be conclusive evidence and the only competent evidence that it has been duly authenticated and delivered hereunder.

**Section 2.6 Form of Bonds.**

(a) The Bonds, the Trustee's certificate of authentication and the form of assignment shall be in substantially the form set forth as Exhibit A-1, in the case of the Series A-1 Bonds, and Exhibit A-2, in the case of the Series A-2 Bonds, with such appropriate variations, omissions, substitutions and insertions as are permitted or required hereby or are required by law and may have such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistent herewith, be determined by the authorized representative of the Issuer executing such Bonds, as evidenced by such authorized representative's execution of the Bonds.

(b) Bonds shall be in either typewritten or printed form, as the Controlling Person shall direct, on behalf of the Issuer, with approval of the Trustee. Any expenses, including, but not limited to, expenses of printing, incurred in connection with the preparation of the form of the Bonds shall be paid by the Borrower.

**Section 2.7 Delivery of Bonds.**

(a) Upon the execution and delivery hereof, the Issuer shall execute the Bonds and deliver them to the Trustee, and the Trustee shall authenticate the Bonds and deliver them (i) in the case of the Series A-1 Bonds, through the Securities Depository in the manner described in Section 2.14(b) hereof and (ii) in the case of the Series A-2 Bonds, to the Series A-2 Purchaser in physical certificated form.



(b) Prior to the delivery by the Trustee of the Bonds, there shall be filed with the Trustee:

(i) A certified copy of all resolutions adopted and proceedings had by the Issuer authorizing execution of this Indenture, the Loan Agreement and the other Bond Documents to which the Issuer is a party and the issuance of the Bonds; and

(ii) An original executed counterpart of the Bond Documents (and with respect to the Note, endorsed without recourse by the Issuer to the Trustee); and

(iii) Copies of any Financing Statements required to be filed to perfect the security interests in the Security or under Section 3.2 of the Loan Agreement; and

(iv) A copy of completed IRS Form 8038 to be filed by or on behalf of the Issuer pursuant to Section 149(e) of the Code; and

(v) An original executed counterpart of the Tax Certificate; and

(vi) An opinion of Bond Counsel or counsel to the Issuer to the effect that this Indenture, the Loan Agreement and the Purchase Agreement have been duly authorized, executed and delivered by the Issuer and are legal, valid and binding agreements of the Issuer; and

(vii) An approving opinion of Bond Counsel that the Bonds have been duly authorized and validly issued, that this Indenture creates a valid lien on the Security, that interest on the Bonds will be excludable from gross income of the Holders thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax, that the Bonds are not required to be registered under the Securities Act, and that this Indenture need not be qualified under the Trust Indenture Act of 1939, as amended; and

(viii) An opinion of Counsel for the Borrower to the effect that the Continuing Disclosure Agreement and the Bond Documents to which it is a party have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the Borrower and such other opinions as are required by the Purchase Agreement or reasonably requested by the Controlling Person or the Holders; and

(ix) A pro forma title insurance policy reasonably acceptable to the Controlling Person;

(x) Reliance letters for, or address of the opinions to, the Controlling Person and the initial Holders of each of the opinions filed with the Trustee; and

(xi) Such other documents as may be required by the Issuer, Trustee, Bond Counsel, or Controlling Person.

(c) Upon receipt of the foregoing, the Trustee shall authenticate and deliver the Bonds as provided in the written instructions of the Issuer to the Trustee.

**Section 2.8 Mutilated, Lost, Stolen or Destroyed Bonds.** If any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate and deliver a new Bond of the same maturity, interest rate, principal amount and tenor in lieu of and in substitution for the Bond mutilated, lost, stolen or destroyed; provided, that there shall be first furnished to the Trustee evidence satisfactory to it and the Issuer of the ownership of such Bond and of such loss, theft or destruction (or, in the case of a mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee), together with indemnity satisfactory to the Trustee and the Issuer and compliance with such other reasonable regulations as the Issuer and the Trustee may prescribe. If any such Bond shall have matured or a redemption date pertaining thereto shall have passed, instead of issuing a new Bond the Issuer may pay the same without surrender thereof. The Issuer and the Trustee may charge the Holder of such Bond with their reasonable fees and expenses in connection with this Section.

**Section 2.9 Exchangeability and Transfer of Bonds; Persons Treated as Owners.**

(a) The Register and all other records relating to the registration of the Bonds and for the registration of transfer of the Bonds as provided herein shall be kept by the Trustee.

(b) Any Holder of a Bond, in person or by his/her duly authorized attorney, may transfer title to his/her Bond on the Register upon surrender thereof at the principal office of the Trustee, by providing the Trustee with a written instrument of transfer (in substantially the form of assignment attached to the Bond) executed by the Holder or such Holder's attorney, duly authorized in writing, and, if required by the terms of the Investor Letter, a fully executed Investor Letter, and thereupon, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of the same aggregate principal amount, series and tenor as the Bond surrendered (or for which transfer of registration has been effected) and of any Authorized Denomination or Authorized Denominations.

(c) Bonds may be exchanged upon surrender thereof at the principal office of the Trustee with a written instrument of transfer satisfactory to the Trustee executed by the Holder or such Holder's attorney duly authorized in writing, for an equal aggregate principal amount of Bonds of the same series and tenor as the Bonds being exchanged and of any Authorized Denomination or Authorized Denominations. The Issuer shall execute and the Trustee shall authenticate and deliver Bonds that the Holder making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding.

(d) Such registrations of transfer or exchanges of Bonds shall be without charge to the Holders of such Bonds, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the Holder of the Bond requesting such 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 of transfer or exchange and all reasonable expenses of the Issuer shall be paid by the Borrower.

(e) The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of either principal or interest shall be made only to or upon the order of the registered owner thereof or his/her duly authorized attorney, but such registration may be changed as hereinabove

provided. 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) All Bonds issued upon any registration of transfer or exchange of Bonds shall 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 registration of transfer or exchange.

(g) Notwithstanding the foregoing, for so long as the Bonds are held under the Book-Entry System, transfers of beneficial ownership will be effected pursuant to rules and procedures established by the Securities Depository, as more fully described in Section 2.14 hereof.

(h) So long as the Series A-1 Bonds remain Outstanding, no Series A-2 Bond may be transferred unless the Trustee shall have received the prior written consent to such transfer from the Controlling Person, which consent may be granted or withheld by the Controlling Person in its sole discretion, and which consent may be conditioned on, among other things, a written confirmation from the transferee of the Series A-2 Bonds of the subordination of the Series A-2 Bonds to the Series A-1 Bonds as more fully set forth herein.

**Section 2.10 Non-Presentment of Bonds.** In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof (other than redemption under Section 2.12(c), for which no presentment is required) or otherwise, if funds sufficient to pay the principal of, premium if any, and interest on such Bond shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, payment of such Bond or portion thereof as the case may be, shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee, subject to any applicable escheat laws, to hold such fund or funds uninvested in the Bond Fund, without liability to the Holder of such Bond for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his/her part on, or with respect to, said Bond, or portion thereof.

**Section 2.11 Ratably Secured.** Except as set forth in Section 2.1(b) hereof with respect to the subordination of the Series A-2 Bonds, all Bonds issued hereunder are and are to be, to the extent provided in this Indenture, equally and ratably secured by this Indenture without preference, priority or distinction on account of the actual time or times of the authentication, delivery or maturity of the Bonds so that subject to Section 2.1(b) as aforesaid, all Bonds at any time Outstanding shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as if they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date.

**Section 2.12 Redemption of Bonds.**

(a) Optional Redemption of Bonds. The Bonds are subject to optional redemption in whole but not in part, at the direction of the Borrower upon not less than thirty

(30) days written notice to the Trustee and the Controlling Person, in Authorized Denominations on any Interest Payment Date occurring on or after August 1, 2034 [**NOTE: 15 YEARS FROM CLOSING**], at a redemption price equal to 100% of the principal amount thereof, plus accrued interest thereon to, but not including, the redemption date.

(b) Mandatory Redemption of Bonds.

(i) The Bonds are subject to mandatory redemption from, and to the extent of, amounts on deposit in the Surplus Fund (subject to Section 4.4 hereof) on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture, following the deposit of Surplus Bond Proceeds, if any, in the Surplus Fund at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(ii) The Bonds are subject to mandatory redemption in whole or in part on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture after and to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project Facilities are deposited in the Project Fund and are not to be used to repair or restore the Project Facilities, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date. If any such redemption is a partial redemption, available funds shall be applied first to the Series A-1 Bonds until redeemed in full and thereafter to the Series A-2 Bonds, unless otherwise directed by the Controlling Person.

(iii) The Series A-1 Bonds are subject to mandatory redemption in part on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture, in the amount as specified by the Controlling Person to the Trustee necessary to cause the Project Facilities to meet the requirements of clause (ii) of the definition of “Stabilization,” if the Project Facilities have not achieved Stabilization by the Stabilization Date at a redemption price equal to 100% of the principal amount of the Series A-1 Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(iv) The Bonds are subject to extraordinary mandatory redemption in whole or in part, at the direction of the Controlling Person to the Trustee and the Borrower, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture following receipt by the Trustee of the direction of the Controlling Person, within one hundred eighty (180) days of the occurrence of any of the following events:

(1) the Project Facilities shall have been damaged or destroyed to such an extent that in the reasonable judgment of the Controlling Person (A) it cannot reasonably be restored within a period of twelve (12) consecutive months to the condition thereof immediately preceding such damage or destruction, (B) the Borrower is thereby prevented from carrying on its normal operations at the Project Facilities for a period of

twelve (12) consecutive months, or (C) it would not be economically feasible for the Borrower to replace, repair, rebuild or restore the same;

(2) title in and to, or the temporary use of, all or substantially all of the Project Facilities shall have been taken under the exercise of the power of eminent domain by any Governmental Authority or any Person acting under Governmental Authority (including such a taking as, in the reasonable judgment of the Controlling Person, results in the Borrower being prevented thereby from carrying on its normal operations at the Project Facilities for a period of twelve (12) consecutive months);

(3) as a result of any changes in the Constitution of the State, or the Constitution of the United States of America or by legislative or administrative action (whether state or federal) or by final decree, judgment, decision or order of any court or administrative body (whether state or federal), any material provision of the Loan Agreement or the Bond Documents (as determined by the Controlling Person) shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein (as determined by the Controlling Person);

(4) unreasonable burdens or excessive liabilities shall have been imposed on the Borrower with respect to the operations of the Project Facilities, including, without limitation, federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Indenture that, in the judgment of the Controlling Person, render the continued operation of the Project Facilities uneconomical;

(5) changes which the Borrower cannot reasonably control or overcome in the economic availability of materials, supplies, labor, equipment and other properties and things necessary for the efficient operation of the Project Facilities for the purposes contemplated by this Indenture and the Loan Agreement shall have occurred or technological changes that the Borrower cannot reasonably overcome shall have occurred that, in the judgment of the Controlling Person, render the continued operation of the Project Facilities uneconomical;

(6) legal curtailment of the Borrower's use and occupancy of all or substantially all of the Project Facilities for any reason other than that set forth in (2) above, which curtailment shall, in the judgment of the Controlling Person, prevent the Borrower from carrying on its normal operations at the Project Facilities for a period of three (3) consecutive months; or

(7) the Loan Agreement is terminated prior to its expiration for any reason, including the occurrence of an Event of Default under the Loan Agreement.

(v) The Bonds are subject to mandatory redemption in whole at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture within forty-five (45) days after the occurrence of a Determination of Taxability; provided, however, if mandatory redemption on account of a Determination of Taxability of less than all the Bonds would result, in the opinion of Bond Counsel, in the interest on the Bonds Outstanding following such mandatory redemption being excludable from the gross income of the Holders of such Bonds Outstanding, then the Bonds are subject to mandatory redemption upon the occurrence of a Determination of Taxability in the amount specified in such opinion, provided that such redemption must be in an Authorized Denomination. If any such redemption is a partial redemption, available funds shall be applied first to the Series A-1 Bonds until redeemed in full and thereafter to the Series A-2 Bonds, unless otherwise directed by the Controlling Person.

(vi) The Bonds are subject to mandatory redemption in whole on any Interest Payment Date specified by the Controlling Person on or after August 1, 2035 [**NOTE: 16 YEARS FROM CLOSING**], if the Controlling Person directs redemption by providing written notice to the Borrower, the Trustee and the Issuer at least six (6) months prior to the Interest Payment Date specified in such notice on which the Bonds are to be redeemed at a redemption price equal to 100% of the principal amount thereof plus interest accrued thereon to, but not including, the redemption date. The direction of the Controlling Person to redeem the Bonds shall be irrevocable and shall be binding on the Holders of all of the Bonds and on any transferee(s) of such Holders.

(vii) The Series A-1 Bonds are subject to mandatory redemption in whole on any Interest Payment Date specified by the Controlling Person no earlier than the Completion Date but not later than the Stabilization Date in the principal amount not to exceed \$[2,250,000] at a redemption price equal to 100% of the principal amount of the Series A-1 Bonds to be redeemed without premium or penalty plus interest accrued thereon to, but not including, the redemption date.

(c) Mandatory Sinking Fund Redemption. The Series A-1 Bonds are subject to mandatory sinking fund redemption in part on each Principal Payment Date, from amounts paid by the Borrower to the Trustee for deposit into the Redemption Fund pursuant to Sections 2.3(d) and 8.4 of the Loan Agreement (in the amount set forth on Schedule 3 of the Loan Agreement), at a redemption price equal to 100% of the principal amount of the Series A-1 Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(d) Selection of Bonds to be Redeemed. If less than all the Outstanding Bonds of a series shall be called for redemption, the Trustee or, if the Bonds are held in the Book-Entry System, the Securities Depository shall select or arrange for the selection of the Bonds to be redeemed in Authorized Denominations by lot, pursuant to its rules and procedures, provided that any Bond or portion thereof remaining Outstanding shall be in an Authorized Denomination; provided, however, that unless otherwise consented to in writing by the Majority Owner, no Series A-2 Bonds shall be redeemed prior to the redemption of all Outstanding Series A-1 Bonds. With respect to the Bonds held in the Book-Entry System, the Securities Depository shall, acting pursuant to its rules and procedures, reflect in said system the partial redemption

and the Trustee shall either (i) exchange the Bond or Bonds held by the Securities Depository for a new Bond or Bonds of such series in the appropriate principal amount, if such Bond is presented to the Trustee by the Securities Depository, or (ii) obtain from the Securities Depository a written confirmation of the reduction in the principal amount of the Bonds held by such Securities Depository.

(e) Partial Redemption of Bonds; Reamortization. In case part but not all of a Bond shall be selected for redemption, upon presentation and surrender at the operations office of the Trustee of such Bond by the Holder thereof or his/her attorney duly authorized in writing (with due endorsement for transfer or accompanied by written instrument of transfer in form satisfactory to the Trustee), the Issuer shall execute and the Trustee shall authenticate and deliver to or upon the order of such Holder, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond or Bonds, at the option of such Holder, of any Authorized Denomination of such series and like tenor, or if less than the minimum Authorized Denomination, an amount necessary to equal the unredeemed portion of the principal amount of the Bond; provided, however, such surrender of Bonds shall not be required for payment of the redemption price pursuant to Section 2.12(c) hereof. For all purposes of this Indenture (including exchange and transfer), the Bond so issued in less than a minimum Authorized Denomination shall be deemed to have been issued in an Authorized Denomination. Bonds so presented and surrendered shall be canceled in accordance with this Indenture. In the event of a partial redemption of Bonds other than pursuant to Section 2.12(c), the mandatory sinking fund schedule set forth on Schedule 3 of the Loan Agreement shall be adjusted to provide for level debt service in respect of the Series A-1 Bonds remaining Outstanding after such partial redemption, on the basis of a forty (40) year amortization schedule, commencing on October 1, 2025. The Controlling Person shall provide the Trustee and the Borrower with a new Schedule 3 reflecting such adjustment promptly following any such partial redemption.

(f) Redemption Price. Other than as described in Section 6.8 hereof, any redemption of Bonds shall be at a redemption price equal to 100% of the principal amount of Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, without premium, penalty or charge.

(g) Right of Borrower to Purchase Bonds. Subject to delivery of a Favorable Opinion of Bond Counsel, provided that such opinion shall not be required if the Bonds are held by a Substantial User or Related Person to a Substantial User, the Borrower shall have the option, by written notice to the Trustee and the Controlling Person given not less than five (5) Business Days (forty-five (45) days in case of a redemption pursuant to Section 2.12(b)(vi) hereof), in advance of any redemption date, to cause the purchase of the Bonds in lieu of redemption on the redemption date. The purchase price of the Bonds so purchased in lieu of redemption shall be equal to the redemption price thereof, and shall be payable on the redemption date. Bonds so purchased in lieu of redemption shall be registered to or upon the direction of the Borrower.

**Section 2.13 Notice of Redemption.** Notice of redemption shall be mailed by the Trustee by first-class mail, postage prepaid, at least thirty (30) days before the redemption date to each Holder of the Bonds to be redeemed in whole or in part at his/her last address appearing on the Register, with a copy to the Controlling Person, but no defect in or failure to give such notice

of redemption shall affect the validity of the redemption; provided, however, that no notice of redemption shall be required for mandatory sinking fund redemption pursuant to Section 2.12(c) hereof. All Bonds properly called for redemption will cease to bear interest on the date fixed for redemption, and, thereafter, the Holders of such Bonds called for redemption shall have no rights in respect thereof except to receive payment of the redemption price from the Trustee and a new Bond for any portion not redeemed. Notwithstanding the foregoing, with respect to any Bonds held under the Book-Entry System, notices of redemption shall be provided in accordance with the rules and procedures established by the Securities Depository, as more fully described in Section 2.14 hereof. If, at the time of mailing of notice of an optional redemption under Section 2.12(a), there shall not have been deposited with the Trustee moneys sufficient to redeem the Bonds in full, such notice may state it is conditional and at the discretion of the Borrower to rescind such call for redemption by written notice of rescission to be delivered to the Trustee (with a copy to the Controlling Person) no later than three (3) Business Days prior to the redemption date.

#### **Section 2.14 Book-Entry System.**

(a) Initially, the Series A-2 Bonds will be issued in the form of one fully registered physical bond certificate. At any time thereafter, the Holder of the Series A-2 Bonds may elect to register the Series A-2 Bonds in a Book-Entry System and the Issuer and the Borrower shall assist the Trustee and the Holder of the Series A-2 Bonds to deposit the Series A-2 Bonds in the Book-Entry System. From and after such direction, any provision of this Indenture or the Bonds requiring physical delivery of the Bonds shall, with respect to any of the Series A-2 Bonds held under the Book-Entry System, be deemed to be satisfied by a notation on the Register maintained by the Trustee that such Series A-2 Bonds are subject to the Book-Entry System.

(b) On the date of issuance and delivery of the Bonds, one Series A-1 Bond in the aggregate principal amount of the Series A-1 Bond and registered in the name of the Securities Depository Nominee will be issued and deposited with the Securities Depository and held in its custody. The Book-Entry System will be maintained by the Securities Depository and the DTC Participants and Indirect Participants and will evidence beneficial ownership of the Series A-1 Bonds in Authorized Denominations, with registration of transfers of ownership effected on the records of the Securities Depository, the DTC Participants and the Indirect Participants pursuant to rules and procedures established by the Securities Depository, the DTC Participants and the Indirect Participants. The principal of, premium if any, and interest on each Series A-1 Bond shall be payable to the Securities Depository Nominee or any other person appearing on the Register as the registered Holder of such Series A-1 Bond or his/her registered assigns or legal representative at the principal office of the Trustee. So long as the Book-Entry System is in effect, the Securities Depository will be recognized as the Holder of the Series A-1 Bonds for all purposes. Transfer of principal, premium if any, and interest payments or notices to DTC Participants and Indirect Participants will be the responsibility of the Securities Depository, and transfer of principal, premium if any, and interest payments or notices to Beneficial Owners will be the responsibility of the DTC Participants and the Indirect Participants. No other party will be responsible or liable for such transfers of payments or notices or for maintaining, supervising or reviewing such records maintained by the Securities



Depository, the DTC Participants or the Indirect Participants. While the Securities Depository Nominee or the Securities Depository, as the case may be, is the registered owner of the Series A-1 Bonds, notwithstanding any other provisions set forth herein, payments of principal, premium if any, and interest on the Series A-1 Bonds shall be made to the Securities Depository Nominee or the Securities Depository, as the case may be, by wire transfer in immediately available funds to the account of said Holder as may be specified in the Register maintained by the Trustee or by such other method of payment as the Trustee may determine to be necessary or advisable with the concurrence of the Securities Depository. In the event the Holder of the Series A-2 Bonds determines that the Series A-2 Bonds should be held in the Book-Entry System, the foregoing provisions shall apply to the Series A-2 Bonds upon the deposit of the Series A-2 Bonds in the Book-Entry System.

(c) If (i) the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds, or (ii) the Borrower, on behalf of the Issuer, with the consent of the Trustee and the Controlling Person, elects to remove the Securities Depository, then the Borrower, on behalf of the Issuer, with the consent of the Trustee and the Controlling Person, may appoint a new Securities Depository and shall do so if the Controlling Person so directs.

(d) If (i) the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds or has been removed and the Borrower fails to appoint a new Securities Depository, or (ii) the Controlling Person or the Borrower, with the consent of the Trustee and the Controlling Person (in the case of the Borrower's election), determines that continuation of a Book-Entry System of evidence and transfer of ownership of the Bonds would adversely affect the interests of the Beneficial Owners, the Book-Entry System will be discontinued, in which case the Trustee will deliver replacement Bonds (for any series then held in the Book-Entry System) in the form of fully registered certificates in Authorized Denominations in exchange for the Outstanding Bonds as required by the Trustee and the Beneficial Owners.

### **ARTICLE III SECURITY**

**Section 3.1 Security.** The Bonds and the interest and any premium thereon shall be limited obligations of the Issuer as provided in Section 10.9 hereof, and shall be secured by and payable from the Security pledged and assigned to the Trustee by the Issuer pursuant to the Granting Clauses hereof.

**Section 3.2 Payment of Bonds and Performance of Covenants.** The Issuer shall promptly pay, but only out of the Security and subject to the subordination provisions of Section 2.1(b) hereof related to the Series A-2 Bonds, the principal of, premium, if any, and interest on the Bonds at the place, on the dates and in the manner provided in the Bonds. The Issuer shall promptly perform and observe all covenants, undertakings and obligations set forth herein, in the Bonds or in the other Bond Documents to which the Issuer is a party on its part to be performed or observed. The Issuer shall fully cooperate with the Trustee in the enforcement by the Trustee of any such rights granted to the Issuer under the Loan Agreement and the other Bond Documents to which the Issuer is a party.

**Section 3.3 Authority.** The Issuer represents and warrants that (i) it is duly authorized under the laws of the State to issue the Bonds, and to execute, deliver and perform the terms of the Loan Agreement and this Indenture; (ii) all action on its part for the issuance of the Bonds and execution and delivery of the Bond Documents to which it is a party has been duly taken; (iii) the Bonds, upon issuance and authentication, and the Bond Documents to which it is a party upon delivery, assuming that they are the respective legal, valid, binding and enforceable obligations of the other parties thereto, shall be valid and enforceable obligations of the Issuer in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles; (iv) it has not heretofore conveyed, assigned, pledged, granted a security interest in or otherwise disposed of the Security; (v) it has not received any payments under the Loan Agreement; (vi) without making any independent investigation, it has no knowledge of any right of set-off, defense or counterclaim to payment or performance of the terms or conditions of the Loan Agreement; and (vii) the execution, delivery and performance of the Bond Documents to which it is a party and issuance of the Bonds are not in contravention of law or any agreement, instrument, indenture or other undertaking to which it is a party or by which it is bound and no other approval, consent or notice from any Governmental Authority is required on the part of the Issuer.

**Section 3.4 No Litigation.** The Issuer represents and warrants that, to its best knowledge, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending, or threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, this Indenture or the other Bond Documents to which the Issuer is a party, or (ii) the exclusion from gross income of interest on the Bonds.

**Section 3.5 Further Assurances.** The Issuer covenants that it will cooperate to the extent necessary with the Borrower and the Trustee in their defenses of the Security against the claims and demands of all Persons and, upon payment or provision for payment of the fees and expenses to be incurred by the Issuer in connection therewith, will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better pledging of the Security. Except for any amendment, modification, supplement, waiver or consent related to the Reserved Rights, the Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement without the prior written consent of the Trustee, which consent shall be governed by Article VIII hereof.

**Section 3.6 No Other Encumbrances; No Dissolution.** The Issuer covenants that, (i) except as otherwise provided herein and in the Loan Agreement, it will not sell, convey, mortgage, encumber or otherwise dispose of any portion of the Security, and (ii) to the fullest extent permitted by applicable law, for so long as the Bonds are Outstanding, it will not dissolve, terminate or permit itself to be dissolved or terminated without a successor to its obligations hereunder and under the Bonds having assumed its obligations hereunder and under the Bonds.

**Section 3.7 No Personal Liability.** No recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein or in the Bonds or the other Bond Documents to which the Issuer is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any director, member, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any director, member, officer, agent, attorney or employee as such, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into in the Bonds or between the Issuer and the Trustee, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such trustee, member, officer, agent, attorney and employee is, by the execution of this Indenture and as a condition of, and as part of the consideration for, the execution of this Indenture, expressly waived and released.

#### **ARTICLE IV FUNDS**

**Section 4.1 Establishment of Funds and Accounts; Applications of Proceeds of the Bonds and Other Amounts.**

(a) The following are hereby created and established as special trust funds:  
[NOTE: TO BE CONFIRMED]

- (i) the Project Fund, consisting of:
  - (A) the Bond Proceeds Account;
  - (B) the Costs of Issuance Account (containing a Bond Proceeds Subaccount and an Equity Subaccount);
  - (C) the Equity Account;
  - (D) the Capitalized Interest Account;
  - (E) the Project Revenue Account;
  - (F) the Insurance and Condemnation Proceeds Account;
- (ii) the Replacement Reserve Fund;
- (iii) the Tax and Insurance Escrow Fund;
- (iv) the Rebate Fund;
- (v) the Bond Fund;

- (vi) the Surplus Fund;
- (vii) the Redemption Fund; and
- (viii) the Operating Reserve Fund.

(b) All the Accounts created by subsection (a) of this Section shall be held by the Trustee in trust for application only in accordance with the provisions of this Indenture.

(c) On the Issue Date, the Trustee shall receive the proceeds of the Bonds and other amounts, which are described, and shall be deposited as follows: (i) the proceeds of the Series A-1 Bonds (\$18,500,000), shall be deposited in the Bond Proceeds Account of the Project Fund; (ii) the proceeds of the Series A-2 Bonds (\$3,000,000), shall be deposited in the Bond Proceeds Account of the Project Fund; and (iii) the initial installment of Required Equity Funds (\$[\_\_\_\_]) shall be deposited in the Equity Account of the Project Fund.

(d) The foregoing initial deposits set forth in Section 4.1(c) having been made, the Trustee shall thereupon make the following transfers and deposits: [NOTE: TO BE UPDATED UPON CONFIRMATION OF FLOW OF FUNDS]

(i) \$[\_\_\_\_], representing a portion of the proceeds of the sale of the Bonds, shall be transferred from the Bond Proceeds Account of the Project Fund and deposited in the Tax and Insurance Escrow Fund;

(ii) \$[\_\_\_\_], representing a portion of the initial installment of Required Equity Funds shall be transferred from the Equity Account of the Project Fund and deposited in the Capitalized Interest Account of the Project Fund; and

(iii) \$[\_\_\_\_], representing a portion of the proceeds of the sale of the Bonds, shall be transferred from the Bond Proceeds Account of the Project Fund and deposited in the Bond Proceeds Subaccount of the Costs of Issuance Account of the Project Fund.

**Section 4.2 Bond Fund.**

(a) There shall be deposited in the Bond Fund (a) all Repayments specified in the Loan Agreement to be deposited in the Bond Fund, including all proceeds resulting from the enforcement of the Security or its realization as collateral, and (b) all other moneys received by the Trustee under the Loan Agreement for deposit by it in the Bond Fund.

(b) Moneys in the Bond Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the payment of the interest on the Bonds, for the payment of principal of the Bonds upon maturity, whether stated or accelerated, or upon mandatory or optional redemption prior to the Maturity Date, and for the payment of the acceleration premium set forth in Section 2.3(c) of the Loan Agreement.

(c) Upon the occurrence and continuation of an Event of Default hereunder, all money and investments in the Bond Fund may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the

Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine; provided, however, that no money or investments in the Bond Fund shall be applied to pay any amount in respect of the Series A-2 Bonds until after the indefeasible payment in full of the Series A-1 Bonds.

(d) After payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of any amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Bond Fund shall be paid to the Borrower.

### **Section 4.3 Project Fund.**

(a) The Trustee shall deposit all amounts specified in Section 4.1 hereof into the specified accounts and subaccounts of the Project Fund. The Trustee will receive and deposit into the Equity Account amounts received as future installments of Required Equity Funds from the Tax Credit Investor in accordance with the provisions of the Partnership Agreement and the Assignment of Capital Contributions. The Trustee shall deposit into the Project Revenue Account of the Project Fund, Net Project Revenues received from the Borrower in accordance with Section 8.6 of the Loan Agreement.

(b) The Trustee is hereby authorized and directed to use moneys in the Project Fund for payment or reimbursement of Project Costs (or, in the case of moneys on deposit in the Bond Proceeds Account of the Project Fund, at least 95% of such funds for payment or reimbursement of Qualified Project Costs) to the Borrower upon the receipt of a fully executed Requisition approved in writing by the Controlling Person, in accordance with the provisions of the Loan Agreement, or for the purposes and in accordance with Section 2.2(d) of the Loan Agreement; provided, however, after Final Completion of the Project Facilities, but in no event later than the Stabilization Date, all Surplus Bond Proceeds remaining in the Bond Proceeds Account of the Project Fund shall be transferred to the Surplus Fund. All remaining amounts in the Equity Account upon Stabilization shall be paid to the Borrower upon receipt of the prior written approval of the Controlling Person, which approval shall not be unreasonably withheld or delayed.

(c) The Trustee shall and is hereby authorized to transfer funds from the Capitalized Interest Account to the Bond Fund to pay interest on the Bonds accruing up to and including the Completion Date without submission of any Requisition. With respect to any such transfer, the Trustee shall first transfer amounts from proceeds of the sale of the Bonds. The Trustee shall transfer any Surplus Bond Proceeds remaining in the Capitalized Interest Account after Final Completion of the Project Facilities, but in no event later than the Stabilization Date, to the Surplus Fund.

(d) Amounts in the Costs of Issuance Account shall be disbursed by the Trustee on the Issue Date and thereafter only to pay costs of issuance pursuant to a closing memorandum attached to a Requisition signed by the Borrower and the Controlling Person identifying the amount to be paid and the payee. Amounts remaining in the Costs of Issuance

Account (including investment proceeds) after the payment of all costs of issuance, and in any event not later than thirty (30) days following the Issue Date, shall be transferred to the Bond Proceeds Account or Equity Account of the Project Fund, as applicable.

(e) Amounts in the Project Revenue Account shall be (i) transferred to the Bond Fund to pay interest on the Bonds accruing up to and including the Completion Date without submission of any Requisition in the event amounts on deposit in the Capitalized Interest Account are insufficient for such purpose on any Interest Payment Date up to and including the Completion Date, and (ii) used for payment or reimbursement of Project Costs to the Borrower upon the receipt of a fully executed Requisition approved in writing by the Controlling Person, in accordance with the provisions of the Loan Agreement. Following the Stabilization Date, all remaining amounts in the Project Revenue Account of the Project Fund shall, upon the written direction of the Controlling Person, be applied to pay the redemption price of Bonds pursuant to Section 2.12(b)(iii) hereof and, to the extent not needed for such purpose, upon Stabilization shall be paid to the Borrower upon written approval of the Controlling Person.

(f) Moneys representing a Condemnation Award or Insurance Proceeds shall be deposited into the Insurance and Condemnation Proceeds Account of the Project Fund, and notice of such deposit thereof shall be given by the Trustee to the Controlling Person. To the extent there has been a determination pursuant to the Bond Documents to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be expended for such purposes in accordance with the provisions of the Bond Documents. In the event there is a determination pursuant to the Bond Documents not to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be either (i) transferred to the Bond Fund and applied first to the redemption of the Series A-1 Bonds and second to the redemption of the Series A-2 Bonds in accordance with Section 2.12 hereof, or (ii) released to the Borrower if the Borrower obtains an opinion of Bond Counsel that such release will not affect the excludability of the interest on the Bonds from gross income for federal income tax purposes, all in accordance with direction of the Controlling Person to the Trustee and subject to the provisions of the Bond Documents.

(g) Upon the occurrence and continuation of an Event of Default hereunder, all money and investments in the Project Fund may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine; provided, however, that no money or investments in the Project Fund shall be applied to pay any amount in respect of the Series A-2 Bonds until after the indefeasible payment in full of the Series A-1 Bonds.

**Section 4.4 Surplus Fund.** The Surplus Fund shall receive all Surplus Bond Proceeds transferred thereto in accordance with the provisions of this Indenture. The deposit of Surplus Bond Proceeds in the Surplus Fund shall be, and shall be deemed to be, a joint direction by the Borrower and the Controlling Person to the Trustee to redeem the greatest principal amount of first the Series A-1 Bonds possible to be redeemed from such deposit until the Series A-1 Bonds are redeemed in full and thereafter the Series A-2 Bonds possible to be redeemed from such deposit pursuant to Section 2.12(b)(i) hereof on the earliest redemption date on which the Bonds may be redeemed, and on such redemption date (or, if such day is not a Business Day, the

immediately preceding Business Day) an amount equal to the principal amount of Bonds to be redeemed plus interest accrued thereon to the redemption date shall be transferred from the Surplus Fund to the Bond Fund and used for such redemption. After such transfer, if and to the extent that there are moneys remaining in the Surplus Fund, such moneys in the Surplus Fund shall be transferred to the Bond Fund and shall be used first for payment of interest on or principal of the Series A-1 Bonds and second for payment of interest on or principal of the Series A-2 Bonds.

**Section 4.5 Use of Certain Additional Funds and Accounts.**

(a) Redemption Fund.

(i) There shall be deposited in the Redemption Fund (a) all payments specified in Section 8.4 of the Loan Agreement to be deposited in the Redemption Fund, and (b) all other moneys received by the Trustee under the Loan Agreement or this Indenture for deposit by it in the Redemption Fund. Moneys in the Redemption Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the redemption of Bonds pursuant to Sections 2.12 hereof. On each Principal Payment Date or redemption date and as otherwise required hereunder or at the written direction of the Controlling Person, the Trustee shall transfer such amounts from the Redemption Fund to the Bond Fund and call and redeem Bonds as provided in Sections 2.12 hereof. After payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and the payment of any amounts owing to the United States pursuant to any rebate requirement and any other amounts owing hereunder, any amounts remaining in the Redemption Fund shall be paid to the Borrower.

(ii) Upon the occurrence and continuation of an Event of Default hereunder, all money and investments in the Redemption Fund may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Controlling Person may determine; provided, however, that no money or investments in the Redemption Fund shall be applied to pay any amounts in respect of the Series A-2 Bonds until after the indefeasible payment in full of the Series A-1 Bonds.

(b) Tax and Insurance Escrow Fund. There shall be deposited in the Tax and Insurance Escrow Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to Section 8.2 of the Loan Agreement. Moneys in the Tax and Insurance Escrow Fund shall be applied to payment of Impositions and insurance premiums at the direction of the Controlling Person; provided, however, that upon the occurrence and continuation of an Event of Default hereunder (provided that the Controlling Person shall have no obligation to accept a cure of any Event of Default), all money and investments held in the Tax and Insurance Escrow Fund may be disbursed at the direction of the Controlling Person to pay costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Controlling Person may determine; provided, however, that no money or investments in the Tax and Insurance Escrow Fund shall be applied to pay any amounts in

respect of the Series A-2 Bonds until after the indefeasible payment in full of the Series A-1 Bonds. Upon the payment in full of the Bonds and the fees and expenses of the Issuer and the Trustee, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Tax and Insurance Escrow Fund shall be paid to the Borrower.

(c) Rebate Fund. The Issuer recognizes that investment of the Bond proceeds will be at the written direction of the Borrower but agrees that it will commit no act, or omit any action, that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and the applicable regulations thereunder. There is hereby established with the Trustee a Rebate Fund. Any provisions in this Indenture to the contrary notwithstanding, amounts credited to the Rebate Fund shall be free and clear of any lien hereunder. The Issuer will observe the covenants contained in the Tax Certificate as if fully set forth herein.

(d) Replacement Reserve Fund. There shall be deposited in the Replacement Reserve Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to the Replacement Reserve Agreement. Moneys in the Replacement Reserve Fund shall be disbursed by the Trustee upon receipt of a written request therefor executed by the Borrower and approved in writing by the Controlling Person, in accordance with the terms of the Replacement Reserve Agreement; provided that, upon the occurrence and continuation of an Event of Default hereunder, all moneys and investments in the Replacement Reserve Fund (other than moneys held to pay costs required to be paid but not yet payable) may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine; provided, however, that no money or investments in the Replacement Reserve Fund shall be applied to pay any amounts in respect of the Series A-2 Bonds until after the indefeasible payment in full of the Series A-1 Bonds. Upon the payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Replacement Reserve Fund shall be paid to the Borrower as soon as practicable.

(e) Operating Reserve Fund. There shall be deposited in the Operating Reserve Fund all moneys received for such purpose pursuant to Section 8.5 of the Loan Agreement. Funds shall be disbursed from the Operating Reserve Fund, at the request of the Borrower, but only with the Controlling Person’s written consent, to fund any operating deficits or expenses of the Borrower or for any other operating or capital needs of the Project Facilities, provided that, so long as no Event of Default has occurred or is existing, the Borrower’s use of the funds deposited in the Operating Reserve Fund in accordance with the Annual Budget shall be deemed approved by the Controlling Person and shall not require separate written consent from the Controlling Person. Upon receipt by the Trustee from the Borrower of a written request together with the written approval of the Controlling Person, which approval shall not be unreasonably withheld or delayed, and which approval shall be deemed to have been provided if no Event of Default has occurred or is existing and the Borrower’s written request for funds is in



accordance with the Annual Budget, the Trustee shall disburse funds from the Operating Reserve Fund in accordance with such written request. Upon the occurrence and continuation of an Event of Default (provided that the Controlling Person shall have no obligation to accept a cure of any Event of Default) or for any payments deemed necessary before or upon Stabilization at the direction of the Controlling Person in its sole discretion, all moneys and investments in the Operating Reserve Fund may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay any costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine; provided, however, that no money or investments in the Operating Reserve Fund shall be applied to pay any amounts in respect of the Series A-2 Bonds until after the indefeasible payment in full of the Series A-1 Bonds. Interest earnings on amounts held in the Operating Reserve Fund shall be released not more frequently than annually to the Borrower upon its written request and with the prior written consent of the Controlling Person. Upon payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, upon payment of amounts payable to the United States of America pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Operating Reserve Fund shall be paid to the Borrower.

#### **Section 4.6 Records.**

(a) The Trustee shall cause to be kept and maintained records pertaining to all funds and accounts maintained by the Trustee hereunder and all disbursements therefrom and shall periodically deliver to the Borrower statements of activity and statements indicating the investments made with moneys in all such funds during the applicable period. Upon written request, the Trustee shall provide the Borrower and the Controlling Person, within a reasonable period of time, with a report stating the principal amount of Bonds outstanding and a list of the registered owners of the Bonds as of the date specified by the Borrower or the Controlling Person in its request.

(b) The Trustee shall provide the Borrower and the Controlling Person with a written report, on a monthly basis through the calendar month in which the last obligation of the Bonds is retired, identifying the Permitted Investments in which the moneys held as part of the Accounts were invested during the preceding period and the dates of such investments, together with such other information as the Trustee ordinarily provides to Persons such as the Borrower and the Controlling Person in its regular monthly investment reports.

**Section 4.7 Investment of Funds.** Subject to the provisions of Section 4.8 hereof, moneys held as part of all Accounts hereunder shall be invested and reinvested in Permitted Investments as instructed by the Borrower with the prior written consent of the Controlling Person; provided, however, that any moneys held by the Trustee to pay the principal of or interest that has become payable with respect to the Bonds shall not be invested. All Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times to be a part of the fund and account which was used to purchase the same. The Trustee may act as principal or agent in the making or disposing of any investment and may utilize its investment department or that of its affiliate and charge its standard investment handling fees. All interest accruing thereon and any profit realized from Permitted Investments shall be credited to the

respective fund or account and any loss resulting from Permitted Investments shall be similarly charged. The Trustee is authorized to cause to be sold and reduced to cash a sufficient amount of Permitted Investments whenever the cash balance in any fund or account hereunder is or will be insufficient to make a requested or required disbursement. The Trustee shall not be responsible for any depreciation in the value of any Permitted Investment or for any loss resulting from such sale, so long as the Trustee performs its obligations hereunder in accordance with the terms of this Indenture. Absent specific instructions from the Borrower approved by the Controlling Person to invest cash balances in Permitted Investments hereunder, the Trustee shall invest in Permitted Investments constituting obligations of the U.S. Treasury or its agencies having a term to maturity of not more than thirty (30) days or any money market fund or similar investment fund that purchases and holds exclusively obligations of the United States of America or its agencies that have a term to maturity of not more than thirty (30) days.

**Section 4.8 Yield Restriction.** [The investment of funds and accounts will be done in accordance with the provisions of the Tax Certificate.]

**Section 4.9 Guaranties.** Any amounts realized by the Trustee under the Guaranty of Completion, the Guaranty of Debt Service and Stabilization, the Guaranty of Recourse Obligations or the Environmental Indemnity shall be used or applied or invested by the Trustee as directed in writing by the Controlling Person.

## ARTICLE V DISCHARGE OF LIEN

**Section 5.1 Discharge of Lien and Security Interest.** Upon payment in full of all of the Bonds and all amounts payable under the Loan Agreement and the other Bond Documents, these presents and the Security Interests shall cease, determine and be discharged, and thereupon the Trustee shall, upon receipt by the Trustee of an opinion of Counsel stating that all conditions precedent to the satisfaction and discharge of this Indenture have been complied with, (a) cancel and discharge this Indenture and the Security Interests; (b) execute and deliver to the Issuer and the Borrower, at the Borrower's expense, such instruments in writing as shall be required to cancel and discharge this Indenture and the Security Interests and reconvey to the Issuer and the Borrower the Security, and assign and deliver to the Issuer and the Borrower so much of the Security as may be in its possession or subject to its control, except for moneys and Government Obligations held in the Bond Fund for the purpose of paying Bonds; and (c) mark as cancelled the Note and satisfy the Mortgage; provided, however, that the cancellation and discharge of this Indenture pursuant to Section 5.3 hereof shall not terminate the powers and rights granted to the Trustee, with respect to the payment, registration of transfer and exchange of the Bonds; provided, further, that the rights of the Issuer and the Trustee to indemnity, non-liability and payment of all reasonable fees and expenses shall survive the cancellation and discharge of this Indenture pursuant to this Section or Section 5.3 hereof.

**Section 5.2 Provision for Payment of Bonds.** Bonds shall be deemed to have been paid within the meaning of Section 5.1 hereof if:

(a) there shall have been irrevocably deposited in the Bond Fund sufficient money or Government Obligations of such maturities and interest payment dates and bearing

such interest as will, in the opinion of a nationally recognized firm of certified public accountants, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon (said earnings also to be held in trust), be sufficient for the payment at their respective maturities or redemption dates prior to maturity of the principal of the Bonds, and interest to accrue thereon through such maturity or redemption dates, as the case may be;

(b) there shall have been paid or provision duly made for the payment of all fees and expenses of the Issuer and the Trustee, due or to become due; and

(c) if any Bonds are to be redeemed on any date prior to their maturity, the Trustee shall have received in form satisfactory to it irrevocable instructions from the Borrower to redeem such Bonds on such date 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 has been granted to the Trustee.

Limitations set forth elsewhere herein regarding the investment of moneys held by the Trustee in the Bond Fund shall not be construed to prevent the depositing and holding in the Bond Fund of the Government Obligations described in this Section 5.2 for the purpose of defeasing the lien of this Indenture as to Bonds which have not yet become due and payable. Notwithstanding any other provision of this Indenture to the contrary, all funds deposited with the Trustee as provided in this Section may be invested and reinvested, at the direction of the Borrower, in Government Obligations (or in a money market fund that invests solely in Government Obligations and is rated no lower than the second highest category by one of Fitch, Moody's or S&P and, if more than one of such rating agencies then rates such money market fund, is rated no less than the second highest rating category by each of such rating agencies then rating such money market fund) maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations (or money market fund) in the hands of the Trustee pursuant to this Section which is not required for the payment of the Bonds and interest and redemption premium, if any, thereon with respect to which such moneys shall have been so deposited shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in the Bond Fund.

**Section 5.3 Discharge of This Indenture.** Notwithstanding the fact that the lien of this Indenture upon the Security may have been discharged and cancelled in accordance with Section 5.1 hereof, this Indenture and the rights granted and duties imposed hereby, to the extent not inconsistent with the fact that the lien upon the Security may have been discharged and cancelled, shall nevertheless continue and subsist after payment in full of the Bonds or the deemed payment in full of the Bonds in accordance with Section 5.2 hereof until the Trustee shall have returned to the Borrower, all funds held by the Trustee which the Borrower is entitled to receive pursuant to this Indenture after all Bonds have been paid at maturity or redeemed on the date set for redemption. Upon payment in full or defeasance of the Bonds, payment of amounts payable to the United States pursuant to any rebate requirement and payment of all other amounts owing under the Bond Documents, all remaining amounts held by the Trustee shall be paid to the Borrower.

## ARTICLE VI DEFAULT PROVISIONS AND REMEDIES

**Section 6.1 Events of Default.** Any one of the following shall constitute an Event of Default hereunder:

(a) Failure to pay interest on any Bond when and as the same shall have become due;

(b) Failure to pay the principal of or any premium on any Bond when and as the same shall become due, whether at the stated maturity or redemption date thereof or by acceleration;

(c) Failure to observe or perform any other of the covenants, agreements or conditions on the part of the Issuer included in this Indenture or in the Bonds and the continuance thereof for a period of thirty (30) days after written notice to the Issuer and the Borrower has been given by the Trustee or by the Controlling Person (with a copy to the Trustee); or

(d) The occurrence of an Event of Default under the Loan Agreement or the failure by the Borrower to perform or comply with any of the other terms or conditions contained in any other Bond Documents to which the Borrower is a party and continuation of such failure for beyond the expiration of any notice, grace or cure period provided in the Loan Agreement or the other Bond Documents (as applicable).

Notwithstanding the foregoing, so long as any Series A-1 Bond remains Outstanding, failure to make any payment of principal of or interest on the Series A-2 Bonds shall not constitute an Event of Default hereunder.

**Section 6.2 Acceleration.**

(a) If an Event of Default shall have occurred, upon the direction of the Controlling Person, the Trustee immediately shall, by notice in writing sent to the Issuer, the Borrower, the Holders and the Controlling Person, declare the principal of all Bonds then Outstanding (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and, upon said declaration, such principal and interest shall become and be immediately due and payable. Upon any declaration of acceleration hereunder, the Trustee shall immediately exercise such rights as it may have under the Loan Agreement and the Note to declare all Repayments to be immediately due and payable. In such event, there shall be due and payable on the Bonds an amount equal to the total principal amount of all such Bonds, plus all interest accrued thereon (including Default Interest, if any) and which will accrue thereon to the date of payment and all unpaid interest on the Bonds on the date of payment, and the acceleration premium described in Section 6.8 (if applicable).

(b) Immediately following any such declaration of acceleration, the Trustee shall cause to be mailed notice of such declaration by first-class mail, postage prepaid, to each Holder of a Bond at his/her last address appearing on the Register. Any defect in or failure to give such notice of such declaration shall not affect the validity of such declaration.

**Section 6.3 Other Remedies; Rights of Holders.**

(a) Upon the happening and continuance of an Event of Default hereunder (provided that the Controlling Person shall have no obligation to accept a cure of any Event of Default), the Trustee may, with the prior written consent of the Controlling Person, and shall upon the direction of the Controlling Person, with or without taking action under Section 6.2 hereof, pursue any available remedy to enforce the performance of or compliance with any Bond Documents.

(b) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee, the Controlling Person, the Majority Owner or the Holders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee, the Majority Owner, the Controlling Person or to the Holders hereunder or now or hereafter existing.

(c) No delay or omission to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Default or Event of Default or acquiescence therein and every such right and power may be exercised from time to time and as often as may be deemed expedient.

(d) No waiver of any Default or Event of Default hereunder, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent Default or Event of Default or shall impair any rights or remedies consequent thereon.

(e) The Trustee, as the assignee of substantially all right, title and interest of the Issuer in and to the Loan Agreement and the Note, shall be empowered to enforce each and every right granted to the Issuer under the Loan Agreement and the Note other than Reserved Rights.

#### **Section 6.4 Right of Controlling Person to Direct Proceedings.**

(a) Anything in this Indenture to the contrary notwithstanding, the Controlling Person 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 hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

(b) No Holder shall have the right to institute any proceeding for the enforcement of this Indenture unless such Holder is a Series A-1 Bondholder who has given the Trustee and the Borrower written notice of an Event of Default, the Controlling Person shall have requested the Trustee in writing to institute such proceeding, the Trustee shall have been afforded a reasonable opportunity to exercise its powers or to institute such proceeding, there shall have been offered to the Trustee indemnity satisfactory to it against the cost, fees, expense and liability to be incurred in connection with such request and the Trustee shall have thereafter failed or refused to exercise such powers or to institute such proceeding within sixty (60) days after receipt of notice with no inconsistent direction given during such sixty (60) days by the Holders of a majority in aggregate principal amount of the Series A-1 Bonds then Outstanding. Nothing in this Indenture shall affect or impair any right of enforcement conferred on any Holder

by the Act to enforce (i) the payment of the principal of, acceleration premium, if any, and interest on Bonds at and after the maturity thereof, or (ii) the obligation of the Issuer to pay the principal of, acceleration premium, if any, and interest on Bonds to such Holder at the time, place, from the sources and in the manner as provided in this Indenture; provided, however, that so long as any Series A-1 Bonds remain Outstanding, no Holder of the Series A-2 Bonds shall be entitled to take any enforcement action whatsoever in respect of the Series A-2 Bonds.

**Section 6.5 Discontinuance of Default Proceedings.** In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and the Trustee shall be restored to their former positions and rights hereunder and all rights, remedies and powers of the Issuer and the Trustee shall continue as if no such proceedings had been taken subject to the limits of any adverse determination.

**Section 6.6 Waiver.** The Trustee, with the consent of the Controlling Person may, and shall upon the written direction of the Controlling Person, waive any Default or Event of Default hereunder and its consequences and rescind any declaration of acceleration of maturity of principal; provided, however, that there shall be no such waiver or rescission unless all principal of, acceleration premium, if any, and interest on the Bonds in arrears, together with interest thereon (to the extent permitted by law) at the applicable rate of interest borne by the Bonds and all fees and expenses of the Trustee and the Issuer shall have been paid or provided for.

**Section 6.7 Application of Moneys.** All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall be deposited in the Bond Fund and, after payment (out of moneys derived from a source other than moneys held for the redemption of Bonds) of (i) the fees, cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, including reasonable attorneys' fees and costs, and all other outstanding fees and expenses of the Trustee, and (ii) any sums due to the Issuer under the Loan Agreement (other than Repayments), such moneys shall be applied in the order set forth below:

(a) Unless the principal of all Bonds shall have become or been declared due and payable, all such moneys shall be applied:

**First:** To the payment of all installments of interest then due on the Series A-1 Bonds in order of priority first to installments past due for the greatest period and, if the amount available shall not be sufficient to pay in full any particular installment, then to the ratable payment of the amounts due on such installment;

**Second:** To the payment of the unpaid principal of and premium, if any, of the Series A-1 Bonds which shall have become due (other than Series A-1 Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), with interest on such Series A-1 Bonds from the respective dates upon which they became due (at the rate borne by the Series A-1 Bonds, to the extent permitted by law) and, if the amount available shall not be sufficient to pay in full Series A-1 Bonds

due on any particular date, together with such premium, then to the ratable payment of the amounts due on such date;

**Third:** To the payment of the amounts required to reimburse the Controlling Person and the Holders of the Series A-1 Bonds for any legal or other out-of-pocket costs incurred by them in connection with exercising their remedies hereunder and payment of any other amounts owing under the Bond Documents with respect to the Series A-1 Bonds;

**Fourth:** Upon payment in full of all principal of, premium, if any, and interest on the Series A-1 Bonds, to the payment of any amounts then due and owing in respect of the Series A-2 Bonds; and

**Fifth:** The balance shall be paid to the Borrower (subject to any required deposits to the Rebate Fund).

(b) If the principal of all the Series A-1 Bonds shall have become or been declared due and payable, all such moneys shall be applied to the payment of the principal, premium, if any, and interest then due and unpaid upon the Series A-1 Bonds, without preference or priority as between principal, premium, interest, installments of interest or Series A-1 Bonds, ratably according to the amounts due respectively for principal, premium and interest to the persons entitled thereto.

(c) If the principal on all Series A-1 Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded under this Article VI then, subject to subsection (b) of this Section 6.7 in the event that the principal of all the Series A-1 Bonds shall again become or be declared due and payable, the moneys shall be applied in accordance with subsection (a) of this Section 6.7.

(d) Notwithstanding anything contained herein to the contrary, (i) the Controlling Person may, with express written consent of the Majority Owner, by written notice to the Trustee direct the application of funds other than in the manner set forth in Section 6.7(a) above, including, without limitation, the application of funds between the principal of or premium on or interest on the Series A-1 Bonds; and (ii) following payment in full of the Series A-1 Bonds and reimbursement of the Controlling Person and the Holders of the Series A-1 Bonds for any legal or other out-of-pocket costs incurred by them in connection with exercising their remedies, the Trustee may apply funds held hereunder to the payment of any amounts due and owing in respect of the Series A-2 Bonds.

(e) Whenever monies are to be applied pursuant to this Section, the Trustee shall fix the date which shall be not more than seven (7) calendar days after receipt of such monies upon which such application is to be made and upon such date interest on the principal amount of Bonds to be paid on such dates shall cease to accrue. 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.

**Section 6.8 Default Interest and Acceleration Premium.** In the event that principal or interest payable on the Series A-1 Bonds is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate, to the extent permitted by law. This interest shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full. In the event there shall have occurred an acceleration of the Bonds or the Borrower's obligations under the Loan Agreement following an Event of Default on or before August 1, 2034, any tender of payment of any amount necessary to pay the Bonds in full shall include the acceleration premium set forth in Section 2.3(c) of the Loan Agreement.

## **ARTICLE VII THE TRUSTEE**

**Section 7.1 Appointment of Trustee.** The Trustee is hereby appointed and does hereby agree to act in such capacity, and to perform the duties of the Trustee under this Indenture, but only upon and subject to the following express terms and conditions (and no implied covenants or other obligations shall be read into this Indenture against the Trustee):

(a) The Trustee may execute any of its trusts or powers hereunder and perform any of its duties by or through attorneys, agents, receivers or employees. The Trustee shall be entitled to advice of Counsel concerning all matters hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees. The Trustee may act upon the opinion or advice of Counsel, accountants, engineers or surveyors selected by it in the exercise of reasonable care or, if the same are selected by the Issuer, approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(b) Except as provided in Section 7.8 hereof, the Trustee shall not be responsible for any recital herein or in the Bonds, or for the recording, re-recording, filing or re-filing of this Indenture, of any financing statements or continuation statements, or for insuring the Security or the Project Facilities or, except as instructed by the Controlling Person, collecting any insurance moneys, or for the validity of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value of or title to the Project Facilities or otherwise as to the maintenance of the Security. The Trustee shall not be liable to the Borrower, any Holder, any Beneficial Owner or any other Person for any loss suffered in connection with any investment of funds made by it in accordance with Section 4.7 in good faith as instructed by the Borrower in accordance with the provisions of this Indenture, and with the prior written consent of the Controlling Person, as applicable. The Trustee shall have no duty or responsibility to examine or review and shall have no liability for the contents of any documents submitted to or delivered to any Holder in the nature of a preliminary or final placement memorandum, official statement, offering circular or similar disclosure document.

(c) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder after such Bonds shall have been delivered in accordance with instructions of the Issuer or for the use by the Borrower of the proceeds of the Bonds



advanced to the Borrower as provided in the Loan Agreement. The Trustee may become the owner of Bonds secured hereby with the same rights as any other Holder.

(d) The Trustee shall be protected in acting upon opinions of Counsel and upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any notices, directions, consents, approvals or requests provided to the Trustee pursuant to the terms of this Indenture or any of the Bond Documents shall not be effective until provided in writing. 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 Holder of any Bond shall be conclusive and binding upon all future Holders of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) The permissive right of the Trustee to do things enumerated in this Indenture or the Loan Agreement shall not be construed as duties. The Trustee shall only be responsible for the performance of the duties expressly set forth herein and shall not be answerable for other than its gross negligence, bad faith or willful misconduct in the performance of those express duties.

(f) 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 non-fulfillment of contracts, relating to the Project Facilities.

(g) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trust and powers or otherwise in respect of this Indenture.

(h) Before taking any action requested hereunder by the Holders which may require it to expend its own funds, the Trustee may require satisfactory security or indemnification for the reimbursement of all expenses to which it may be put by reason of any action so taken. The Trustee shall not be entitled to indemnification as a precondition to giving notices of default or taking other actions at the direction of the Majority Owner or the Controlling Person which do not require the Trustee to expend its own funds or for which funds have been advanced by the Majority Owner or the Controlling Person to the Trustee in advance of its taking such action.

(i) All moneys received by the Trustee, until used or applied or invested as herein provided, shall be held as special trust funds for the purposes specified in this Indenture and for the benefit and security of the Holders of the Bonds as herein provided. Such moneys need not be segregated from other funds except to the extent required by law or herein provided, and the Trustee shall not otherwise be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(j) The Trustee shall not be bound to ascertain or inquire as to the performance of the obligations of the Borrower or the Issuer under the Loan Agreement or this Indenture, and shall not be deemed to have, or be required to take, notice of default under this Indenture (other than under Section 6.1(a) or (b), or Section 6.1(c) or (d) if written notice thereof

has been received by the Trustee) or the occurrence of a Determination of Taxability, except (i) in the event the Borrower fails to pay any Repayment when due, (ii) in the event of an insufficient amount in the Bond Fund (or any account therein) to make a principal or interest payment on the Bonds, (iii) written notification of a Determination of Taxability by the Holder of any Bonds, (iv) written notification of such default by the Controlling Person, the Majority Owner or two or more Holders with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Series A-1 Bonds, or (v) receipt of an opinion of Bond Counsel concluding that a Determination of Taxability has occurred, and in the absence of such notice the Trustee may conclusively presume there is no Determination of Taxability and no default except as aforesaid. The Trustee may nevertheless require the Issuer and the Borrower to furnish information regarding performance of their obligations under the Loan Agreement and this Indenture, but is not obligated to do so.

(k) The Trustee shall, prior to any Event of Default and after the curing of all Events of Default which may have occurred, perform such duties and only such duties of the Trustee as are specifically set forth in this Indenture. The Trustee shall, during the existence of any Event of Default which has not been cured, exercise such of the rights and powers vested in it by this Indenture 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 his/her own affairs.

(l) In addition to the Trustee's other duties hereunder, the Trustee shall authenticate and cancel Bonds as provided herein, keep such books and records relating to such duties as shall be consistent with prudent industry practice and make such books and records available for inspection by the Issuer and the Borrower at all reasonable times. All Bonds shall be made available for authentication, exchange and registration of transfer at the principal office of the Trustee.

(m) The Trustee shall have no duty to inspect or oversee the renovation or completion of the Improvements or to verify the truthfulness or accuracy of the certifications made by the Borrower in any Requisition.

(n) Without limiting the duties of the Trustee expressly set forth herein, the Trustee shall have no obligation or responsibility whatsoever in connection with (i) any federal or state tax-exempt status of the Bonds or the interest thereon; (ii) the consequences of the investment or non-investment of any funds or accounts relating to the Bonds under Section 148 of the Code, or (iii) the calculation of any amount required to be rebated to the United States under Section 148 of the Code.

(o) No provision of this Indenture, the Loan Agreement or the Bonds shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(p) Whenever in the administration of this Indenture the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee may, in the absence of bad faith on its part and except as otherwise expressly set forth herein, rely upon a written certificate of the Controlling Person or the Majority Owner.

(q) In the absence of a direction from the Controlling Person, if the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of Holders of the Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Indenture, the directions given by the group of Holders of the Series A-1 Bonds shall be controlling and the Trustee shall follow such directions.

(r) The Trustee's immunities and protections from liability and its rights to indemnification in connection with the performance of its duties under this Indenture shall likewise extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and rights to indemnification, together with the Trustee's rights to compensation, shall survive the Trustee's resignation or removal, the discharge of this Indenture and the final payment of the Bonds.

(s) The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold or deal in any of the Bonds and may join in any action that any Holder may be entitled to take with like effect as if it were not the Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the Borrower and may act as depository, trustee or agent for any committee of Holders secured hereby or other obligations of the Borrower, as freely as if it were not the Trustee hereunder. The provisions of this paragraph shall extend to the affiliates of the Trustee.

(t) The Trustee shall have no responsibility or obligation to DTC Participants, to Indirect Participants, or to the Persons for whom they act as nominees with respect to the Bonds, or to any Beneficial Owner of Bonds in respect of the accuracy of any records maintained by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant, the payment by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant of any amount in respect of the principal of or interest on the Bonds, any notice which is permitted or required to be given under this Indenture, the selection by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant of any Person to receive payment in the event of a partial redemption of the Bonds, or any consent given or other action taken by the Securities Depository or the Securities Depository Nominee as Holder.

(u) Whether or not expressly so provided, each and every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of this Section.

## **Section 7.2 Compensation and Indemnification of Trustee; Trustee's Prior Claim.**

(a) The Loan Agreement provides that the Borrower will pay the reasonable fees and expenses of the Trustee under this Indenture and all other amounts which may be payable to the Trustee under this Section, such fees and expenses to be paid when due and payable by the Borrower directly to the Trustee for its account. Except as set forth in Section 6.7, the Trustee shall not have a lien on the Security for the payment of its fees or expenses and shall not be entitled to pay its fees and expenses from amounts held in the funds and accounts hereunder.

(b) The Borrower shall (i) pay the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), (ii) pay or reimburse the Trustee upon request for all reasonable expenses, disbursements and advances incurred or made, in accordance with any of the provisions of this Indenture and the Loan Agreement (including the reasonable compensation and the reasonable expenses and disbursements of its Counsel and of all agents and other persons not regularly in its employ), except to the extent that any such expense, disbursement or advance is due to its own gross negligence, willful misconduct or bad faith, and (iii) indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred by it, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder or the performance of its duties hereunder or under the Loan Agreement, including the reasonable costs and expenses of defending itself against or investigating any claim of liability in the premises, except to the extent that any such loss, liability or expense was due to its own gross negligence, willful misconduct or bad faith. "Trustee," for purposes of this Section shall include any predecessor Trustee, but the gross negligence, willful misconduct or bad faith of any Trustee, shall not affect the indemnification of any other Person. The obligations of the Borrower under this Section shall survive the termination of this Indenture.

**Section 7.3 Intervention in Litigation.** In any judicial proceedings to which the Issuer is a party, the Trustee may intervene on behalf of the Holders, and shall intervene if requested in writing by the Controlling Person, the Majority Owner or, if there is no Majority Owner, the Holders of at least twenty-five percent (25%) in aggregate principal amount of the Series A-1 Bonds then Outstanding.

**Section 7.4 Resignation; Successor Trustees.**

(a) The Trustee and any successor Trustee may resign only upon giving sixty (60) days prior written notice to the Issuer, the Borrower, the Controlling Person and each Holder of Bonds then Outstanding as shown on the Register. Such resignation shall take effect only upon the appointment of a successor Trustee by the Issuer with the consent of the Controlling Person and the acceptance of such appointment by the successor Trustee. If no successor is appointed within sixty (60) days after the notice of resignation, the Controlling Person may appoint a Trustee or the resigning Trustee may appoint a successor or petition any court of competent jurisdiction to appoint a successor. Upon appointment of a successor Trustee, the resigning Trustee shall assign all of its right, title and interest in this Indenture and the Security to the successor Trustee. The successor Trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States, or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000. Any successor Trustee shall accept in writing its duties and responsibilities hereunder and such writing shall be filed with the Issuer, the Controlling Person and the Borrower.

(b) Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, reorganization or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or any material part of the corporate trust business of the Trustee that includes this Indenture, shall be

the successor of the Trustee hereunder without the execution or filing of any paper of any further act on the part of any Person, anything herein to the contrary notwithstanding, provided that such successor Trustee shall be eligible to serve as Trustee under the provisions of this Indenture. If the Trustee is not the successor corporation in any such merger or consolidation, the Trustee shall give notice of such event to the Borrower and shall take such action as may be required to effect a transfer of the trust included in this Indenture to such successor corporation.

**Section 7.5 Removal of Trustee.** The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee, the Issuer, the Controlling Person and the Borrower and signed by the Holders of a majority in aggregate principal amount of Series A-1 Bonds then Outstanding. During such time that no Event of Default has occurred and is continuing under this Indenture, the Trustee may also be removed by an instrument or concurrent instruments in writing delivered to the Trustee and the Issuer and signed by the Controlling Person, with notice to the Borrower. Such removal shall take effect only upon the appointment of a successor Trustee by the Issuer with the consent of the Controlling Person and the acceptance of such appointment by the successor Trustee. Upon such removal, the Trustee shall assign to the successor Trustee all of its right, title and interest in this Indenture and the Security in the same manner as provided in Section 7.4 hereof.

**Section 7.6 Instruments of Holders.**

(a) Any instrument required by this Indenture to be executed by Holders may be in any number of writings of similar tenor and may be executed by Holders in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds given in any of the following forms shall be sufficient for any of the purposes of this Indenture:

(i) A 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 him/her the execution thereof; and

(ii) A certificate executed by any trust company or bank stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank, as the property of such party, the Bonds therein mentioned.

(b) The Trustee may rely on such an instrument of Holders unless and until the Trustee receives notice in the form specified in clauses (a) (i) or (ii) above that the original such instrument is no longer reliable. In the absence of direction from the Controlling Person, if the Trustee shall receive conflicting directions from two or more groups of Holders, each with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Series A-1 Bonds, the directions given by the group of Holders which holds the largest percentage of the principal amount of the Series A-1 Bonds shall be controlling and the Trustee shall follow such directions.

**Section 7.7 Power to Appoint Co-Trustees.**

(a) At any time or times, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Project Facilities may at the time be located, the Issuer and the Trustee shall have power to appoint and, upon the request of the Trustee or of the Controlling Person, the Issuer shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more persons approved by the Trustee and the Borrower either to act as co-trustee or co-trustees, jointly with the Trustee of all or any part of the Project Facilities, or to act as separate trustee or separate co-trustees of all or any part of the Project Facilities, and to vest in such person or persons, in such capacity, such title to the Project Facilities or any part thereof, and such rights, powers, duties, trusts or obligations as the Issuer and the Trustee may consider necessary or desirable, subject to the remaining provisions of this Section.

(b) Any co-trustee or separate trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000.

(c) The Trustee and co-trustee, if any, may by written instrument between them designate and assign either the Trustee or the co-trustee or both of them to perform all or any part of the responsibilities and duties of the Trustee under this Indenture.

(d) If the Issuer shall not have joined in such appointment within thirty (30) days after the receipt by it of a written request to do so, or in case an Event of Default shall have occurred and be continuing, the Trustee and the Borrower shall have the power to make such appointment.

(e) 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.

(f) Every co-trustee or separate trustee appointed pursuant to this Section 7.7, to the extent permitted by law or any applicable contract, shall be subject to the following terms, namely:

(i) This Indenture shall become effective at the time the Bonds shall be authenticated and delivered, and thereupon such co-trustee or separate trustee shall have all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of moneys, papers, securities and other personal property.

(ii) All rights, powers, trusts, duties and obligations conferred or imposed upon the trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-trustee or co-trustees, or separate trustee or separate trustees, as shall be provided in the instrument appointing such co-trustee or co-trustees or separate trustee or separate trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or

unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or co-trustees or separate trustee or separate trustees.

(iii) Any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-trustee or separate trustee.

(iv) Any co-trustee or separate trustee, to the extent permitted by law, may delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise.

(v) The Trustee at any time, by an instrument in writing, with the concurrence of the Issuer, may accept the resignation of any co-trustee or separate trustee appointed under this Section, and, in case an Event of Default shall have occurred and be continuing, the Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Issuer. Upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section.

(vi) No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

(vii) Any moneys, paper, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

(g) Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it or he shall be vested with the Security Interest in the Security and with such rights, powers, duties, trusts or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as applicable law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee.

(h) In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the Security Interest in the Security and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the same manner as provided for with respect to the appointment of a successor Trustee pursuant to Section 7.4 hereof.

**Section 7.8 Filing of Financing Statements.** The Trustee shall file or record or cause to be filed or recorded all Financing Statements that are required in order fully to protect and preserve the Security Interests in the Security and the priority thereof and the rights and powers of the Trustee in connection therewith, including without limitation all continuation statements for the purpose of continuing without lapse the effectiveness of (i) those Financing Statements

which shall have been filed at or prior to the issuance of the Bonds in connection with the security for the Bonds pursuant to the authority of the U.C.C., and (ii) any previously filed continuation statements that shall have been filed as required herein. The Trustee shall also file the Financing Statements required under Section 3.2 of the Loan Agreement. The Borrower will pay all costs of filing the Financing Statements.

## **ARTICLE VIII AMENDMENTS, SUPPLEMENTAL INDENTURES**

### **Section 8.1 Supplemental Indentures.**

(a) The Issuer and the Trustee, with the prior written consent of the Controlling Person, but without the consent of or notice to any Holders, may enter into an indenture or indentures supplemental to this Indenture that do not materially adversely affect the interest of the Holders for one or more of the following purposes:

(i) to grant to or confer upon the Trustee for the benefit of the Holders, any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Holders or the Trustee;

(ii) to grant or pledge to the Trustee for the benefit of Holders, any additional security other than that granted or pledged under this Indenture;

(iii) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939 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;

(iv) to appoint a successor Trustee or co-trustees in the manner provided in Article VII hereof;

(v) to modify, amend or supplement this Indenture to permit a transfer of Bonds from one Securities Depository to another or the discontinuance of the Book-Entry System and issuance of replacement Bonds to the Beneficial Owners;

(vi) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture that may be defective or inconsistent with any provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture which shall not materially adversely affect the interest of the Holders; or

(vii) to make any change herein necessary, in the opinion of Bond Counsel, to maintain the exclusion of the interest on any Outstanding Bonds from gross income of the Holders thereof for federal income tax purposes.

(b) When requested by the Issuer, and if all conditions precedent under this Indenture have been met, and there shall have been delivered to the Trustee an opinion of Bond Counsel to the effect that such supplemental indenture is authorized or permitted by this



Indenture and complies with its terms and will not adversely affect the excludability of interest on the Bonds from the gross income of the Holders thereof for federal income tax purposes, the Trustee shall not be required to join the Issuer in the execution of any such supplemental indenture unless it is reasonably compensated for additional obligations of the Trustee not initially contemplated and the indemnification rights of the Trustee cover any changes in the Trustee's rights and immunities under this Indenture or otherwise. Any additional compensation or the expansion of any indemnity obligation shall be the sole responsibility of the Borrower.

(c) The Trustee shall file copies of all such supplemental indentures with the Borrower and the Controlling Person. The Trustee shall cause notice of any supplemental indenture described above to be given by first-class mail, postage prepaid, to the Holders of the Outstanding Bonds then shown on the Register.

**Section 8.2 Amendments to Indenture; Consent of Majority Owner, Holders, and Borrower.**

(a) Exclusive of supplemental indentures covered by Section 8.1 hereof and subject to the terms and provisions contained in this Section 8.2, and not otherwise, anything contained in this Indenture to the contrary notwithstanding, no indenture or indentures supplemental hereto for the purpose of modifying, altering, amending, adding to or rescinding, in any particular manner, any of the terms or provisions contained in this Indenture or in any supplemental indenture shall be effective without delivery of a Favorable Opinion of Bond Counsel, the written consent of the Controlling Person and execution and delivery by the Trustee (acting upon the direction of the Controlling Person) and the Issuer; provided, however, that nothing contained in this Section shall permit, or be construed as permitting, without the prior written consent of the Holders of all Outstanding Bonds, (i) an extension of the maturity of the principal of, or the optional, extraordinary or mandatory redemption date of, or interest on, any Bond, (ii) a reduction in the principal amount of or the rate of interest on, any Bond, (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, (iv) the creation of a lien on the Security prior to the lien of this Indenture, or (v) a reduction in the aggregate principal amount of the Bonds required for any consent to any supplemental indenture; provided further, however, that without the prior written consent of the Trustee, the Trustee shall not be required to join the Issuer in the execution of any supplemental indenture unless it is reasonably compensated for additional obligations on the Trustee not initially contemplated and the indemnification rights of the Trustee covering any changes in the Trustee's rights and immunities under this Indenture or otherwise. Any additional compensation or the expansion of any indemnity obligation shall be the sole responsibility of the Borrower. The giving of notice to and consent of the Holders to any such proposed supplemental indenture shall be obtained pursuant to Section 8.5 hereof.

(b) Anything herein to the contrary notwithstanding, a supplemental indenture, amendment or other document described under this Article that affects any rights or obligations of the Borrower shall not become effective unless and until the Borrower shall have consented to the execution of such supplemental indenture, amendment or other document.

**Section 8.3 Amendments to the Loan Agreement or the Note Not Requiring Consent of Holders.**

(a) The Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement or the Note without the prior written consent of the Trustee, the Borrower and the Controlling Person. The Issuer may, with the consent of the Controlling Person, but without the consent of or notice to any other Holders, enter into or permit (and the Trustee shall consent to) any amendment of the Loan Agreement or the Note acceptable to the Borrower as may be required (i) for the purpose of curing any ambiguity or formal defect or omission that shall not adversely affect the interest of the Holders, (ii) to grant or pledge to the Issuer or Trustee, for the benefit of the Holders any additional security, (iii) to make any change therein necessary, in the opinion of Bond Counsel, to maintain the exclusion of interest on any Outstanding Bonds from gross income of the Holders thereof for federal income tax purposes, or (iv) in connection with any other change therein which, in the judgment of the Trustee acting in reliance upon an opinion of Counsel, is not materially prejudicial to the interests of the Trustee and the Holders of the Bonds; provided, however, that without the written consent of the Trustee, the Trustee shall not be required to join in the execution of any such amendment that affects the rights, duties, obligations or immunities of the Trustee or that imposes additional obligations on the Trustee unless it is reasonably compensated for additional obligations of the Trustee not initially contemplated and the indemnification rights of the Trustee cover any changes in the Trustee's rights and immunities under this Indenture or otherwise. Any additional compensation or the expansion of any indemnity obligation shall be the sole responsibility of the Borrower.

(b) The Issuer and the Borrower shall file copies of any such amendments to the Loan Agreement or the Note with the Trustee and the Controlling Person.

**Section 8.4 Amendments to the Loan Agreement or the Note Requiring Consent of Holders.** Except as provided in Section 8.3 hereof, the Issuer shall not enter into, and the Trustee shall not consent to, any other modification or amendment of the Loan Agreement or the Note, nor shall any such modification or amendment become effective, without delivery of a Favorable Opinion of Bond Counsel and the prior written consent of the Majority Owner, such consent to be obtained in accordance with Section 8.5 hereof. No such amendment may, without the consent of the Holders of all the Outstanding Bonds, reduce the amounts or delay the times of payment of Repayments under the Loan Agreement or the Note. The Issuer and the Borrower shall file copies of all such amendments to the Loan Agreement or the Note with the Trustee, the Controlling Person and the Majority Owner.

**Section 8.5 Notice to and Consent of Holders.** If consent of the Controlling Person, the Majority Owner or any other Holder is required under the terms of this Indenture for the amendment of this Indenture, the Loan Agreement, the Note or for any other similar purpose, the Trustee shall cause notice of the proposed execution of the amendment or supplemental indenture to be given by first-class mail, postage prepaid, to the Controlling Person, the Majority Owner or any other applicable Holder then shown on the Register. Such notice shall briefly set forth the nature of the proposed amendment, supplemental indenture or other action and shall state that copies of any such amendment, supplemental indenture or other document are on file at the principal office of the Trustee for inspection by all Holders. If, within forty five (45) days or such longer period as shall be prescribed by the Trustee following the mailing of such notice, the Controlling Person, the Majority Owner or the Holders of all, as the case may be, of the principal

amount of the Bonds Outstanding by instruments filed with the Trustee shall have consented to the amendment, supplemental indenture or other proposed action, then the Trustee may execute such amendment, supplemental indenture or other document or take such proposed action and the consent of the Controlling Person, Majority Owner or the Holders, as applicable, shall thereby be conclusively presumed.

## **ARTICLE IX CONTROLLING PERSON; SERVICING**

### **Section 9.1 Majority Owner to Appoint Controlling Person.**

(a) The Majority Owner may engage a Person, collaterally assign some or all of its rights hereunder to a Person, or otherwise provide for a Person, at the Majority Owner's sole cost and expense, to act on behalf of the Majority Owner under the Bond Documents as the "Controlling Person". The Majority Owner may at any time and from time to time terminate or remove and replace any such Controlling Person. The Majority Owner shall give notice to the Trustee, the Issuer and the Borrower of its appointment, termination, removal and replacement of any Controlling Person, and the parties may rely on any such notice until any subsequent notice is given. Initially, the Majority Owner has engaged Red Stone Servicer, LLC to act as the "Controlling Person" hereunder and Red Stone Servicer, LLC has accepted such engagement. The Majority Owner is under no obligation to appoint a Controlling Person; if at any time a Controlling Person has not been designated by the Majority Owner, all references to the "Controlling Person" herein and in the other Bond Documents shall refer to the Majority Owner. Any opinion provided for herein, in the Loan Agreement or in any other Bond Document that is directed to the Controlling Person shall also be directed to, and may be relied upon by, the Majority Owner. The Majority Owner will have no liability to the Issuer, the Borrower, the Trustee or any other Person for any act omission of the Controlling Person unless the Controlling Person is the Majority Owner or such act or omission was expressly approved by the Majority Owner in each particular case but not, in any event, with respect to any liabilities, damages, costs or expenses against which such Indemnified Party is indemnified under Section 2.5 of the Loan Agreement.

(b) Under no circumstances shall the Holder or Holders of Series A-2 Bonds have any right to participate in the appointment, termination or replacement of the Controlling Person or to direct, authorize, request, consult with or otherwise participate in any decisions made by, determinations of, consents, approvals, directions or authorization of, or any other action taken by the Controlling Person. Except as provided herein or in the Loan Agreement, the Controlling Person shall have no duty to the Holders of the Series A-2 Bonds and shall not be obligated to take into account the interests of the Holders of the Series A-2 Bonds, to consult with or seek the consent or approval of the Holders of the Series A-2 Bonds or to provide any notice to the Holders of the Series A-2 Bonds. The Controlling Person shall have no liability to the Holders of the Series A-2 Bonds as a result of any action taken or not taken, any consent, approval, direction, authorization or other similar occurrence in its capacity as Controlling Person hereunder or under any of the other Bond Documents.

### **Section 9.2 Servicing.**

(a) The Majority Owner has appointed the Controlling Person to be the servicer of the Loan and the Controlling Person has accepted such appointment. Satisfactory arrangements have previously been made for the payment of servicing fees and expenses in connection with the Controlling Person's servicing obligations hereunder, and the Borrower, the Majority Owner and the Trustee have no obligation for such payments. Without limiting the foregoing, the Controlling Person shall have no right or claim to any transfer or assumption fees, late charges, acceleration premium or Default Interest payable under this Indenture or Bond Documents; provided, however that, to the extent permitted under the Bond Documents, the Controlling Person shall be entitled to collect from the Borrower its normal and customary incidental fees and charges for any requested review, approval or other action, including, without limitation, in connection with any proposed transfer, loan assumption, easement, subordinate financing, release of collateral, condemnation proceeding, non-disturbance agreement or other similar action, unless such review, approval or other action is performed solely by the Majority Owner.

(b) The Controlling Person shall be responsible for the performance of the following servicing duties:

(i) The Controlling Person shall perform the duties expressly given to the Controlling Person under the Bond Documents and this Indenture.

(ii) The Controlling Person shall prepare monthly bills to the Borrower in accordance with the Bond Documents for payments to the Trustee of principal and interest under the Loan and for deposits into the Tax and Insurance Escrow Fund and the Replacement Reserve Fund. On the last Business Day of each calendar month, the Controlling Person shall notify the Borrower of the amount payable by the Borrower to the Trustee on the Note on the next Business Day. Such notification may be delivered by electronic mail or by facsimile. The Controlling Person shall diligently attempt to collect all of the following, at the times they are due and payable under this Indenture and Bond Documents:

- (1) The principal and interest due and payable on the Note;
- (2) The Trustee's fee and Issuer's fee, as applicable;
- (3) Any monthly Replacement Reserve Fund deposit;
- (4) Any Monthly Tax and Insurance Amounts;
- (5) Any other escrow or reserve deposits required by this Indenture or Bond Documents;
- (6) Any assumption or transfer fee required by this Indenture or Bond Documents; and
- (7) Any acceleration premium.

(c) Subject to Section 6.7, all payments received under this Indenture or Bond Documents shall be applied in the following order unless otherwise instructed by the Majority Owner or expressly set forth in this Indenture or Bond Documents:

- Note; (i) To the principal and interest due and payable on the Series A-1 Note;
- (ii) To the Issuer's fee and Trustee's fee, as applicable;
- (iii) To the acceleration premium, if applicable, on the Series A-1 Note;
- (iv) To required deposits to the Replacement Reserve Fund;
- (v) To required deposits in the Tax and Insurance Escrow Fund;
- (vi) To other escrow or reserve deposits required by this Indenture or the other Bond Documents;
- Note; (vii) To Default Interest and any late fees in respect of the Series A-1 Note;
- (viii) To amounts due in respect of the Series A-2 Note; and
- (ix) To other amounts due under the Bond Documents.

Any payment received by the Controlling Person from or on behalf of the Borrower under this Indenture or the Bond Documents shall be remitted by the Controlling Person to the Trustee no later than the second (2<sup>nd</sup>) Business Day after receipt by the Controlling Person, or sooner if so required under this Indenture or Bond Documents.

(d) The Controlling Person shall make any remittance to the Trustee by wire transfer in accordance with the instructions received from the Trustee or to any other party entitled to such remittances pursuant this Indenture or the Bond Documents in accordance with the instructions received from the Majority Owner.

(e) The Controlling Person shall review the Tax and Insurance Escrow Fund and the Replacement Reserve Fund on an annual basis and adjust required monthly escrow payments in accordance with terms of Bond Documents. The Controlling Person shall notify the Holders and the Trustee of such adjustment.

(f) The Controlling Person shall prepare monthly reports for the Holders and the Trustee outlining the status of the Loan, including disbursements from the Replacement Reserve Fund, the Tax and Insurance Escrow Fund, the Operating Reserve Fund or any other Account under this Indenture, loan history schedules, outstanding loan balances and escrow balances and consents, approvals or waivers given by the Controlling Person, which reports shall be furnished to the Holders no later than the fifteenth (15<sup>th</sup>) day of each calendar month (or the next Business Day thereafter if such fifteenth (15<sup>th</sup>) day is not a Business Day).

(g) The Controlling Person shall provide immediate written notice to the Holders of any Event of Default of which it receives notice or has actual knowledge, or any event which, with the giving of notice or the passage of time, or both, would constitute any Event of Default of which it receives notice or has actual knowledge.

(h) The Controlling Person shall refer to the Trustee all Borrower requests for a quote of a payoff amount for the Loan, shall request a copy of any such quote from the Trustee, and shall notify the Holders of the Borrower's request. The Controlling Person shall prepare payoff letters and delinquency and default notices when necessary, as required by the Bond Documents or this Indenture or otherwise as directed by the Majority Owner.

(i) The Controlling Person shall use its best efforts to obtain financial statements and other reports from the Borrower at the times and to the extent required under the Bond Documents and deliver the same to the Holders and the Trustee.

(j) The Controlling Person shall obtain, and shall provide to the Holders a copy of the Borrower's certificates of compliance with the Land Use Restriction Agreement or other evidence of such compliance submitted by the Borrower to the Issuer or the Issuer's designee within thirty (30) days after the later of (i) the date it is required to be submitted to the Issuer or the Issuer's designee, or (ii) the date it is actually so submitted.

(k) The Controlling Person may perform additional duties with respect to the Loan during renovation of the Project Facilities or during the period following an Event of Default at the request of the Majority Owner.

## ARTICLE X MISCELLANEOUS

**Section 10.1 Right of Trustee to Pay Taxes and Other Charges.** If any tax, assessment or governmental or other charge upon any part of such Project Facilities is not paid as required, the Trustee may, subject to any indemnity required pursuant to Section 7.1(h) hereof, pay such tax, assessment or governmental or other charge, without prejudice, however, to any rights of the Trustee hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment until paid at the greater of the rate of interest borne by the Bonds or the per annum rate of interest announced from time to time by the bank serving as Trustee as its "prime rate" shall become so much additional indebtedness secured by this Indenture, shall be given a preference in payment over the Bonds, and shall be paid out of the Security.

**Section 10.2 Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned 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 parties hereto, the Holders, the Controlling Person and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions herein being intended to be and being for the sole and exclusive benefit of the parties hereto, the Holders, the Controlling Person and the Borrower as herein provided.

**Section 10.3 Severability.** If any provision of this Indenture is held to be in conflict with any applicable statute or rule of law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections of this Indenture, shall not affect the remaining portions of this Indenture or any part thereof.

**Section 10.4 Notices.** Except as otherwise provided herein, all notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be deemed to have been given when the writing is delivered if given or delivered by hand, overnight delivery service or facsimile transmitter (with confirmed receipt) to the address or facsimile number set forth below and shall be deemed to have been given on the date deposited in the mail, if mailed, by first-class, registered or certified mail, postage prepaid, addressed as set forth below. Where required herein, notice shall be given by telephone, and promptly confirmed in writing, and shall be deemed given when given by telephone to the telephone numbers set forth below. The Issuer, the Borrower, the Trustee, the Majority Owner, the Controlling Person and the Tax Credit Investor may, by written notice given hereunder, designate any different addresses, phone numbers and facsimile numbers to which subsequent notices, certificates, approvals, consents, requests or other communications shall be sent.

**To the Issuer:** City of San Jose Department of Housing  
200 E. Santa Clara Street, T-12  
San Jose, California 95113  
Attention: Executive Director

**With a copy to:** Office of the City Attorney  
200 E. Santa Clara Street, T-16  
San Jose, California 92660  
Attention: Housing Attorney

**With a copy to:** Stradling Yocca Carlson & Rauth, P.C.  
660 Newport Center Drive, Suite 1600  
Newport Beach, California 92660  
Attention: Brad Neal, Esq.

**To the Borrower:** Lenzen Square Community Partners, LP  
c/o WNC Lenzen Square Community Partners GP,  
LLC  
17782 Sky Park Circle  
Irvine, California 92614  
Attention: Anand Kannan

**With a copy to:** FFAH V Lenzen Square, LLC  
384 Forest Avenue, Suite 14  
Laguna Beach, California 92651  
Attention: Deborrah A. Willard

**With a copy to:** Cox, Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, California 94111  
Attention: Ofer Elitzur, Esq.

**To the Trustee:** [ ]  
[ ]  
[ ]  
Attention: [ ]

**To the Majority Owner:** At the address provided by the Majority Owner to the Trustee from time to time.

**If to the Holder of the Series A-1 Bonds:** At the address provided by the Holder of the Series A-1 Bonds to the Trustee from time to time.

**If to the Series A-2 Purchaser:** Arc70 Capital LLC  
Two Embarcadero Center, 8th Floor  
San Francisco, California 94111  
Attention: Adrian Garcia

**If to the Holder of the Series A-2 Bonds:** At the address provided by the Holder of the Series A-2 Bonds to the Trustee from time to time.

**To the Controlling Person:** Red Stone Servicer, LLC  
666 Old Country Road, Suite 603  
Garden City, New York 11530  
Attention: Kiki Mastorakis

**With a copy to:** Sidley Austin LLP  
787 Seventh Avenue  
New York, New York 10019  
Attention: Adam S. Verstandig, Esq.

**If to Tax Credit Investor or Special Limited Partner:** WNC Holding, LLC  
c/o WNC & Associates, Inc.  
17782 Sky Park Circle  
Irvine, California 92614  
Attention: David Shafer

**With a copy to:** Holland & Knight LLP  
10 St. James Avenue, 11th Floor  
Boston, MA 02116  
Attention: Jonathan I. Sirois, Esq.



**Section 10.5 Payments Due on Non-Business Days.** In any case where the date of maturity of, interest on or premium, if any, or principal of the Bonds or the date fixed for redemption of any Bonds shall not be a Business Day, then payment of such interest, premium or principal need not be made on such date but shall be made on the next succeeding Business Day, with the same force and effect as if made on the date of maturity or the date fixed for redemption, and, in the case of such payment, no interest shall accrue for the period from and after such date.

**Section 10.6 Binding Effect.** This instrument shall inure to the benefit of and 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 10.7 Captions.** The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

**Section 10.8 Governing Law; Venue.** This Indenture shall be governed by and interpreted in accordance with the laws of the State, without regard to conflict of laws principles. This Indenture and the Bonds shall be enforceable in the State of California, 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 10.9 Limited Liability of Issuer.** Notwithstanding anything to the contrary, any liability for payment of money and any other liability or obligation which the Issuer may incur under the Bonds, this Indenture, the Loan Agreement, the Purchase Agreement or any other Bond document shall not constitute a general obligation of the Issuer but shall constitute limited obligations of the Issuer, payable solely from and enforced only against the Security hereunder.

**Section 10.10 Notification of Issuer of Amount of Outstanding Bonds.** The Trustee shall notify the Issuer, via mutually acceptable electronic means or by mail, of the aggregate principal amount of Outstanding Bonds on such schedule as agreed upon by the Trustee and the Issuer and otherwise upon the Issuer's request.

**Section 10.11 Tax Certificate.** In the event of any conflict between this Indenture and the Tax Certificate, the requirements of the Tax Certificate shall control.

**Section 10.12 Execution in Counterparts; Electronic Signatures.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. To the fullest extent permitted by applicable law and except for the certificate of authentication on the Bonds (which must be manually signed by an authorized representative of the Trustee) and instruments of transfer of the Bonds, facsimile or electronically transmitted signatures shall constitute original signatures for all purposes under this Indenture.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be executed in its name and on its behalf by its authorized official and the Trustee has caused this Indenture to be executed, in its name by its duly authorized representative, all as of the day and year first above written.

**CITY OF SAN JOSE**

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

Name:

Title: Authorized Signatory

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

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

Name:

Title:

**EXHIBIT A-1  
FORM OF SERIES A-1 BOND**

**THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY ONLY BE REGISTERED IN THE NAME OF, OR TRANSFERRED TO, AN “APPROVED BUYER” AS DEFINED IN THE INDENTURE AND PURSUANT TO THE TERMS THEREOF.**

**FOR BOOK-ENTRY ONLY: UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO 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 DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.**

**CITY OF SAN JOSE  
MULTIFAMILY HOUSING REVENUE BONDS  
(LENZEN SQUARE) 2019 SERIES A-1**

No. [ ]

<u>DATED DATE</u>	<u>MATURITY DATE</u>	<u>INTEREST RATE</u>	<u>CUSIP NO.</u>
August [ ], 2019	August 1, 2059	5.00%	798165LD6

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: EIGHTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$18,500,000)

The City of San Jose (the “Issuer”), a municipal corporation and charter city organized and existing under its Charter and the laws of the State of California, for value received, hereby promises to pay (but only out of the revenues and other assets pledged under the Indenture (hereinafter defined)) to the Registered Owner specified above or registered assigns (subject to any right of prior redemption), (A) on each Principal Payment Date (as defined in the Indenture) and the Maturity Date specified above, the applicable portion of the Principal Amount specified above, and (B) interest thereon, at the Bond Coupon Rate (as defined in the Indenture), payable on the first Business Day of each month, commencing October 1, 2019 to the person whose name appears on the registration books on day before such Interest Payment Date (whether or

not a Business Day) (a “Record Date”) and to pay any other amounts as specified in the Indenture (hereinafter defined).

Principal of, and premium, if any, on this Bond are payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of U.S. Bank National Association, as trustee (the “Trustee”), or its successor.

Interest on this Bond shall be computed on the basis of a 360-day year, comprised of twelve 30 day months. This Bond shall bear interest at the Default Rate as and when prescribed in the Indenture. Interest on this Bond shall be payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of the Trustee or its successor.

If a Bondholder so elects, any payment due to such Bondholder shall be made by wire transfer of federal reserve funds to any account in the United States of America designated by such Bondholder if such Bondholder, at its expense, (a) so directs by written notice delivered to the Trustee at least ten (10) Business Days before the date upon which such wire transfer or other arrangement is to be made and (b) otherwise complies with the reasonable requirements of the Trustee.

This Bond is one of an issue of duly authorized City of San Jose Multifamily Housing Revenue Bonds (Lenzen Square) 2019 Series A-1 issued in the aggregate principal amount of \$18,500,000 (the “Series A-1 Bonds”), pursuant to the provisions of Chapter 5 of Division 7 of Title 1 of the California Government Code, together with the provisions of Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as the same may be amended (the “Act”). In conjunction with, and subordinate to, the issuance of this Series A-1 Bond, the Issuer is also issuing its City of San Jose Multifamily Housing Revenue Bonds (Lenzen Square) 2019 Series A-2 issued in the aggregate principal amount of \$3,000,000.

The proceeds from the Series A-1 Bonds are to be used for the purpose of making a mortgage loan pursuant to a Loan Agreement, dated as of August 1, 2019 (as amended, modified or supplemented from time to time, the “Loan Agreement”), between the Issuer and the Borrower, to finance the acquisition, improvement and renovation and equipping of a multifamily residential facility located at 790 Lenzen Avenue, San Jose, California, and known as “Lenzen Square Apartments” (the “Project Facilities”). The Borrower’s payment obligations under the Loan Agreement will be evidenced by the Note and secured by the Mortgage.

The Series A-1 Bonds are issued under and are equally and ratably secured by an Indenture of Trust, dated as of August 1, 2019 (as amended, modified or supplemented from time to time, the “Indenture”), between the Issuer and the Trustee. All capitalized terms not defined herein shall have the meaning set forth in the Indenture.

Reference is hereby made to the Indenture and to all amendments and supplements thereto for a description of the property pledged and assigned to the Trustee and of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the manner in

which interest is computed on this Bond, mandatory and optional redemption rights, acceleration, the rights of the Bondholders and the provisions for defeasance of such rights.

This Bond is subject to optional and mandatory redemption 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.

If an Event of Default (as such term is defined in the Indenture) shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture. Under certain conditions as set forth in the Indenture, such declaration of acceleration and its consequences may be rescinded.

THE BONDS AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY FROM THE SECURITY PLEDGED THEREFOR UNDER THE INDENTURE. NEITHER THE ISSUER, ANY OF ITS MEMBERS, THE STATE OF CALIFORNIA, NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) NOR ANY PUBLIC AGENCY SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER EXCEPT AS SET FORTH IN THE INDENTURE, AND NONE OF THE BONDS OR ANY OF THE ISSUER'S AGREEMENTS OR OBLIGATIONS SHALL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF OR A MORAL OBLIGATION OF ANY OF THE FOREGOING WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER. THE ISSUER HAS NO TAXING POWER.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

By its purchase of this Bond, the registered owner hereof agrees to the appointment of the Controlling Person as provided in the Indenture and authorizes the Controlling Person to exercise such rights and remedies afforded to the Controlling Person on behalf of the Bondholder as provided in the Bond Documents.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond may be exchanged, and its transfer may be effected, only by the registered owner hereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture. Upon exchange or registration of such transfer a new registered bond or bonds of the same series, maturity and interest rate and of an Authorized Denomination or Authorized Denominations for the same aggregate principal amount will be issued in exchange therefor.

The Issuer and the Trustee may deem and treat the person in whose name this Bond shall be registered on the bond register, as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

All acts, conditions and things required by the laws of the Issuer to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

Neither the trustees, officers, agents, employees or representatives of the Issuer nor any person executing the Bonds shall be personally liable hereon or be subject to any personal liability by reason of the issuance hereof, 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 expressly released and waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until the Trustee shall have executed the Certificate of Authentication appearing hereon.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to or in the execution and delivery of the Indenture have been done and performed and have happened in regular and due form as required by law.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of its [\_\_\_\_\_] and attested by the manual or facsimile signature of its [\_\_\_\_\_] , and has caused this Bond to be dated as of the Dated Date set forth above.

**CITY OF SAN JOSE**

By: \_\_\_\_\_  
Title: [\_\_\_\_\_]

Attest:

\_\_\_\_\_  
Title: [\_\_\_\_\_]

**CERTIFICATE OF AUTHENTICATION**

This is to certify that this Bond is one of the Bonds referred to in the within mentioned Indenture.

Date of Authentication:

U.S. BANK NATIONAL ASSOCIATION, as  
trustee

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

**ASSIGNMENT FOR TRANSFER**

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto [\_\_\_\_\_] (Tax Identification or Social Security No.[ \_\_\_\_\_]) the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints [\_\_\_\_\_] attorney to transfer the within bond on the books kept for registration thereof, with full power or substitution in the premises.

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

Signature Guaranteed:

\_\_\_\_\_  
Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

NOTICE: The signature to this assignment must correspond with the name of the registered owner of the within bond as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.



**EXHIBIT A-2  
FORM OF SERIES A-2 BOND**

**THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY ONLY BE REGISTERED IN THE NAME OF, OR TRANSFERRED TO, AN “APPROVED BUYER” AS DEFINED IN THE INDENTURE AND PURSUANT TO THE TERMS THEREOF.**

**FOR BOOK-ENTRY ONLY: UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO 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 DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.**

**CITY OF SAN JOSE  
MULTIFAMILY HOUSING REVENUE BONDS  
(LENZEN SQUARE) 2019 SERIES A-2**

No.

<u>DATED DATE</u>	<u>MATURITY DATE</u>	<u>INTEREST RATE</u>
August <input type="text"/> , 2019	August 1, 2059	8.00%

REGISTERED OWNER:

PRINCIPAL AMOUNT: THREE MILLION DOLLARS (\$3,000,000)

The City of San Jose (the “Issuer”), a municipal corporation and charter city organized and existing under its Charter and the laws of the State of California, for value received, hereby promises to pay (but only out of the revenues and other assets pledged under the Indenture (hereinafter defined)) to the Registered Owner specified above or registered assigns (subject to any right of prior redemption), (A) on each Principal Payment Date (as defined in the Indenture) and the Maturity Date specified above, the applicable portion of the Principal Amount specified above, and (B) interest thereon, at the Bond Coupon Rate (as defined in the Indenture), payable on the first Business Day of each month, commencing October 1, 2019 to the person whose name appears on the registration books on day before such Interest Payment Date (whether or

not a Business Day) (a “Record Date”) and to pay any other amounts as specified in the Indenture (hereinafter defined).

Principal of, and premium, if any, on this Bond are payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of U.S. Bank National Association, as trustee (the “Trustee”), or its successor.

Interest on this Bond shall be computed on the basis of a 360-day year, comprised of twelve 30 day months. This Bond shall bear interest at the Default Rate as and when prescribed in the Indenture. Interest on this Bond shall be payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of the Trustee or its successor.

If a Bondholder so elects, any payment due to such Bondholder shall be made by wire transfer of federal reserve funds to any account in the United States of America designated by such Bondholder if such Bondholder, at its expense, (a) so directs by written notice delivered to the Trustee at least ten (10) Business Days before the date upon which such wire transfer or other arrangement is to be made and (b) otherwise complies with the reasonable requirements of the Trustee.

This Bond is one of an issue of duly authorized City of San Jose Multifamily Housing Revenue Bonds (Lenzen Square) 2019 Series A-2 issued in the aggregate principal amount of \$3,000,000 (the “Series A-2 Bonds”), pursuant to the provisions of the Chapter 5 of Division 7 of Title 1 of the California Government Code, together with the provisions of Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as the same may be amended (the “Act”). In conjunction with, and in priority to, the issuance of this Series A-2 Bond, the Issuer is also issuing its City of San Jose Multifamily Housing Revenue Bonds (Lenzen Square) 2019 Series A-1 issued in the aggregate principal amount of \$18,500,000 (the “Series A-1 Bonds”).

The proceeds from the Series A-2 Bonds are to be used for the purpose of making a mortgage loan pursuant to a Loan Agreement, dated as of August 1, 2019 (as amended, modified or supplemented from time to time, the “Loan Agreement”), between the Issuer and the Borrower, to finance the acquisition, improvement and renovation and equipping of a multifamily residential facility located at 790 Lenzen Avenue, San Jose, California, and known as “Lenzen Square Apartments” (the “Project Facilities”). The Borrower’s payment obligations under the Loan Agreement will be evidenced by the Note and secured by the Mortgage.

The Series A-2 Bonds are issued under and are equally and ratably secured by an Indenture of Trust, dated as of August 1, 2019 (as amended, modified or supplemented from time to time, the “Indenture”), between the Issuer and the Trustee. The rights of the holder of this Bond are subordinate in priority of payment and in access to security to those of the holders of the Series A-1 Bonds, as more fully set forth in the Indenture. All capitalized terms not defined herein shall have the meaning set forth in the Indenture.

Reference is hereby made to the Indenture and to all amendments and supplements thereto for a description of the property pledged and assigned to the Trustee and of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the manner in which interest is computed on this Bond, mandatory and optional redemption rights, acceleration, the rights of the Bondholders and the subordination thereof and the provisions for defeasance of such rights.

This Bond is subject to optional and mandatory redemption 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.

If an Event of Default (as such term is defined in the Indenture) shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture. Under certain conditions as set forth in the Indenture, such declaration of acceleration and its consequences may be rescinded.

THE BONDS AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY FROM THE SECURITY PLEDGED THEREFOR UNDER THE INDENTURE. NEITHER THE ISSUER, ANY OF ITS MEMEBERS, THE STATE OF CALIFORNIA, NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) NOR ANY PUBLIC AGENCY SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER EXCEPT AS SET FORTH IN THE INDENTURE, AND NONE OF THE BONDS OR ANY OF THE ISSUER'S AGREEMENTS OR OBLIGATIONS SHALL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF OR A MORAL OBLIGATION OF ANY OF THE FOREGOING WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER. THE ISSUER HAS NO TAXING POWER.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

By its purchase of this Bond, the registered owner hereof agrees to the appointment of the Controlling Person as provided in the Indenture and authorizes the Controlling Person to exercise such rights and remedies afforded to the Controlling Person on behalf of the Bondholder as provided in the Bond Documents.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond may be exchanged, and its transfer may be effected, only by the registered owner hereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture. Upon exchange or registration of such transfer a new registered bond or bonds of the same series, maturity and interest rate and of an Authorized Denomination or Authorized Denominations for the same aggregate principal amount will be issued in exchange therefor.

The Issuer and the Trustee may deem and treat the person in whose name this Bond shall be registered on the bond register, as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

All acts, conditions and things required by the laws of the Issuer to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

Neither the trustees, officers, agents, employees or representatives of the Issuer nor any person executing the Bonds shall be personally liable hereon or be subject to any personal liability by reason of the issuance hereof, 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 expressly released and waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until the Trustee shall have executed the Certificate of Authentication appearing hereon.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to or in the execution and delivery of the Indenture have been done and performed and have happened in regular and due form as required by law.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of its [\_\_\_\_\_] and attested by the manual or facsimile signature of its [\_\_\_\_\_] , and has caused this Bond to be dated as of the Dated Date set forth above.

**CITY OF SAN JOSE**

By: \_\_\_\_\_  
Title: [\_\_\_\_\_]

Attest:

---

Title:

**CERTIFICATE OF AUTHENTICATION**

This is to certify that this Bond is one of the Bonds referred to in the within mentioned Indenture.

Date of Authentication:

U.S. BANK NATIONAL ASSOCIATION, as  
trustee

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

**ASSIGNMENT FOR TRANSFER**

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto [ \_\_\_\_\_ ](Tax Identification or Social Security No.[ \_\_\_\_\_]) the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints [ \_\_\_\_\_ ] attorney to transfer the within bond on the books kept for registration thereof, with full power or substitution in the premises.

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

Signature Guaranteed:

\_\_\_\_\_  
Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

NOTICE: The signature to this assignment must correspond with the name of the registered owner of the within bond as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.

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

August 1, 2019

City of San Jose Department of Housing  
200 E. Santa Clara Street  
San Jose, California 95113  
Attn: Executive Director

U.S. Bank National Association, as trustee  
One California Street, Suite 1000  
San Francisco, California 94111  
Attn: Andrew Fung

[For the Series A-1 Bonds only:  
FMSbonds, Inc.  
4775 Technology Way  
Boca Raton, Florida 33431  
Attn: Mark Viggiano]

Re: [\$18,500,000 Multifamily Housing Revenue Bonds (Lenzen Square) 2019 Series A-1] [\$3,000,000 Multifamily Housing Revenue Bonds (Lenzen Square) 2019 Series A-2]

Ladies and Gentlemen:

The undersigned (the “Purchaser”) hereby acknowledges receipt of the above-captioned bonds (the “Bonds”), dated August [ ], 2019 and bearing interest from the date thereof, in fully registered form and in the aggregate principal amount of [\$18,500,000][\$3,000,000], constituting all of the Bonds currently outstanding.

The undersigned acknowledges that the Bonds were issued for the purpose of making a mortgage loan to assist in the financing of the acquisition, rehabilitation and equipping of a certain multifamily rental housing development located in San Jose, California (the “Project”), as more particularly described in that certain Loan Agreement dated as of August 1, 2019 (the “Loan Agreement”), by and between the City of San Jose (the “Issuer”) and Lenzen Square Community Partners, LP (the “Borrower”). The undersigned further acknowledges that the Bonds are secured by an Indenture of Trust, dated as of August 1, 2019 (the “Indenture”), between the Issuer and U.S. Bank National Association (the “Trustee”).

In connection with the sale of the Bonds to the Purchaser, the Purchaser hereby makes the following representations upon which you may rely:

1. The Purchaser is either a “qualified institutional buyer” (a “QIB”) as defined in Rule 144(A) under the Securities Act of 1933, as amended (the “1933 Act”) or an



“accredited investor” as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the 1933 Act (an “Accredited Investor”).

2. The Purchaser is purchasing the Bond with its own funds and not the funds of any other person, and for its own account and not as nominee or agent for the account of any other person and not with a present view to any distribution or transfer thereof other than the deposit or sale of the Bond in or to a custodial or trust entity or arrangement each of the beneficial owners of which shall be required to be a QIB or an Accredited Investor; provided, however, that the Purchaser may otherwise transfer the Bond upon the terms and conditions set forth in the Indenture and in compliance with applicable state and federal securities laws.
3. The Purchaser has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of investments of the same general type as the Bond (or that the foregoing is applicable to one or more QIBs or Accredited Investors for whom it is authorized to act); the Purchaser acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and the Purchaser has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Issuer, its business and the Project so that, as a reasonable investor, the Purchaser has been able to make its decision to purchase the Bond.
4. The Purchaser understands that in connection with any proposed transfer or exchange of the Bond, other than a transfer to (i) an Affiliate, (ii) in a transaction complying with Rule 144A, to a person it reasonably believes is a QIB purchasing for its own account or for the account of a QIB to whom notice is given that the resale or other transfer is being made in reliance on Rule 144A, or (iii) a deposit or sale of the Bond in or to a trust or custodial entity or arrangement each of the beneficial owners of which are required to be QIBs or Accredited Investors, there must be delivered to the Trustee a letter of the transferee to substantially the same effect as this letter.
5. The Purchaser understands that the Bond is not registered under the 1933 Act and that such registration is not legally required as of the date hereof; and further understands that the Bond (a) is not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable.
6. The Purchaser has satisfied itself that the Bond is a lawful investment for it under all applicable laws. This letter and the representations and agreements contained herein are made for your benefit.
7. [For the Series A-1 Bonds only: Solely as to FMSbonds, Inc. (the “Dealer”), the Purchaser acknowledges that (a) it has requested the Dealer to serve the limited role of dealer intermediary and riskless principal by purchasing the Bonds for the purpose of immediate resale to the Purchaser under Rule 144A, (b) the Dealer is making no

recommendation to the Purchaser concerning an investment in the Bonds, and (c) the Purchaser is not relying on any due diligence investigation by the Dealer in making an investment decision to purchase the Bonds.]

Capitalized terms used herein and not otherwise defined have the meaning given such terms in the Indenture.

[Signature Page to Investor Letter for Multifamily Housing Revenue Bonds (Lenzen Square)  
2019 Series A-1/Multifamily Housing Revenue Bonds (Lenzen Square) 2019 Series A-2]

Very truly yours,

[NAME OF PURCHASER]

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

Name:

Title: