

TRUST INDENTURE

By and Between

CITY OF SAN JOSE

and

UMB BANK, NATIONAL ASSOCIATION,
as Trustee

Dated as of [April] 1, 2026

[\$82,584,672]
City of San José
Multifamily Housing Revenue Bonds, Series 2026A
(Berryessa TOD)

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TRUST INDENTURE

THIS TRUST INDENTURE is entered into as of [April] 1, 2026 (this “Indenture”), by and between the CITY OF SAN JOSE (together with its successors and assigns, the “Issuer”), a municipal corporation and charter city, organized and existing under the laws of the State of California (the “State”), and UMB BANK, NATIONAL ASSOCIATION, a national banking association, duly organized and existing under the laws of the United States, as trustee (together with any successor trustee thereunder, the “Trustee”), under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals and granting clauses being used therein as defined in ARTICLE I hereof):

RECITALS

A. By virtue of the authority of the laws of the State, and particularly 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”), the Issuer is authorized to issue revenue bonds for the purpose of, among other things, financing the acquisition, construction and development of multifamily rental housing and for the provision of capital improvements in connection therewith and determined to be necessary thereto.

B. Pursuant to the Act, the Issuer has determined to issue and sell its Multifamily Housing Revenue Bonds, Series 2026A (Berryessa TOD) (the “Bonds”) in the principal amount of \$[82,584,672] and to loan the proceeds to be derived from the sale thereof to the Borrower (as defined below) to assist in the financing of the Project (as defined below) to be undertaken by the Borrower.

C. The Bonds will be secured by this Indenture, and the Issuer is authorized to execute and deliver this Indenture and to do or cause to be done all acts provided or required herein to be performed on its part.

D. Pursuant to its lawful authority under the Act and in accordance with a resolution of the Issuer adopted on [April 14, 2026] (the “Bond Resolution”), the Issuer and Berryessa Affordable Housing, L.P., a California limited partnership (the “Borrower”), have executed a certain Loan Agreement dated as of [April] 1, 2026 (the “Agreement” or the “Loan Agreement”), by the terms of which Loan Agreement the Issuer agrees to loan the proceeds of the Bonds to the Borrower (the “Loan”) for the purpose of financing the construction and development of a multifamily rental housing facility for low-income households, very-low income households and extremely low-income households to be located at 1565 Mabury Road, San José, California 95133 (the “Project”), and as more fully described in the Agreement.

E. The Loan will be evidenced by a Promissory Note (the “Note”) executed by the Borrower in the form attached as EXHIBIT B to the Loan Agreement, delivered to the Issuer, and assigned by the Issuer to the Trustee. From the Closing Date through the Mandatory Tender Date, the Bonds will be cash-collateralized, and no mortgage lien with respect to the Project will secure the Bonds or the Loan.

F. All acts and conditions 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, or at the delivery of the Bonds will exist, will have happened and will have been performed (i) to make the Bonds, when issued, delivered and authenticated, valid limited obligations of the Issuer in accordance with the terms thereof and hereof and (ii) to make this Indenture a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms.

G. The Trustee has accepted the trusts created by this Indenture, and in evidence thereof has joined in the execution hereof.

H. Deutsche Bank AG, New York Branch (the “Construction Lender”) has agreed to provide a separate construction loan (the “Construction Loan”) to the Borrower, the proceeds of which shall be advanced pursuant to the Construction Loan Documents and used directly or indirectly (including to cash collateralize the Bonds through deposits to the Collateral Fund) to finance the costs of the construction and development of the Project. The Construction Lender will administer the Construction Loan in accordance with the Construction Loan Documents.

I. Deutsche Bank Securities Inc. (the “Funding Lender”) has agreed, subject to the satisfaction of the Conditions to Forward Delivery (or Conditions to Interim Forward Delivery, as applicable) set forth in the Forward Commitment Agreement, dated April [], 2026, by and among the Construction Lender, the Funding Lender, and the Borrower (the “Forward Commitment Agreement”), to facilitate the financing of the Project in the permanent phase or the Interim Phase (as may be applicable) (the “Funding Loan”).

J. [Subject to the satisfaction of the Conditions to Forward Delivery (or Conditions to Interim Forward Delivery, as applicable) set forth in the Forward Commitment Agreement, Conversion of the Bonds shall occur on a Mandatory Tender Date, and on such Mandatory Tender Date, (i) the Bonds shall be subject to mandatory tender in accordance with Section 3.01 hereof, (ii) the purchase price of the Bonds shall be paid with amounts on deposit in the Collateral Fund (and other Eligible Funds hereunder), (iii) the Bonds shall be removed from the Book-Entry System, (iv) if all requirements for Stabilization have been met on the Mandatory Tender Date, the Bonds will be converted to one physical Governmental Note of the Issuer (in the form attached to the Funding Loan Agreement) which shall be purchased by the Funding Lender; provided, however, that if all requirements for Stabilization have not been met on the Mandatory Tender Date, the Bonds will be converted into two physical Governmental Notes of the Issuer (in the form attached to the Funding Loan Agreement) which shall be purchased by the Funding Lender, in each case, as set forth in the Funding Loan Agreement and the Borrower Loan Agreement, (v) the Funding Loan Agreement attached hereto as APPENDIX D and the Borrower Loan Agreement attached hereto as APPENDIX E shall be executed and delivered by the respective parties and become effective and shall supersede this Indenture and the Loan Agreement, respectively, (vi) the proceeds of the Funding Lender Purchase Price, along with any other funds of the Borrower (including equity funds), shall be deposited into the Construction Loan Prepayment Fund, and the Construction Loan shall be paid in like amount on deposit therein, and (vii) if all requirements for Stabilization have been met on the Mandatory Tender Date, the Borrower shall execute one Borrower Note; provided, however, that if all requirements for Stabilization have not been met on the Mandatory Tender Date, the Borrower shall execute two Borrower Notes, in either case, in order to evidence its obligations under the Borrower Loan Agreement and a new (or amended and restated) security instrument with respect to the Project to secure its obligations under the Borrower Loan Agreement, which Borrower Note(s) and security instrument will be assigned to

and held by the Fiscal Agent under the Funding Loan Agreement to secure the Governmental Note(s) of the Issuer, in each case, as further set forth in the Funding Loan Agreement and the Borrower Loan Agreement.]

K. With respect to the construction phase of the Project, the issuance, sale and delivery of the Bonds and the execution and delivery of this Indenture and the Loan Agreement have been in all respects duly and validly authorized in accordance with the Act, and, with respect to the permanent phase of the Project or Interim Phase (as may be applicable), the execution, delivery and sale of the Governmental Note(s) and the execution and delivery of the Funding Loan Agreement and the Borrower Loan Agreement have been in all respects duly and validly authorized in accordance with the Act.

L. In connection with the issuance of the Bonds, on or before the Closing Date, Construction Lender has indicated that the applicable Construction Loan Documents have been delivered in escrow to the title company for recordation.

GRANTING CLAUSES AND AGREEMENTS

NOW, THEREFORE, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of any or all of the Bonds issued and sold by the Issuer from time to time under this Indenture by those who shall hold the same from time to time, and of the sum of one dollar, lawful money of the United States of America, duly paid to the Issuer by the Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the principal of and interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds and the payment and performance of all other of the Issuer's Obligations, the Issuer does hereby grant, bargain, sell, convey, pledge and assign, without recourse, unto the Trustee and unto its successors in trust forever, and grants to the Trustee and to its successors in trust, a security interest in, the following (such property being herein referred to as the "Trust Estate"):

I.

All right, title and interest of the Issuer in and to all Revenues, derived or to be derived by the Issuer or the Trustee for the account of the Issuer under the terms of this Indenture and the Loan Agreement (other than the Unassigned Issuer's Rights), together with all other Revenues received by the Trustee for the account of the Issuer arising out of or on account of the Trust Estate.

II.

All right, title and interest of the Issuer in and to the Loan Agreement and the Note (other than the Unassigned Issuer's Rights) including all payments and proceeds with respect thereto or replacement thereof.

III.

All moneys (including the Eligible Funds received by the Trustee for deposit into the Collateral Fund provided that Construction Loan proceeds become part of the Trust Estate concurrently with the Trustee's corresponding disbursement of Bond proceeds to or at the direction of the Construction Lender in accordance with Section 4.08 hereof) which are at any time or from time to time on deposit in any fund or account created under this Indenture (excluding amounts on deposit in the Costs of Issuance Fund, the Expense Fund, the Construction Loan Prepayment Fund and the Rebate Fund).

IV.

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

PROVIDED, HOWEVER, that there shall be excluded from the granting clauses of this Indenture all the Unassigned Issuer's Rights, including all amounts paid or collected by the Issuer in connection therewith.

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

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

PROVIDED, HOWEVER, that if the Issuer shall well and truly pay, or cause to be paid, the principal of the Bonds issued hereunder, and interest due or to become due thereon, at the times and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, and shall cause the payments to be made into the Bond Fund as required under ARTICLE VIII hereof or by depositing with the Trustee the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all of the covenants and conditions pursuant to the terms of this Indenture and all other of the Issuer's Obligations to be kept, performed and observed by it, the Rebate Amount shall be paid in full and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon

such final payment, as further provided in Section 8.01 hereof, and the termination of the Loan Agreement, this Indenture and the rights hereby granted shall cease, terminate and be void; otherwise, this Indenture shall remain in full force and effect.

AND IT IS EXPRESSLY DECLARED that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all such property, moneys, revenues and receipts hereby pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer has agreed and covenanted and does hereby agree and covenant with the Trustee and with the respective holders from time to time of the Bonds, or any part thereof, as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.01 Definitions. Certain terms used in this Indenture are defined in the Loan Agreement and in the attached Funding Loan Agreement and when and if used herein, such terms shall have the meanings given to them by the Loan Agreement and the Funding Loan Agreement unless the context clearly indicates otherwise. In addition, when used in this Indenture, the following terms shall have the meanings given to them in this Section unless the context clearly indicates otherwise:

“Act” means Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as the same may be amended.

“Actual Project Loan Amount” shall mean the amount funded by the Funding Lender on the Mandatory Tender Date pursuant to terms of the Forward Commitment Agreement (as further described in Section 2.12 of this Indenture), which amount shall either be (i) an amount equal to the permanent phase Funding Loan amount (if Stabilization occurs on the Mandatory Tender Date) or (ii) an amount equal to the outstanding principal amount of the Bonds (if Stabilization does not occur on the Mandatory Tender Date).

“Additional Payments” means the amounts required to be paid by the Borrower pursuant to the provisions of Section 4.02 of the Loan Agreement.

“Administrative General Partner” means AHG Berryessa, LLC, a California limited liability company, and its permitted successors and assigns

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

“Agreement” or “Loan Agreement” means the Loan Agreement dated as of the same date as this Indenture, between the Issuer and the Borrower and any and all Supplements thereto.

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

“Authorized Denomination” means \$[5,000], or any integral multiple of \$[1,000] in excess thereof.

“Authorized Officer” means (a) with respect to the Issuer, any “Authorized Officer” as such term is defined in the Bond Resolution.

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

“Bond Counsel” means Hawkins Delafield & Wood LLP or other counsel selected by the Issuer and nationally recognized as having an expertise in connection with the exclusion of interest on obligations of states and local governmental units from the gross income of holders thereof for federal income tax purposes.

“Bond Debt Service Charges” means payments to be made by the Borrower to the Issuer pursuant to the Loan Agreement and the Note in amount sufficient to pay the principal of and interest on the Bonds when due.

“Bond Fund” means the Bond Fund created in Section 4.01 of this Indenture.

“Bond Payment Date” means each Interest Payment Date and any other date Bond Debt Service Charges on the Bonds are due, whether at maturity, upon redemption, on the mandatory tender or acceleration or otherwise.

“Bond Purchase Agreement” means the Bond Purchase Agreement, dated [April __, 2026], among the Issuer, the Borrower and Underwriter.

“Bond Resolution” means the resolution adopted by the Issuer on [April 14, 2026], authorizing, among other things, the issuance, sale, and delivery of the Bonds and related matters.

“Bond Year” means each annual period of twelve months the first of which commences on the date of the original issuance and delivery of the Bonds and the last of which ends on the maturity of the Bonds, except that the last Bond Year may be less than twelve months.

“Bondholder” or “Holder of the Bonds” or “Holder” or “Owner of the Bonds” or “Owner” when used with respect to any Bond, means the person or persons in whose name such Bond is

registered as the owner thereof on the books of the Issuer maintained at the Designated Office of the Trustee for that purpose.

“Bonds” means the \$[82,584,672] Multifamily Housing Revenue Bonds, Series 2026A (Berryessa TOD) of the Issuer issued, authenticated and delivered under this Indenture, which are identified as such in Section 2.01(a) hereof.

“Book-Entry Form” or “Book-Entry System” means a form or system, as applicable, under which (i) the ownership of beneficial interests in the Bonds may be transferred only through a book entry and (ii) physical bond certificates in fully registered form are registered only in the name of a Securities Depository or its nominee as holder, with the physical bond certificates “immobilized” in the custody of the Securities Depository.

“Borrower” means Berryessa Affordable Housing, L.P., a limited partnership organized and existing under the laws of the State, and its permitted successors and assigns.

“Borrower Documents” means the Loan Agreement, the Note, the Tax Certificate, the Regulatory Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Forward Commitment Agreement and any and all documents, agreements or instruments executed by the Borrower in connection with the Loan and the Bonds, but excluding the Construction Loan Documents.

“Borrower Loan Agreement” means the Borrower Loan Agreement attached hereto as APPENDIX E, which Borrower Loan Agreement shall be executed, delivered and become effective on the Mandatory Tender Date.

“Borrower Note” or “Borrower Notes” means, one or two (such determination being contingent on the requirements for Stabilization having been met on the Mandatory Tender Date as further set forth in Section 2.12 hereof and in the Funding Loan Agreement and the Borrower Loan Agreement) Borrower Notes of the Borrower in the form attached as EXHIBIT A to the Borrower Loan Agreement, which Borrower Note(s) shall be executed, delivered and become effective on the Mandatory Tender Date.

“Borrower’s Obligations” means the obligations of the Borrower under the Loan Agreement, the Note, and the other Borrower Documents to (a) pay the principal of, and interest on the Note, when and as the same shall become due and payable (whether at the stated maturity thereof, on any payment date or by acceleration of maturity or otherwise), (b) pay all other amounts required by the Loan Agreement, the Note, and the other Borrower Documents to be paid by the Borrower to the Issuer, as and when the same shall become due and payable, and (c) timely perform, observe and comply with all of the terms, covenants, conditions, stipulations, and agreements, express or implied, which the Borrower is required by the Loan Agreement, the Note, the Regulatory Agreement, and any of the other Borrower Documents, to perform or observe.

“Business Day” means a day, other than a Saturday or Sunday, on which (a) banks or trust companies located in New York, New York, Kansas City, Missouri, Costa Mesa, California, or in the city in which the Designated Office of the Trustee is located, are not required or authorized by law, regulation or executive order to close for business, and (b) the Federal Reserve Bank of New York or the New York Stock Exchange is not closed.

“Cash Flow Projection” means a cash flow projection prepared by an independent firm of certified public accountants, a financial advisory firm, a law firm or other independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Underwriter and the Rating Agency, establishing the sufficiency of (a) the amount on deposit in the Project Fund, the Collateral Fund and the Bond Fund, (b) projected investment income to accrue on amounts on deposit in the Project Fund, Collateral Fund and Bond Fund during the applicable period and (c) any additional Eligible Funds delivered to the Trustee by or on behalf of the Borrower to pay Bond Debt Service Charges and the administrative expenses, in each instance, when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds, (ii) a proposed remarketing of the Bonds, as provided in Section 3.03, (iii) the release of Eligible Funds from the Negative Arbitrage Account of the Bond Fund, as provided in Section 4.02 hereof and (iii) the purchase, sale or exchange of Eligible Investments as provided in Section 6.01 hereof.

“CDLAC” means the California Debt Limit Allocation Committee or its successors.

“Certificate of Occupancy” means the temporary or final certificate of occupancy, as the case may be, issued for the multifamily units in the Project, or if certificates of occupancy are not required or provided for multifamily units, then evidence of all final inspection approvals needed to occupy the multifamily units.

“Closing Date” means the date of initial delivery of the Bonds in exchange for the purchase price thereof.

“Code” means the Internal Revenue Code of 1986, including applicable final, temporary and proposed regulations and revenue rulings applicable thereto.

“Collateral Fund” means the Collateral Fund created in Section 4.01 hereof.

“Completion Certificate” means a certificate submitted by the Authorized Borrower Representative to the Issuer, the Trustee and CDLAC as provided in Regulatory Agreement, a form of which is attached as EXHIBIT F to the Regulatory Agreement.

“Completion Date” means the date upon which the Completion Certificate and the Certificate of Occupancy are delivered by the Borrower to the Issuer, the Trustee and CDLAC.

“Confirmation of Rating” means a written confirmation, obtained prior to the event or action under scrutiny, from the Rating Agency to the effect that, following the proposed action or event under scrutiny at the time such confirmation is sought, the rating of the Rating Agency with respect to all Bonds then Outstanding and then rated by the Rating Agency will not be downgraded, suspended, qualified or withdrawn as a result of such action or event.

“Construction Lender” means Deutsche Bank AG, New York Branch, and any successors or assigns.

“Construction Loan” means the loan in the amount of \$[____] to be made by the Construction Lender to the Borrower with respect to the Project, as described and provided for in the Construction Loan Documents.

“Construction Loan Agreement” means the Construction Loan Agreement dated as of the date hereof, between the Construction Lender and the Borrower, as the same may be amended, supplemented or restated.

“Construction Loan Documents” means the Construction Loan Agreement, the Construction Loan Security Instrument, the Construction Note, and all other documents required by the Construction Lender in connection with the Construction Loan.

“Construction Loan Prepayment Amount” means an amount necessary to prepay the outstanding principal amount of the Construction Loan (in whole or in part, as may be applicable), together with accrued interest to, but not including, the Mandatory Tender Date, as set forth in a payoff statement submitted by the Construction Lender to the Trustee on or prior to the Mandatory Tender Date.

“Construction Loan Prepayment Fund” means the Construction Loan Prepayment Fund created in Section 4.01 hereof.

“Construction Loan Security Instrument” means the Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (With Power of Sale) and Future Advance dated as of the date hereof, from the Borrower in favor of a deed of trust trustee for the benefit of the Construction Lender, which will secure the Construction Loan, as the same may be amended, supplemented or restated.

“Construction Note” means the Promissory Note evidencing the Construction Loan, delivered by the Borrower to the Construction Lender, as may be amended and restated.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement of even date herewith between the Borrower and the Dissemination Agent, as the same may be amended, supplemented or restated from time to time.

“Conversion” means the purchase by the Funding Lender of the Governmental Note(s) upon mandatory tender of the Bonds on the Mandatory Tender Date, as set forth in Section 2.12 hereof.

“Costs of Issuance” means all fees, costs and expenses payable or reimbursable directly or indirectly by the Issuer or the Borrower and related to the authorization, issuance and sale of the Bonds, including issuance costs of the Bonds (within the meaning of Section 147(g) of the Code).

“Costs of Issuance Deposit” means the deposit from the Borrower in the amount set forth in Section 4.01 of this Indenture, if any.

“Costs of Issuance Fund” means the Costs of Issuance Fund created pursuant to Section 4.01 of this Indenture.

“Costs of the Project” with respect to the Project shall be deemed to include all items permitted to be financed under the provisions of the Code and the Act.

“Designated Office” of the Trustee or the Underwriter means, with respect to the Trustee its Notice Address set forth in this Section 1.01, or with respect to the Underwriter, the office of the Underwriter, each at the respective Notice Address set forth in Section 1.01 hereof, or at such other address as may be specified from time to time in writing by the Trustee or the Underwriter, as applicable, as provided in Section 12.06 hereof, or the designated corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time in writing as provided in Section 12.06 hereof).

“Determination of Taxability” means a final decree or judgment of any Federal court or a final action of the Internal Revenue Service determining that interest paid or payable on any Bond is or was includable in the gross income of a Holder of the Bonds for Federal income tax purposes other than a Holder who is a “substantial user” or “related person” to a “substantial user” within the meaning of Section 147(a) of the Code, and other than a Holder who is an “applicable corporation” within the meaning of Section 59(k) of the Code who must include interest on the Bonds in its annual “adjusted financial statement income” for purposes of calculating the alternative minimum tax imposed on applicable corporations; provided, that no such decree, judgment, or action will be considered final for this purpose unless the Borrower and the Issuer have been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of any Holder of a Bond, and until the conclusion of any appellate review, if sought.

“Dissemination Agent” means initially UMB Bank, National Association, or any dissemination agent subsequently appointed in accordance with the Continuing Disclosure Agreement.

“Documents” means and shall include this Indenture, the Bonds, the Loan Agreement, the Note, the Regulatory Agreement, the Tax Certificate, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement, the Official Statement, the Forward Commitment Agreement and any and all other documents which the Issuer, the Borrower or any other party or parties or their representatives, have executed and delivered, or may hereafter execute and deliver, with respect to the Bonds or the Loan, or in connection therewith (which, for purposes of Section 2.05(a) hereof, shall be identified to the Trustee as required to be received by the Trustee prior to delivery of the Bonds), and any and all Supplements thereto, but excluding the Construction Loan Documents.

“Electronic Means” means the following communications methods: portable document format (“.pdf”) or other replicating image attached to an e-mail, facsimile transmission or other unsecured electronic methods, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

“Eligible Funds” means, as of any date of determination, any of:

(a) the proceeds of the Bonds (including any additional amount paid to the Trustee as the purchase price thereof or as an advance by the Underwriter);

- (b) moneys drawn on a letter of credit;
- (c) moneys received by the Trustee representing advances to the Borrower of proceeds of the Construction Loan;
- (d) remarketing proceeds of the Bonds (including any additional amount paid to the Trustee as the purchase and or remarketing price thereof by the Remarketing Agent) received from the Remarketing Agent or any purchaser of Bonds (other than funds provided by the Borrower, the Issuer, any Affiliate of either the Borrower or the Issuer);
- (e) any other amounts, including the proceeds of any refunding bonds, for which the Trustee has received an Opinion of Counsel (which opinion may assume that no Holder or Beneficial Owner of Bonds is an “insider” within the meaning of the Bankruptcy Code) to the effect that (A) the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court and (B) payments of such amounts to Holders would not be avoidable as preferential payments under Section 547 or 550 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code;
- (f) any payments made by the Borrower and held by the Trustee for a continuous period of 123 days, *provided* that no act of bankruptcy has occurred during such period;
- (g) proceeds of the Funding Lender Purchase Price received from the Funding Lender in connection with the purchase of the Governmental Note(s) on the Mandatory Tender Date; and
- (h) investment income derived from the investment of the money described in subsections (a) through (g) hereof.

“Eligible Investments” means any of the following investments which at the time of investment are legal investments for moneys of the Issuer and each of which investments must mature or be guaranteed to be able to be tendered at a price of par prior to the Fixed Mandatory Tender Date (or if moneys are invested after the Fixed Mandatory Tender Date, prior to the date such funds are expected to be needed) :

(a) Direct obligations of the United States of America including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America, including, when available, SLGS (“Governmental Obligations”); or

(b) Money market funds rated “Aaa-mf” by Moody’s (or the equivalent Highest Rating Category given by the Rating Agency for that Rating Category) (including mutual funds of the Trustee or its affiliates or for which the Trustee or an affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of direct obligations of the government of the United States of America.

“Event of Default” or “Default” means, when used in this Indenture, those events of default or defaults specified in Section 9.01 hereof and, when used in the Loan Agreement, those events of default or defaults specified in Section 7.01 thereof.

“Expense Fund” means the Expense Fund created in Section 4.01 hereof.

“Expense Fund Deposit” means the deposit from the Borrower in the amount set forth in Section 4.01 of this Indenture, if any.

“Extension Payment” means the amount due, if any, in connection with the change or extension of the Mandatory Tender Date pursuant to Section 3.03 hereof, which shall be determined by a Cash Flow Projection and must consist of Eligible Funds.

“Extraordinary Issuer Fees and Expenses” means the expenses and disbursements payable to the Issuer under this Indenture for Extraordinary Services and Extraordinary Expenses, including extraordinary fees, costs and expenses incurred by the Issuer, Bond Counsel and counsel to the Issuer which are to be paid by the Borrower pursuant to Section [4.02(d)] of the Loan Agreement.

“Extraordinary Services” and “Extraordinary Expenses” mean all services rendered and all reasonable fees and expenses properly incurred by the Trustee or the Issuer (including reasonable and actual fees, costs and expenses of counsel) under this Indenture or the other Documents, other than Ordinary Services and Ordinary Expenses. Extraordinary Services and Extraordinary Expenses shall specifically include but are not limited to services rendered or fees or expenses incurred by the Trustee or the Issuer in connection with, or in contemplation of, an Event of Default (including reasonable and actual fees, costs and expenses of counsel).

“Federal Tax Status” means, as to the Bonds, the status of the interest on the Bonds as excludible from gross income for federal income tax purposes of the Holders of the Bonds (except on Bonds while held by a substantial user or related person to a substantial user within the meaning of Section 147(a) of the Code or by an applicable corporation within the meaning of Section 59(k) of the Code).

“Fixed Mandatory Tender Date” means [May] 1, 2029.

“Forward Commitment Agreement” means the Forward Commitment Agreement, dated the Closing Date, by and between the Construction Lender, the Funding Lender and the Borrower.

“Funding Lender” means Deutsche Bank Securities Inc., and its successor and assigns.

“Funding Lender Purchase Price” means an amount equal to the Actual Project Loan Amount to be funded by the Funding Lender on the Mandatory Tender Date.

“Funding Loan Agreement” means the Funding Loan Agreement attached hereto as APPENDIX D, which Funding Loan Agreement shall be executed, delivered and become effective on the Mandatory Tender Date.

“Funding Loan Fund” means the Funding Loan Fund established under the Funding Loan Agreement.

“General Partner” means, collectively, the Managing General Partner and the Administrative General Partner.

“Governmental Authority” means any federal, State or local governmental or quasi-governmental entity, including, without limitation, any agency, department, commission, board, bureau, administration, service, or other instrumentality of any governmental entity.

“Governmental Note” or “Governmental Notes” means, one or two (such determination being contingent on the requirements for Stabilization having been met on the Mandatory Tender Date as further set forth in Section 2.12 hereof and in the Funding Loan Agreement and the Borrower Loan Agreement) Governmental Notes of the Issuer, in the form attached as EXHIBIT A to the Funding Loan Agreement, which Governmental Note(s) shall be executed, delivered and become effective on the Mandatory Tender Date.

“Governmental Requirements” means all laws, ordinances, orders, rules or regulations of any Governmental Authority applicable to the Project, the Issuer, the Borrower or any of the Borrower’s assets or other properties, including without limitation, laws, ordinances, orders, rules and regulations relating to securities or other public disclosures, zoning, licenses, permits, subdivision, building, safety, health, and fire protection and all environmental laws.

“Hazardous Substance” means any of the following as defined by the Relevant Environmental Laws: solid wastes; toxic or hazardous substances, petroleum products or derivatives, wastes, or contaminants (including, without limitation, polychlorinated biphenyls (“PCBs”), paint containing lead, and ureaformaldehyde foam insulation; and discharges of sewage or effluent).

“Highest Rating Category” means, with respect to an Eligible Investment, that the Eligible Investment is rated by a Rating Agency in the highest rating given by that Rating Agency for that Rating Category, provided that such rating shall include but not be below Aa1 or Aa1/VMIG-1 if rated by Moody’s or A-1+ or AA+ if rated by S&P.

“Indemnified Parties” or “Indemnified Party” shall have the meaning as set forth in 6.02 of the Agreement.

“Indenture” means this Trust Indenture, dated as of [April] 1, 2026, by and between the Issuer and the Trustee, and any and all Supplements thereto.

“Initial Borrower Deposit” means Eligible Funds in the amount of \$[_____].

“Initial Collateral Fund Deposit” means Eligible Funds in the amount of \$[_____].

“Initial Interest Rate” means [_____] %.

“Initial Remarketing Date” means the Fixed Mandatory Tender Date, but only if the Conversion has not occurred on such date and the conditions for remarketing the Bonds on such date as provided in Section 3.03 hereof are satisfied.

“Interest Payment Date” means (a) [May] 1 and [November] 1 of each year beginning [November] 1 20[26], and (b) each Mandatory Tender Date.

“Interest Period” means, initially, the period from the Closing Date to but not including first Interest Payment Date, and thereafter, the period commencing on each succeeding Interest Payment Date and ending on the last day of the month preceding the next Interest Payment Date.

“Interest Rate” means, as applicable, the Initial Interest Rate to, but not including, the Fixed Mandatory Tender Date and thereafter the applicable Remarketing Rate; *provided, however*, upon Conversion, the Interest Rate shall be as set forth in the Funding Loan Agreement.

“Interim Phase” means the period of time between the Mandatory Tender Date and the Stabilization Date (if Stabilization does not occur on the Mandatory Tender Date).

“Investor Limited Partner” means BF FRE 2023, Limited Partnership, and its successor and assigns.

“Issuer” means the City of San José, a municipal corporation and charter city, organized and existing under the laws of the State.

“Issuer Documents” means the Loan Agreement, this Indenture, the Regulatory Agreement, the Bond Purchase Agreement, the Tax Certificate and any and all documents, agreements or instruments executed by the Issuer in connection with the Loan.

“Issuer Fees and Expenses” means, collectively, the Ordinary Issuer Fees and Expenses and the Extraordinary Issuer Fees and Expenses. The Issuer Fees and Expenses shall be payable by the Borrower, and not from funds pledged to the benefit of the Trust Estate.

“Issuer’s Obligations” means, subject to Section 2.09 hereof, the obligations of the Issuer under the Bonds, this Indenture, and the other Documents to (a) pay the principal of and interest on the Bonds, when and as the same shall become due and payable (whether at the stated maturity thereof, or by acceleration of maturity or after notice of prepayment or otherwise) and, (b) timely perform, observe and comply with all of the terms, covenants, conditions, stipulations, and agreements, express or implied, which the Issuer is required, by the Bonds, this Indenture, or any of the other Documents, to perform and observe.

“Loan” means the loan in the original principal amount of \$[82,584,672] made by the Issuer to the Borrower from the proceeds of the Bonds pursuant to the Loan Agreement and evidenced by the Note.

“Loan Payments” means the amounts required to be paid by the Borrower in repayment of the Loan pursuant to the provisions of the Note and Section 4.01 of the Loan Agreement.

“Mandatory Tender Date” means the Fixed Mandatory Tender Date and any subsequent date on which all Outstanding Bonds are subject to mandatory tender as set forth in Section 3.01(b) hereof.

“Managing General Partner” means CFAH Housing LLC, a California limited liability company, and its permitted successors and assigns.

“Maturity Date” means [May] 1, 2066.

“Maximum Interest Rate” means the interest rate equal to the lesser of: (a) 12% per annum, or (b) the maximum interest rate per annum permitted by applicable law.

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, and its successors and assigns, or if it is dissolved or no longer assigns credit ratings, then any other nationally recognized statistical rating agency, acceptable to the Remarketing Agent, that assigns credit ratings.

“Negative Arbitrage Account” means the Negative Arbitrage Account of the Bond Fund created in Section 4.01 hereof.

“No Adverse Effect Opinion of Bond Counsel” means an opinion of Bond Counsel to the effect that such action will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

“Note” means the Promissory Note dated the Closing Date from the Borrower to the Issuer in substantially the form attached as EXHIBIT B to the Loan Agreement, which Note has been assigned by the Issuer to the Trustee, as the same may be amended, supplemented or restated.

“Notice Address” means, unless otherwise designated pursuant to Section 12.06 hereof:

(a) As to the Issuer:

City of San José
Department of Finance
200 East Santa Clara Street, 13th Floor
San José, California 95113-1905
Attention: Debt Management
Email: debt.management@sanjoseca.gov

With a copy to:

City of San José
Department of Housing
200 East Santa Clara Street, 12th Floor
San José, California 95113-1905
Attention: Director of Housing

With a copy to:

City of San José
City Attorney’s Office
200 East Santa Clara Street, 16th Floor
San José, California 95113-1905
Attention: Housing Attorney

(b) As to the Trustee:

UMB Bank, National Association
3070 Bristol Street, Suite 300
Costa Mesa, California 92626
Attention: Corporate Trust Services

(c) As to the Borrower:

AHG Berryessa, LLC
c/o Affirmed Housing Group, Inc.
13520 Evening Creek Drive North, Suite 160
San Diego, CA 92128
Attention: Chief Financial Officer
Telephone: (858) 386-5176
Email: nicki@affirmedhousing.com

With a copy to:

Katten Muchin Roseman LLP
2121 Avenue of the Stars, Suite 1100
Los Angeles, CA 90067-5010
Attention: [David Cohen]
Telephone: [(310) 788-4591]
Email: [david.cohen@katten.com]

With a copy to:

CFAH Housing LLC
c/o Compass for Affordable Housing
17190 Bernardo Center Dr., Suite 200
San Diego, CA 92128
Attention: Executive Director

With a copy to:

Hobson Bernardino + Davis LLP
600 Corporate Pointe, Suite 215
Culver City, CA 90230
Attention: Jason Hobson
Email: jhobson@hbdlegal.com

(d) As to the Construction Lender:

Deutsche Bank AG, New York Branch.
Deutsche Bank Center
1 Columbus Circle
New York, New York 10019
Attention: Charles Seymour

Telephone: (212) 250-8982
Email: charles.seymour@db.com

With a copy to:

Kutak Rock LLP
Two Logan Square
100 North 18th Street, Suite 1920
Philadelphia, Pennsylvania 19103
Attention: Andrew P. Schmutz, Esq.
Email: Andrew.Schmutz@kutakrock.com

With a copy to: Investor Limited Partner

(e) As to the Underwriter and Remarketing Agent:

Lument Securities, LLC
3111 Camino Del Rio N, Suite 100
San Diego, CA 92108
Attention: Nick Hamilton
Telephone: (619) 471-0117
Email: nick.hamilton@lument.com

with a copy to:

Tiber Hudson LLC
601 Pennsylvania Avenue, NW, Suite 900 South
Washington, DC 20004
Attention: Kent Neumann
Telephone: (202) 973-0107
Email: kent@tiberhudson.com

(f) As to the Rating Agency:

Moody's Investors Service, Inc.
250 Greenwich Street, 16th Floor
New York, NY 10007
Attention: Public Finance Group – Housing Team
Electronic notices shall be delivered to:
Housing@moodys.com

(g) As to the Investor Limited Partner:

BF FRE 2023, Limited Partnership
c/o Boston Financial Investment Management, L.P.
101 Arch Street
Boston, MA 02110
Attention: [Laura Surdel]
Telephone: [(774) 567-5893]
Email: laura.surdel@bfim.com

With a copy to:

Kutak Rock LLP
1650 Farnham Street
The Omaha Building
Omaha, NE 68102-2103
Attention: Gregory Grattan
Email: gregort.grattan@kutakrock.com

(h) As to the Funding Lender:

Deutsche Bank Securities Inc.
Deutsche Bank Center
1 Columbus Circle
New York, New York 10019
Attention: Charles Seymour
Telephone: (212) 250-8982
Email: charles.seymour@db.com

With a copy to:

Kutak Rock LLP
Two Logan Square
100 North 18th Street, Suite 1920
Philadelphia, Pennsylvania 19103
Attention: Andrew P. Schmutz, Esq.
Email: Andrew.Schmutz@kutakrock.com

“Official Statement” means, collectively, the preliminary and final Official Statement relating to the Bonds along with any amendments or supplements thereto.

“Opinion of Counsel” means an opinion from an attorney or firm of attorneys, acceptable to the Issuer, with experience in the matters to be covered in the opinion.

“Optional Call Date” means any date on or after the Mandatory Tender Date (if the Conversion has not occurred).

“Ordinary Issuer Fees and Expenses” means the fees of the Issuer as described in Sections [7(a) and 7(b)] of the Regulatory Agreement.

“Ordinary Services” and “Ordinary Expenses” mean those services normally rendered, and those expenses normally incurred, by a trustee under instruments similar to this Indenture.

“Outstanding,” “outstanding” or “Bonds Outstanding” when used with respect to the Bonds means any Bonds theretofore authenticated and delivered under this Indenture, except:

- (a) Bonds theretofore canceled by the Trustee or theretofore delivered to the Trustee for cancellation;
- (b) Bonds for the payment of which moneys or obligations shall have been theretofore deposited with the Trustee in accordance with ARTICLE VIII; or
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under this Indenture.

“Partnership Agreement” means the [Second Amended and Restated Agreement of Limited Partnership] of the Borrower dated as of [April] 1, 2026, as it may be amended in accordance with the Borrower Documents and the Construction Loan Documents.

“Permitted Encumbrances” means (a) any matters set forth in any policy of title insurance issued to the Construction Lender and insuring Construction Lender’s interest in the Project which are acceptable to the Construction Lender as of the date hereof, (b) the lien of the Construction Loan Security Instrument, and (c) any other encumbrance that the Construction Lender shall reasonably approve in writing.

“Person” shall include an individual, association, unincorporated organization, corporation, partnership, joint venture, or government or agency or political subdivision thereof.

“Plans and Specifications” means the plans and specifications describing the Project as now prepared and as they may be changed as provided in the Loan Agreement.

“Project” means the multifamily rental housing facility to be constructed at 1565 Mabury Road, San José, California 95133, which, upon completion, will include 195 units (including two unrestricted manager’s units) for low-income households, very low-income households and extremely low-income households.

“Project Fund” means the Project Fund created in Section 4.01 of this Indenture.

“Qualified Project Costs” means any expenditures which (a) are incurred not more than 60 days prior to the date on which the issuer first declared its “official intent” (within the meaning of Treasury Regulation Section 1.150-2) with respect to the Project (other than preliminary expenditures with respect to the Project in an amount not exceeding 20% of the aggregate principal amount of the Bonds); (b) are made exclusively to provide facilities and improvements that constitute part of a “qualified residential rental project” within the meaning of Section 142(d) of the Code; and (c) are properly chargeable to the Project’s capital account under general federal income tax principles or that would be so chargeable with a proper election or but for a proper election by the Borrower to deduct such expenditure. However, “Qualified Project Costs” do not include (i) issuance costs of the Bonds (within the meaning of Section 147(g) of the Code) or (ii)

any fee, charge or profit payable to the Borrower or a “related person” (within the meaning of Section 144(a)(3) of the Code) of the Borrower. As used herein, the term “preliminary expenditures” includes architectural, engineering, surveying, soil testing and similar costs that were incurred prior to the commencement of the Project, but does not include land acquisition, site preparation and similar costs incident to commencement of the Project.

“Rating Agency” means Moody’s, S&P or any other nationally recognized securities rating agency rating the Bonds, or such rating agency’s successors or assigns, and initially means Moody’s so long as Moody’s is rating the Bonds.

“Rating Category” means one of the rating categories of the Rating Agency for the specific type and duration of the applicable Eligible Investment.

“Rebate Amount” means the amount, if any, which is to be paid to the United States of America pursuant to the Section 148(f) of the Code and Section 4.06 hereof.

“Rebate Analyst” means [Hawkins Delafield & Wood LLP] or such other certified public accountant, financial analyst or attorney, or any firm of the foregoing, or a financial institution experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code and selected by the Issuer at the direction and expense of the Borrower to calculate the Rebate Amount or, in the event that the Issuer fails to so select a Rebate Analyst and the Borrower fails to pay such fee one month prior to any date on which calculations are required to be made, any qualified person retained by the Trustee to calculate the Rebate Amount.

“Rebate Fund” means the Rebate Fund created in Section 4.01 of this Indenture.

“Record Date” means the 15th day of the month preceding any Interest Payment Date or 45 days prior to any Mandatory Tender Date.

“Regulatory Agreement” means the Regulatory Agreement, dated as of [April] 1, 2026, by and between the Issuer and the Borrower.

“Relevant Environmental Laws” means all applicable federal, state and local laws, rules, regulations, orders, judicial determinations, and decisions or determinations by any judicial, legislative or executive body of any governmental or quasi-governmental entity, as they may be amended from time to time, whether previously existing, presently existing or hereinafter enacted, adopted or ordered with respect to: (i) the existence on, discharge from or to, or removal from all or any portion of the Project site of any Hazardous Substance; and (ii) the effects on the environment of all or any portion of the Project site (including, without limitation, any wetlands located on the Project site) or of any activity now, previously, or hereafter conducted on the Project site. The Relevant Environment Laws shall include, but not be limited to, (a) the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601-9675; the Superfund Amendments and Reauthorization Act, Public Law 99-499, 100 Stat. 1613; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901-6992(k); the National Environmental Policy Act, 42 U.S.C. Section 4321; the Safe Drinking Water Act, 42 U.S.C. Sections 300f-300j11; the Toxic Substances Control Act, 15 U.S.C. Section 2601, 2671; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801; the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251, et seq.; the Clean Air Act, 42 U.S.C. Sections 7401-7642;

the Clean Water Act, 33 U.S.C. Sections 1251-1387, as any of the foregoing have or will be amended; (b) any regulations promulgated pursuant to any of such statutes; (c) Environmental Protection Agency regulations pertaining to asbestos (including 40 C.F.R. Part 61, Subpart M); and (d) any other state and local laws and regulations pertaining to any Hazardous Substance and/or asbestos.

“Remarketing Agent” means Lument Securities, LLC, or any successor as Remarketing Agent designated in accordance with Section 10.23 hereof.

“Remarketing Agent's Fee” means the fee of the Remarketing Agent for its remarketing services.

“Remarketing Agreement” means the Remarketing Agreement, dated as of [April] 1, 2026, by and between the Borrower and the Remarketing Agent, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

“Remarketing Date” means the Initial Remarketing Date and, if the Bonds Outstanding on such date or on any subsequent Remarketing Date are remarketed pursuant to Section 3.03 for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

“Remarketing Expenses” means the costs and expenses incurred by the Trustee and its counsel, the Remarketing Agent and its counsel, the Issuer and its counsel, and Bond Counsel in connection with the remarketing of the Bonds, including bond printing and registration costs, costs of funds advanced by the Remarketing Agent, registration and filing fees, rating agency fees and other costs and expenses incurred in connection with or properly attributable to the remarketing of Bonds as certified to the Trustee by the Remarketing Agent in writing.

“Remarketing Notice Parties” means the Borrower, the Investor Limited Partner, the Issuer, the Trustee, the Remarketing Agent and the Construction Lender.

“Remarketing Period” means the period beginning on a Remarketing Date and ending on the last day of the term for which Bonds are remarketed pursuant to Section 3.03.

“Remarketing Proceeds Account” means the Remarketing Proceeds Account of the Bond Fund created in Section 4.01 hereof.

“Remarketing Rate” means the interest rate or rates established pursuant to Section 2.01 and borne by the Bonds then Outstanding from and including each Remarketing Date to, but not including, the next succeeding Remarketing Date or the final Maturity Date of the Bonds, as applicable, which shall be the lowest rate at which the remarketed Bonds can be sold at a price equal to par.

“Requisition” means the written request to make a disbursement from the Project Fund in substantially the form attached as APPENDIX B hereto or a disbursement request from the Costs of Issuance Fund in substantially the form attached as APPENDIX C hereto.

“Responsible Officer” of the Trustee shall mean and include any Vice President, Assistant Vice President or other officer of the Trustee having regular responsibility for the administration of this Indenture.

“Revenues” means (a) the Loan Payments, (b) the Eligible Funds received by the Trustee for deposit into the Collateral Fund, (c) all other money received or to be received by the Trustee in respect of repayment of the Loan, including without limitation, all money and investments in the Bond Fund, (d) any money and investments in the Special Funds, and (e) all income and profit from the investment of the foregoing moneys. The term “Revenues” does not include any money or investments in the Rebate Fund, the Costs of Issuance Fund, the Expense Fund or the Construction Loan Prepayment Fund, amounts paid as fees, reimbursement for expenses or for indemnification of the Issuer and the Trustee, or amounts paid to or collected by the Issuer in connection with any Unassigned Issuer’s Rights.

“S&P” means S&P Global Ratings.

“Securities Depository” means the Depository Trust Company, its successors and assigns, or any other securities depository for the Bonds designated by the Issuer or the Borrower to the Trustee in writing.

“Securities Depository Representation Letter” means the Issuer’s Blanket Issuer Letter of Representations to The Depository Trust Company.

“Special Funds” means, collectively, the Bond Fund, the Collateral Fund and the Project Fund, and any accounts therein, all as created in this Indenture.

“Stabilization” shall have the meaning as set forth in the Funding Loan Agreement.

“Stabilization Date” shall have the meaning as set forth in the Funding Loan Agreement.

“State” means the State of California.

“Supplement” or “Supplements” means any and all extensions, renewals, modifications, amendments, supplements and substitutions to any Document.

“Tax Certificate” means the Tax Certificate and Agreement executed by the Issuer and the Borrower, in connection with the issuance of the Bonds and dated as of the Closing Date, and any exhibits, schedules, amendments and supplements to the foregoing.

“Term of Agreement” means the term of the Loan Agreement as specified in Section 8.01 of the Loan Agreement.

“Title Company” means Corinthian Title & Escrow Company.

“Trustee” means UMB Bank, National Association, a national banking association, organized and existing under the laws of the United States and authorized to conduct business in the State, and its successor or successors in the trust created by this Indenture.

“Trust Estate” has the meaning given such term in the Granting Clauses of this Indenture.

“Unassigned Issuer’s Rights” means those certain rights of the Issuer under the Documents to which the Issuer is a party to indemnification and to payment or reimbursement of fees and expenses of the Issuer, its right to give and receive notices and to enforce notice and reporting requirements and restrictions on transfer of ownership, its right to inspect and audit the books, records and premises of the Borrower and of the Project, its right to collect attorneys’ fees and related expenses, its right to specifically enforce the Borrower’s covenant to comply with applicable federal tax law and State law (including the Act and the rules and regulations of the Issuer, if any), and its right to give or withhold consent to amendments, changes, modifications and alterations to the Documents relating to the Unassigned Issuer’s Rights.

“Undelivered Bond” means any Bond that is required under this Indenture to be delivered to the Remarketing Agent or the Trustee for purchase on a Mandatory Tender Date but that has not been received on the date such Bond is required to be so delivered.

“Underwriter” means, Lument Securities, LLC.

Section 1.02 *Rules of Construction.* The words “hereof,” “herein,” “hereunder,” “hereto,” and other words of similar import refer to this Indenture in its entirety.

The terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants.”

References to Articles, Sections, and other subdivisions of this Indenture are to the designated Articles, Sections, and other subdivisions of this Indenture.

The headings of this Indenture are for convenience only and shall not define or limit the provisions hereof.

All references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

Any reference to particular sections or subsections of the Code and applicable Income Tax Regulations shall include any successor provisions of law or regulations, to the extent the same shall apply to the Bonds.

Any reference to a Bond or to the Bonds shall include each portion in the minimum Authorized Denomination of any registered bond having a denomination greater than the minimum Authorized Denomination.

ARTICLE II

THE BONDS

Section 2.01 *Authorization and Terms of Bonds.*

(a) *Authorization of Bonds.* The Issuer hereby authorizes for issuance under this Indenture, bonds in the original aggregate principal amount of \$[82,584,672], which shall be

designated “*City of San José Multifamily Housing Revenue Bonds, Series 2026A (Berryessa TOD)*,” to be issued as hereinafter provided.

(b) *Registered Form; Numbering.* The Bonds shall be issuable only as fully registered Bonds in Authorized Denominations, substantially in the form, appropriately completed, attached hereto as APPENDIX A and made a part hereof. The Bonds shall be lettered “R,” and shall be numbered separately from “1” consecutively upward.

(c) *Date, Denominations, Dates from Which Interest Payable, Interest Rate and Maturity.* The Bonds shall be dated the Closing Date, shall be issued in Authorized Denominations, and shall bear interest on the principal amount Outstanding from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or provided for, from their date of initial delivery, payable on each Bond Payment Date. The Bonds shall bear interest for each Interest Period at the Interest Rate all as more specifically set forth hereinafter. Interest on the Bonds shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. The Bonds shall mature on the Maturity Date, subject to mandatory tender for purchase as set forth in Section 3.01 hereof and mandatory redemption as set forth in Section 3.04 hereof.

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Initial Interest Rate</u>	<u>CUSIP Number</u>
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(d) *Initial Interest Rate.* From the Closing Date to, but not including, the Fixed Mandatory Tender Date, the interest rate on the Bonds shall be the Interest Rate. On the Fixed Mandatory Tender Date, the Bonds shall be subject to Mandatory Tender pursuant to Section 3.01 hereof.

(e) *Establishment of Remarketing Rate.* The Remarketing Agent shall establish the interest rate on the Bonds Outstanding for each Remarketing Period at the Remarketing Rate in accordance with this Section 2.01(e). Not less than ten (10) Business Days preceding each Remarketing Date, the Remarketing Agent, taking into consideration prevailing market conditions, shall, using its best professional judgment, determine the minimum rate(s) of interest which, if borne by the Bonds then Outstanding for the Remarketing Period specified by the Remarketing Agent at the direction of the Borrower as provided in Section 3.03 hereof shall offer for sale and use its best efforts to sell the Bonds Outstanding on the Remarketing Date at a price equal to 100% of the principal amount of such Bonds plus, if such Remarketing Date is a date other than a scheduled Interest Payment Date, accrued interest on such Bonds from the preceding Interest Payment Date to which interest has been paid. The rate of interest determined in accordance with the previous sentence shall be the Remarketing Rate for the specified Remarketing Period; provided that if the rate of interest so determined for such period would exceed the maximum interest rate per annum permitted by applicable law, the Bonds Outstanding shall be remarketed for the longest Remarketing Period for which the minimum rate of interest that would enable such Bonds to be remarketed at a price equal to 100% of the principal amount of such Bonds that would not exceed the maximum interest rate permitted by applicable law. Notwithstanding the foregoing, if the rate of interest so determined for any Remarketing Period would exceed the Maximum Interest Rate permitted by applicable State law, the Bonds Outstanding shall not be remarketed.

(f) *Notice of Remarketing Rate.* The Remarketing Agent shall, upon determination of the Remarketing Rate and Remarketing Period, immediately (and in no event later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate and the Remarketing Period) give notice of its determination by telephone or telecopy, promptly confirmed in writing within two (2) Business Days, to the Trustee, the Issuer, the Borrower and the Investor Limited Partner. The Remarketing Rate and the Remarketing Period shall be conclusive and binding upon the Trustee, the Issuer, the Borrower and the Holders for the purposes of this Indenture.

(g) *Book-Entry Form.* Initially, the Bonds shall be issued in Book-Entry Form only through the facilities of the Securities Depository as further provided in Section 2.11 hereof. In the event the Book-Entry System is subsequently terminated as provided in Section 2.11 hereof, replacement Bonds shall be issued in Authorized Denominations.

(h) *Medium and Place of Payment.* Principal of and interest on the Bonds shall be payable in lawful money of the United States of America which, at the respective times of payment, is legal tender for the payment of public and private debts, but only from the Revenues and any other monies made available to the Issuer for such purpose. Subject to Section 2.11 hereof, principal of the Bonds shall be payable at the Designated Office of the Trustee upon presentation and surrender of the Bonds as the same become due, and upon the request of any registered Owner of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, such principal shall be paid by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such Owner in writing to the Trustee. Interest on the Bonds shall be payable to each registered Owner of the Bonds by check mailed to such Owners at their addresses as they appear on registration books kept by the Trustee, or, upon the request of any registered Owner of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such Owner in writing to the Trustee at least three (3) Business Days prior to the applicable payment date.

(i) *Form of Bonds.* The definitive Bonds, which may be printed, typewritten, photocopied, or otherwise reproduced, including the Trustee's Certificate of Authentication to be endorsed thereon, shall be substantially in the form as set forth in APPENDIX A attached hereto with such appropriate variations, omissions and insertions as permitted or required by this Indenture.

(j) *Payments or Actions to be taken on Saturdays, Sundays and Holidays.* If any Bond Payment Date or a date of maturity of the principal of any Bonds is a Saturday, Sunday or a day on which the Trustee is required, or authorized or not prohibited, by law (including without limitation, executive orders) to close and is closed, then payment of interest and principal need not be made by the Trustee on that date, but that payment may be made on the next succeeding Business Day on which the Trustee is open for business with the same force and effect as if that payment were made on the Bond Payment Date or date of maturity, and no interest shall accrue for the period after that date. If a Mandatory Tender Date is a day that is not a Business Day, then, notwithstanding any provision hereof to the contrary, (i) any tender, purchase or redemption required to be made, or other action required to be taken, on such Mandatory Tender Date pursuant to ARTICLE III hereof instead shall be made or taken on the next succeeding Business Day with the same force and effect as if made or taken on such Mandatory Tender Date, and (ii) any

provision in ARTICLE III hereof for the giving of notice or satisfaction of a condition a specified number of days prior to such Mandatory Tender Date instead shall be deemed to refer to the giving of such notice or satisfaction of such condition such number of days prior to the Business Day next succeeding such Mandatory Tender Date.

Section 2.02 *Security and Source of Payment of Bonds.* Subject to Section 2.09 hereof, the Bonds shall be secured by and payable solely from the Trust Estate pledged therefor under this Indenture. Nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer. All the Bonds to be issued hereunder shall be equally and ratably secured, to the extent provided herein, by this Indenture.

Section 2.03 *Execution of Bonds.* Each Bond shall be signed by or bear the facsimile or manual signature of an Authorized Officer of the Issuer. In case any officer whose signature or a facsimile of whose signature shall appear on any Bond shall cease to be that officer before the issuance of the Bond, such signature or the facsimile thereof nevertheless shall be valid and sufficient for all purposes, the same as if such officer had remained in office until that time. Any Bond may be executed on behalf of the Issuer by an officer who, on the date of execution is the proper officer, although on the date of the Bond that person was not the proper officer

Section 2.04 *Certificate of Authentication.* Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form set forth in the form of the Bond herein provided and duly executed by the Trustee shall be entitled to any right or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if manually signed by an authorized officer of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder. At the time of authentication of any Bond, the Trustee shall insert therein the date from which interest on such Bond shall be payable as provided in Section 2.01(c).

Section 2.05 *Authentication and Delivery of Bonds.* Upon the execution and delivery of this Indenture, and satisfaction of the conditions established by the Issuer in the Bond Resolution and in the Bond Purchase Agreement for delivery of the Bonds, the Issuer shall execute the Bonds and deliver them to the Trustee. Thereupon, the Trustee shall authenticate the Bonds and hold them on behalf of the Securities Depository pending closing therewith.

Prior to the Closing with the Securities Depository, the Trustee shall have received the following:

- (a) executed counterparts of this Indenture and the other Documents specifically set forth in the definition of Documents;
- (b) a written order of the Issuer directing the Trustee to authenticate and deliver the Bonds;

- (c) the sale proceeds of the Bonds and all other amounts required to be received by the Trustee for deposit pursuant to Section 4.01(b), (c) and (d) hereof;
- (d) a copy of the Issuer's certified Bond Resolution;
- (e) an opinion of counsel to the Issuer in form and content acceptable to the Bond Counsel;
- (f) an approving opinion of Bond Counsel in form and content acceptable to the Issuer;
- (g) an Opinion of Counsel for the Borrower in form and content acceptable to the Issuer, Bond Counsel and the Underwriter; and
- (h) a copy of the rating letter from the Rating Agency evidencing a rating on the Bonds of “[Aa1]”.

Section 2.06 *Temporary Bonds.* Until Bonds in definitive form are ready for delivery, the Issuer may execute, and upon its request in writing, the Trustee shall authenticate and deliver in lieu of any thereof, and subject to the same provisions, limitations and conditions, one or more printed, typewritten or photocopied Bonds in temporary form, substantially of the tenor of the Bonds herein described, and with appropriate omissions, variations and insertions. Such Bond or Bonds in temporary form shall be delivered in denominations authorized by this Indenture, may be numbered using the prefix “T” before any number thereon as authorized by this Indenture, and may bear a legend thereon setting forth the terms for the exchange thereof for Bonds in definitive form. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the benefit of this Indenture. The Issuer shall, without unreasonable delay (unless the Holders of the Bonds issued in temporary form agree otherwise), prepare, execute and deliver to the Trustee, and thereupon, upon the presentation and surrender of the Bond or Bonds in temporary form, the Trustee shall authenticate and deliver, in exchange therefor, a Bond or Bonds in a definitive authorized form in Authorized Denominations, of the same maturity or maturities, bearing the same interest rate or rates and for the same aggregate principal amount as the Bond or Bonds in temporary form surrendered. Such exchange shall be made by the Issuer at the Borrower’s expense and without making any charge to the Holders of the Bonds therefor.

Section 2.07 *Mutilated, Lost, Stolen or Destroyed Bonds.* In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate a new Bond of like date, maturity, interest rate and denomination as that of the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond there shall be first furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. The Trustee may, with the consent of the Holder, provide to the Holder a typewritten (or similarly reproduced) Bond certificate in lieu of a printed Bond certificate. In the event any such Bond shall have matured, instead of issuing a duplicate Bond the Trustee may pay the same without surrender thereof. The Issuer and the Trustee may charge the Holder of such Bond their expenses and reasonable fees, if any, in connection with the preparation, execution and authentication of a replacement Bond.

Section 2.08 *Registration, Negotiability, Transfer and Exchange of Bonds.* All of the Bonds issued under this Indenture shall be negotiable instruments. Subject to Section 2.11, the provisions for registration, transfer and exchange contained in this Section and otherwise in this Indenture shall apply to the Bonds. So long as any of the Bonds shall remain outstanding, the Issuer shall maintain and keep at the Designated Office of the Trustee, books for the registration and transfer of Bonds; and, upon presentation thereof for such purpose at such office, the Trustee shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as the Issuer or the Trustee may prescribe, any Bond entitled to registration or transfer.

Each Bond shall be transferable only upon the books of the Issuer maintained for such purpose by the Trustee, at the written request of the registered Owner thereof or his attorney duly authorized in writing, upon presentation and surrender thereof, together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered Owner or his attorney duly authorized in writing. Upon the surrender for transfer of any Bond, the Issuer shall issue, and the Trustee shall authenticate, in the name of the transferee, in Authorized Denominations, a new Bond or Bonds without coupons of the same aggregate principal amount, maturity and interest rate as the surrendered Bond.

The Issuer and the Trustee may deem and treat the person in whose name any Outstanding registered Bond shall be registered upon the books of the Issuer as the absolute Owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

For every exchange or transfer of Bonds, whether temporary or definitive, the Issuer or the Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. Notwithstanding any other provision of this Indenture to the contrary, any fees or expenses of the Issuer or the Trustee incurred in connection therewith (except any applicable tax or other governmental charge to be paid by the person requesting such transfer or exchange) shall be paid by the Borrower as required by the Loan Agreement. The Issuer shall not be obligated to make any such exchange or transfer of Bonds during the fifteen (15) days next preceding an interest payment date on the Bonds.

Section 2.09 *Limited Obligations.* THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY FROM THE TRUST ESTATE HEREUNDER. NONE OF THE ISSUER, ANY OF ITS MEMBERS, THE STATE, NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER, TO THE LIMITED EXTENT SET FORTH HEREIN) 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 HEREIN, 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 foregoing statement of limitation shall appear on the face of each Bond.

Section 2.10 *Cancellation and Disposal of Bonds.* All Bonds that have been surrendered for payment, cancellation or for registration of transfer or exchange pursuant to Section 2.08 shall be cancelled and disposed of by the Trustee in accordance with its then-customary practices and shall not be reissued, and a counterpart of the certificate of disposal evidencing such disposal shall be furnished by the Trustee to the Issuer and, upon written request therefor, to the Borrower and the Investor Limited Partner. Any Bonds so cancelled may be retained by the Trustee for such period of time as the Trustee may determine and shall be disposed of by the Trustee in accordance with its then-customary practices at the end of such period. Any Bonds so cancelled shall thereafter no longer be considered Outstanding for any purpose of this Indenture or the Loan Agreement.

Section 2.11 *Book-Entry System.*

(a) Except as provided in subparagraph (c) of this Section 2.11, the registered owner of all of the Bonds shall be, and the Bonds shall be registered in the name of, Cede & Co. (“Cede”), as nominee of The Depository Trust Company (“DTC”). Payment of interest and principal (including purchase price) for the Bonds shall be made by transfer of same-day funds on each Bond Payment Date in accordance with the procedures established by the Securities Depository. Each global Bond shall bear a legend substantially to the following effect: “UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE INDENTURE) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), 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.”

(b) The Bonds shall be initially issued in the form of a separate single fully registered bond in the amount of each separately stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the registry books of the Issuer kept by the Trustee in the name of Cede, as nominee of DTC. With respect to Bonds registered in the registry books kept by the Trustee in the name of Cede, as nominee of DTC, the Issuer and the Trustee shall have no responsibility or obligation to any participant of DTC (a “Participant”) or to any person for whom a Participant acquires an interest in the Bonds (a “Beneficial Owner”). Without limiting the immediately preceding sentence, the Issuer and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede or any Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Participant, any Beneficial Owner or any other person, other than DTC, of any notice with respect to the Bonds, or (iii) the payment to any Participant, any Beneficial Owner or any other person, other than DTC, of any amount with respect to the principal of or interest on the Bonds. The Issuer and the Trustee may

treat as and deem DTC to be the absolute owner of each Bond for the purpose of payment of the principal of and interest on such Bond, and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Trustee shall pay all principal of and interest on the Bonds only to or upon the order of DTC, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. Payments of principal may be made without requiring the surrender of the Bonds, and the Issuer and Trustee shall not be liable for the failure of DTC or any successor thereto to properly indicate on the Bonds the payment of such principal. No person other than DTC shall receive a Bond evidencing the obligation of the Issuer to make payments of principal of and interest on the Bonds pursuant to this Indenture. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede, and subject to the transfer provisions hereof, the word "Cede" in this Indenture shall refer to such new nominee of DTC.

(c) (i) DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the Issuer and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is not a successor Securities Depository), Bond certificates will be delivered at the sole cost and expense of the Borrower as described in this Indenture.

(ii) The Issuer, in its sole discretion and without the consent of any other person, may terminate the services of DTC with respect to the Bonds if the Issuer determines that: (1) DTC is unable to discharge its responsibilities with respect to the Bonds or (2) a continuation of the requirement that all of the Outstanding Bonds be registered in the registration books kept by the Trustee in the name of Cede, as nominee of DTC, is not in the best interest of the Beneficial Owners of the Bonds. In the event that no substitute Securities Depository is found by the Issuer, or restricted registration is no longer in effect, Bond certificates will be delivered at the sole cost and expense of the Borrower as described in this Indenture.

(iii) Upon the termination of the services of DTC with respect to the Bonds pursuant to subparagraph (c)(i) of this Section 2.11, or upon the discontinuance or termination of the services of DTC with respect to the Bonds pursuant to subparagraph (c)(ii) of this Section 2.11 after which no substitute Securities Depository willing to undertake the functions of DTC hereunder can be found which, in the opinion of the Issuer, is willing and able to undertake such functions upon reasonable and customary terms, the Bonds shall no longer be restricted to being registered in the registration books kept by the Trustee in the name of Cede as nominee of DTC, but shall be registered in whatever name or names Bondholders transferring or exchanging Bonds shall designate, in accordance with the provisions of this Indenture. Prior to any transfer of the Bonds outside the book-entry only system (including, but not limited to, the initial transfer outside the book-entry system) the transferor shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045, as amended.

(d) Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of Cede, as nominee of DTC, all payments with respect to the principal of and interest on such Bond and all notices with respect to such Bond shall be made and

given, respectively, to DTC as provided in the applicable Securities Depository Representation Letter.

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

Section 2.12 *Conversion.*

(a) [Subject to the satisfaction of the Conditions to Forward Delivery (or Conditions to Interim Forward Delivery, as applicable) set forth in the Forward Commitment Agreement, Conversion of the Bonds shall occur on a Mandatory Tender Date, and on such Mandatory Tender Date, (i) the Bonds shall be subject to mandatory tender in accordance with Section 3.01 hereof, (ii) the purchase price of the Bonds shall be paid with amounts on deposit in the Collateral Fund (and other Eligible Funds hereunder), (iii) the Bonds shall be removed from the Book-Entry System, (iv) if all requirements for Stabilization have been met on the Mandatory Tender Date, the Bonds will be converted to one physical Governmental Note of the Issuer (in the form attached to the Funding Loan Agreement) which shall be purchased by the Funding Lender; provided, however, that if all requirements for Stabilization have not been met on the Mandatory Tender Date, the Bonds will be converted into two physical Governmental Notes of the Issuer (in the form attached to the Funding Loan Agreement) which shall be purchased by the Funding Lender, in each case, as set forth in the Funding Loan Agreement and the Borrower Loan Agreement, (v) the Funding Loan Agreement attached hereto as APPENDIX D and the Borrower Loan Agreement attached hereto as APPENDIX E shall be executed and delivered by the respective parties and become effective and shall supersede this Indenture and the Loan Agreement, respectively, (vi) the proceeds of the Funding Lender Purchase Price, along with any other funds of the Borrower (including equity funds), shall be deposited into the Construction Loan Prepayment Fund, and the Construction Loan shall be paid in like amount up deposit therein, and (vii) if all requirements for Stabilization have been met on the Mandatory Tender Date, the Borrower shall execute one Borrower Note; provided, however, that if all requirements for Stabilization have not been met on the Mandatory Tender Date, the Borrower shall execute two Borrower Notes, in either case, in order to evidence its obligations under the Borrower Loan Agreement and a new (or amended and restated) security instrument with respect to the Project to secure its obligations under the Borrower Loan Agreement, which Borrower Note(s) and security instrument will be assigned to and held by the Fiscal Agent under the Funding Loan Agreement to secure the Governmental Note(s) of the Issuer, in each case, as further set forth in the Funding Loan Agreement and the Borrower Loan Agreement.]

(b) The Issuer and Trustee agree to execute and deliver the Funding Loan Agreement, the Governmental Note(s) and Borrower Loan Agreement, in the forms attached hereto, upon Conversion on the Mandatory Tender Date, subject to the completion by or at the direction of the Issuer of the attached forms, including the Actual Project Loan Amount and attaching the final amortization schedule(s) in accordance with Section 2.12(c) hereof and in the Funding Loan Agreement and Borrower Loan Agreement. In no event shall the Actual Project Loan Amount exceed \$[82,584,672].

(c) The Governmental Note(s) shall mature on the Maturity Date and be subject to earlier prepayment as provided in the Funding Loan Agreement and the Borrower Notes. It is anticipated that the unpaid principal balance of the Governmental Note(s) shall be paid on the dates and in the amounts set forth on the initial Debt Service Schedule provided on the Closing Date and attached as Schedule 3 to the form of the Borrower Loan Agreement attached hereto (the “Funding Loan Amortization Schedule”). Additionally, in the event (i) the outstanding amount of the Funding Loan on the Mandatory Tender Date is less than the starting principal amount set forth in the initial Funding Loan Amortization Schedule, or (ii) Stabilization does not occur on the Mandatory Tender Date, a new Funding Loan Amortization Schedule will be generated on the Mandatory Tender Date at such lesser outstanding principal amount or as otherwise necessary based on the parameters set forth in the Funding Loan Agreement and the Borrower Loan Agreement. In the event the initial Funding Loan Amortization Schedule is modified in accordance with this Section 2.12(c), a replacement Funding Loan Amortization Schedule will be provided by the Funding Lender which will be attached to Schedule 3 of the Borrower Loan Agreement on the Mandatory Tender Date.

(d) In addition to the Conditions to Forward Delivery (or Conditions to Interim Forward Delivery, as applicable) set forth in the Forward Commitment Agreement, Conversion shall be conditioned upon the delivery of any additional required items set forth in Section 2.5(b) of the Funding Loan Agreement.

Section 2.13 CUSIP Numbers. The Issuer in issuing the Bonds may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” numbers in notices of redemption as a convenience to Holders; provided that the Trustee shall have no liability for any defect in the “CUSIP” numbers as they appear on any Bond, notice or elsewhere, and, provided further that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Bonds or as contained in any notice of redemption and that reliance may be placed only on the other identification numbers printed on the Bonds, and any such redemption shall not be affected by any defect in or omission of such numbers. The Borrower will promptly notify the Trustee in writing of any change in the “CUSIP” numbers.

ARTICLE III

MANDATORY TENDER AND REMARKETING OF BONDS; MANDATORY REDEMPTION

Section 3.01 Mandatory Tender.

(a) All Outstanding Bonds shall be subject to mandatory tender by the Holders for purchase in whole and not in part on the Fixed Mandatory Tender Date and any subsequent Mandatory Tender Date. The purchase price for each such Bond shall be payable in lawful money of the United States of America by check, shall equal 100% of the principal amount to be purchased and accrued interest, if any, to the Mandatory Tender Date, and shall be paid in full on the applicable Mandatory Tender Date. Notwithstanding the foregoing, if it has been determined that the Conversion will not occur by the Fixed Mandatory Tender Date, the Bonds must be remarketed or redeemed on such Fixed Mandatory Tender Date subject to meeting the requirements set forth below.

(b) The Mandatory Tender Dates shall consist of (i) the Fixed Mandatory Tender Date and (ii) any subsequent dates for mandatory tender of the Bonds established by the Borrower, with the consent of the Issuer, the Investor Limited Partner and the Remarketing Agent, in connection with a remarketing of the Bonds pursuant to Section 3.03 hereof.

(c) While tendered Bonds are in the custody of the Trustee pending purchase pursuant hereto, the tendering Holders thereof shall be deemed the owners thereof for all purposes, and interest accruing on tendered Bonds through the day preceding the applicable Mandatory Tender Date is to be paid as if such Bonds had not been tendered for purchase.

(d) Notwithstanding anything herein to the contrary, any Bond tendered under this Section 3.01 will not be purchased if such Bond matures or is redeemed on or prior to the applicable Mandatory Tender Date.

(e) The Trustee shall utilize the following sources of payments to pay the tender price of the Bonds not later than 2:30 p.m. Eastern time on the funding date in the following priority:

(a) If the funding date is the Fixed Mandatory Tender Date, with respect to principal, amounts on deposit in the Collateral Fund and then the Project Fund; and with respect to interest, amounts on deposit in the Bond Fund and to the extent not sufficient, amounts on deposit in the Negative Arbitrage Account of the Bond Fund; and any other Eligible Funds available or made available for such purpose at the direction of the Borrower, with the consent of the Issuer.

(b) If the funding date is a date other than the Fixed Mandatory Tender Date, with respect to principal, the Trustee shall use funds on deposit in the Remarketing Proceeds Account (representing proceeds of remarketed Bonds) and to the extent not sufficient, from amounts on deposit in the Collateral Fund, and then the Project Fund, and with respect to interest, amounts on deposit in the Bond Fund and to the extent not sufficient, amounts on deposit in the Negative Arbitrage Account.

(f) Bonds shall be deemed to have been tendered for purposes of this Section 3.01 whether or not the Holders shall have delivered such Undelivered Bonds to the Trustee, and subject to the right of the Holders of such Undelivered Bonds to receive the purchase price of such Bonds and interest accrued thereon to the Mandatory Tender Date, such Undelivered Bonds shall be null and void. If such Undelivered Bonds are to be remarketed, the Trustee shall authenticate and deliver new Bonds in replacement thereof in connection with the remarketing of such Undelivered Bonds.

Section 3.02 *Mandatory Tender Notice.*

(a) Not less than 30 days preceding a Mandatory Tender Date (or 10 days in connection with the Fixed Mandatory Tender Date), the Trustee shall give written notice of mandatory tender to the Holders of the Bonds then Outstanding (with a copy to the Borrower, the Investor Limited Partner, the Construction Lender and the Issuer and the Remarketing Agent) by first class mail, postage prepaid, at their respective addresses stating:

(i) the Mandatory Tender Date and that (a) all Outstanding Bonds are

subject to mandatory tender for purchase on the Mandatory Tender Date, (b) all Outstanding Bonds must be tendered for purchase no later than 12:00 Noon Eastern time on the Mandatory Tender Date and (c) Holders will not have the right to elect to retain their Bonds;

(ii) the address of the Designated Office of the Trustee at which Holders should deliver their Bonds for purchase and the date of the required delivery;

(iii) that all Outstanding Bonds will be purchased on the Mandatory Tender Date at a price equal to the principal amount of the Outstanding Bonds plus interest accrued to the Mandatory Tender Date; and

(iv) that any Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after the Mandatory Tender Date.

(b) In the event that any Bond required to be delivered to the Trustee for payment of the purchase price of such Bond shall not have been delivered to the Trustee on or before the 20th day following a Mandatory Tender Date, the Trustee shall mail a second notice to the Holder of the Bond at its address as shown on the Register setting forth the requirements set forth in this Indenture for delivery of the Bond to the Trustee and stating that delivery of the Bond to the Trustee (or compliance with the provisions of this Indenture concerning payment of lost, stolen or destroyed Bonds) must be accomplished as a condition to payment of the purchase price or redemption price applicable to the Bond.

(c) Neither failure to give or receive any notice described in this Section 3.02, nor the lack of timeliness of such notice or any defect in any notice (or in its content) shall affect the validity or sufficiency of any action required or provided for in this Section 3.02.

(d) Notice delivered as required in this Section 3.02 with respect to a mandatory tender pursuant to Section 3.01 hereof may be rescinded and annulled on or before the tender date set forth in such notice.

Section 3.03 *Remarketing of Bonds.*

(a) No later than 11:00 a.m. Eastern time on the 35th day prior to each Mandatory Tender Date (or the 10th day in connection with a Mandatory Tender Date due to [a purchase of the Governmental Note(s)]), the Trustee shall give notice to the Borrower, the Investor Limited Partner, the Construction Lender, the Issuer and the Remarketing Agent by telephone or telecopy, confirmed on the same day in writing, which states the Mandatory Tender Date and that all of the Bonds are to be tendered or deemed to be tendered on the Mandatory Tender Date pursuant to Section 3.01 hereof.

(b) No later than 11:00 a.m. Eastern time on the 15th day prior to the Mandatory Tender Date then in effect (excluding a Mandatory Tender Date in connection with a [a purchase of the Governmental Note(s)]), the Borrower may give notice to the Remarketing Notice Parties by telephone or telecopy, confirmed on the same day in writing, that it elects to cause the Bonds to be remarketed. A remarketing of the Bonds shall be permitted only if the following conditions are satisfied no later than the time the foregoing election notice is given:

(i) Notice by the Borrower to the Issuer, the Investor Limited Partner, the Construction Lender, the Remarketing Agent and the Trustee of the Remarketing Period pursuant to and in accordance with Section 4.05 of the Loan Agreement;

(ii) Delivery to the Issuer, the Trustee and the Remarketing Agent of a preliminary Cash Flow Projection with respect to the proposed Remarketing Period and delivery of a No Adverse Opinion of Bond Counsel (Bond Counsel may deliver the expected form of such opinion on such date); and

(iii) The Borrower shall have notified the Trustee in writing that it has approved as to form and substance any disclosure document or offering materials which, in the Opinion of Counsel to the Remarketing Agent, is necessary to be used in connection with the remarketing of the Outstanding Bonds.

(c) Not less than ten (10) days before each Remarketing Date, the Remarketing Agent shall offer for sale and use its best efforts to sell the Bonds Outstanding on the Remarketing Date at a price equal to 100% of the principal amount of such Bonds plus, if such Remarketing Date is a date other than an Interest Payment Date, accrued interest on such Bonds from the preceding Interest Payment Date to which interest has been paid. Not less than four (4) Business Days before each Remarketing Date, the Remarketing Agent shall give notice, by telephone or telecopy, promptly confirmed in writing, to the Remarketing Notice Parties specifying the principal amount of Bonds, if any, it has remarketed (including Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account), the Remarketing Rate(s) and the Remarketing Period applicable to the Bonds.

The Remarketing Agent shall remarket any Bond tendered, except those tendered in connection with [a purchase of the Governmental Note(s)], pursuant to Section 3.01 hereof; *provided, however*, that no such Bond shall be remarketed at a price less than 100% of the principal amount thereof plus accrued interest (if any) without the prior written consent of the Borrower; and *provided, further*, that the purchase price of any Bond paid to the tendering Holder allocable to such discount shall be paid with Eligible Funds made available by the Borrower therefor and on deposit with the Trustee prior to the remarketing of such Bonds. The Remarketing Agent shall have the right to purchase any Bond tendered or deemed tendered pursuant to Section 3.01 hereof at 100% of the principal amount thereof, and to thereafter sell such Bond. Any such purchase shall constitute a remarketing hereunder.

The Remarketing Agent shall not remarket any Bond to the Issuer, the Borrower, the Investor Limited Partner, any guarantor of the Bonds or any person which is an “insider” of the Issuer, Borrower, or any such guarantor within the meaning of the Bankruptcy Code.

(d) If, not less than four (4) or two (2) Business Days, as applicable, preceding the Remarketing Date:

(i) if, not less than four (4) Business Days preceding the Remarketing Date, the Remarketing Agent shall have notified the Trustee in writing of the remarketing of the Outstanding Bonds and that the proceeds from the remarketing (including proceeds of remarketing of Outstanding Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account) and other Eligible Funds equal to the amount needed to purchase the remarketed

Bonds on the Remarketing Date are expected to be available to the Trustee on the Remarketing Date for deposit into the Remarketing Proceeds Account;

(ii) if, not less than four (4) Business Days preceding the Remarketing Date, the Trustee shall have received written notice from the Remarketing Agent that the Remarketing Agent has received a Confirmation of Rating from the Rating Agency, together with a copy of such Confirmation of Rating from the Rating Agency;

(iii) if, not less than two (2) Business Days preceding the Remarketing Date, there shall be on deposit with the Trustee, from Eligible Funds provided by the Borrower an amount sufficient to pay the Extension Payment set forth in the Cash Flow Projection for deposit to the Negative Arbitrage Account of the Bond Fund with respect to the payment of interest and principal during the new Remarketing Period;

(iv) if, not less than two (2) Business Days preceding the Remarketing Date, there shall either (A) be on deposit with the Trustee in the Expense Fund an amount sufficient to pay the estimated Remarketing Expenses as certified in writing to the Trustee and the Issuer by the Borrower, or (B) the Remarketing Agent shall have certified in writing to the Trustee that provision for the payment of the estimated Remarketing Expenses shall have been made to the satisfaction of the Remarketing Agent;

then the Trustee shall immediately give notice, by telephone or telecopy, which notice shall be immediately confirmed in writing, to the Remarketing Notice Parties that (a) all conditions precedent to the remarketing of the Outstanding Bonds have been satisfied and (b) the sale and settlement of the Outstanding Bonds is expected to occur on the Remarketing Date. Following the Trustee's notice, the Outstanding Bonds shall be sold to the purchasers identified by the Remarketing Agent for delivery and settlement on the Remarketing Date, and the Trustee shall apply the funds in the Remarketing Proceeds Account of the Bond Fund on the Remarketing Date to payment of the purchase price of the Outstanding Bonds.

(e) If, not less than four (4) or two (2) Business Days, as applicable, preceding a Remarketing Date, any condition set forth in paragraph (d) of this Section 3.03 has not been satisfied, then, the Remarketing Agent shall not sell any of the Outstanding Bonds on the Remarketing Date.

(f) No later than 11:00 a.m. Eastern time on each Remarketing Date, the Remarketing Agent shall pay to the Trustee, in immediately available funds, the proceeds theretofore received by the Remarketing Agent from the remarketing of Bonds tendered for purchase on such Remarketing Date; provided that the Remarketing Agent may use its best efforts to cause the purchasers of the remarketed Bonds to pay the purchase price plus accrued interest (if any) to the Trustee in immediately available funds. The proceeds from the remarketing of the Bonds shall be segregated from any funds of the Borrower and the Issuer and shall in no case be considered to be or be assets of the Borrower or the Issuer. Funds representing remarketing proceeds received by the Remarketing Agent after 11:00 a.m. Eastern time on each Remarketing Date shall be paid to the Trustee as soon as practicable upon such receipt.

(g) On or before the Business Day next preceding each Remarketing Date, the Remarketing Agent, by telephonic advice, shall notify the Trustee of the principal amount of

Bonds to be sold by the Remarketing Agent pursuant to this Section 3.03 hereof, the purchase price and the Remarketing Rate(s), and, unless the Bonds are then in the Book-Entry System, the names, addresses and social security numbers or other tax identification numbers of the proposed purchasers thereof. Such telephonic advice shall be confirmed by written notice delivered or electronically communicated at the same time as the telephonic advice.

Bonds purchased by the Trustee on a Mandatory Tender Date that have been remarketed shall be delivered to the purchasers thereof as directed by the Remarketing Agent. Bonds delivered as provided in this Section shall be registered in the manner directed by the recipient thereof.

Section 3.04 *Mandatory Redemption.*

The Bonds are subject to mandatory redemption, in whole, on any Mandatory Tender Date other than upon the Conversion, upon the occurrence of any of the following events: (i) the Borrower has not previously elected pursuant to Section 3.03 hereof and Section 4.05 of the Loan Agreement to cause the remarketing of the Bonds, (ii) the conditions to remarketing set forth in Section 2.01(e) or Section 3.03 have not been met by the dates and times set forth therein, or (iii) the proceeds of a remarketing on deposit in the Remarketing Proceeds Account at 11:00 a.m. Eastern time on the Mandatory Tender Date are insufficient to pay the purchase price of the Outstanding Bonds on such Mandatory Tender Date. The Bonds shall be redeemed at a redemption price equal to 100% of the principal amount of such Bonds plus accrued interest to the applicable redemption date from funds on deposit in, or transferred from, the Bond Fund, the Collateral Fund, and the Project Fund.

Section 3.05 *Optional Redemption; Notice of Redemption.*

The Bonds are subject to optional redemption prior to their maturity, at direction of the Borrower, either in whole or in part, on any date on the Optional Call Date, at a redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest, but without premium, to the applicable redemption date. Bonds subject to redemption in accordance with this paragraph shall be redeemed from (i) amounts on deposit in the Collateral Fund, (ii) amounts on deposit in the Bond Fund, other than funds in the Negative Arbitrage Account therein, (iii) amounts on deposit in the Project Fund, and (iv) any other Eligible Funds available or made available for such purpose at the direction of the Borrower.

For Bonds subject to optional redemption pursuant to this section, the Trustee shall give at least fifteen (15) calendar days' notice (or, with respect to the Securities Depository, such shorter period in order to comply with the policies or procedures of the Securities Depository), in the name of the Issuer and at the expense of the Borrower, of the redemption of the Bonds, which notice shall be provided to the Securities Depository and made available on the Electronic Municipal Market Access System (EMMA) of the Municipal Securities Rulemaking Board, specifying (i) the maturity and principal amounts of the Bonds to be redeemed; (ii) the CUSIP number, if any, of the Bonds to be redeemed; (iii) the date of such notice; (iv) the issuance date for such Bonds; (v) the interest rate on the Bonds to be redeemed; (vi) the planned redemption date; (vii) any conditions to the occurrence of the redemption (including whether such notice shall be subject to rescission if the conditions are not satisfied); (viii) the place or places where amounts due upon such redemption will be payable; (ix) the redemption price; (x) the Trustee's name and address with a contact and a phone number, if necessary or convenient as determined by the Trustee; and (xi) that on the redemption date, the

redemption price shall be paid and from and after such date, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of said redemption price. Neither the giving of such notice by the Trustee nor the receipt of such notice by the Bondholder, nor any defect in such notice shall affect the sufficiency of the proceedings for redemption of any Bonds or constitute a condition precedent to the effectiveness of any such redemption. The Bonds to be redeemed in part pursuant to this section shall be selected in accordance with the operational arrangements of DTC or any successor Securities Depository, and any payments in respect of a redemption in part shall be made in accordance with DTC procedures.

ARTICLE IV

REVENUES AND FUNDS

Section 4.01 *Creation of Funds; Allocation of Bond Proceeds and Other Amounts.*

(a) Trust Funds. The following trust funds are hereby created by the Issuer and established by the Trustee, to be maintained in the custody of the Trustee each as a separate bank account, to be used for the purposes as hereinafter provided in this Indenture:

- (i) Bond Fund, and within the Bond Fund, the “*Negative Arbitrage Account*” and the “*Remarketing Proceeds Account*”.
- (ii) Project Fund.
- (iii) Rebate Fund.
- (iv) Costs of Issuance Fund.
- (v) Collateral Fund.
- (vi) Expense Fund.
- (vii) Construction Loan Prepayment Fund.

The Trustee may create one or more accounts or subaccounts within any fund authorized by this Indenture for the purpose of accounting for funds deposited into or held in each fund or for carrying out any of the requirements of this Indenture. The Trustee may transfer funds between accounts and subaccounts within any fund as permitted by this Indenture.

In the event certain moneys are deposited with the Trustee prior to the Closing Date, whether or not pursuant to one or more letters of instruction from the provider or providers of such moneys, such moneys shall be held by the Trustee subject to the terms and conditions of this Indenture, in addition to the terms of any such letter(s) of instruction. For such purpose, the standards of care, any provisions governing the responsibilities and indemnification and other provisions relating to the Trustee contained in this Indenture and in the Loan Agreement (the “Effective Provisions”) shall be effective as of the first date of receipt by the Trustee of such moneys. The Effective Provisions shall be deemed incorporated into any such letter(s) of

instructions. Funds in the Costs of Issuance Fund, the Construction Loan Prepayment Fund and the Rebate Fund shall not be pledged to the payment of the Bonds and shall not be part of the Trust Estate.

(b) Allocation of Bond Proceeds. On the Closing Date, all of the proceeds of the Bonds in the amount of \$[] shall be delivered to the Trustee and allocated and deposited to the Project Fund.

(c) Allocation of Borrower Funds. On the Closing Date, the Trustee shall receive the [Initial Borrower Deposit, the Expense Fund Deposit and the Costs of Issuance Deposit], from or on behalf of the Borrower, which the Trustee shall deposit as follows:

(i) to the Negative Arbitrage Account of the Bond Fund, the Initial Borrower Deposit in the amount of \$[];

(ii) to the Expense Fund the Expense Fund Deposit in the amount of \$[]; and

(iii) to the Costs of Issuance Fund, the Costs of Issuance Deposit in the amount of \$[].

(d) Initial Deposit to the Collateral Fund. On the Closing Date, the Trustee shall receive from or on behalf of the Borrower the Initial Collateral Fund Deposit in the amount of \$[], which the Trustee shall deposit to the Collateral Fund.

(e) Closing Memo. Upon delivery of the Bonds and receipt of the proceeds thereof, the Trustee is hereby authorized and directed to make payments, transfers and disbursements from the proceeds of the Bonds and any other moneys held in connection with the closing of the Bonds, in accordance with the closing memorandum (the “Closing Memo”) signed by the Borrower, delivered to the Trustee on or prior to the Closing Date.

Section 4.02 *Deposits into and Use of Moneys in the Bond Fund.* On the Closing Date, the Trustee shall deposit the Initial Borrower Deposit, if any, in the Negative Arbitrage Account of the Bond Fund. The Bond Fund and amounts on deposit in the Bond Fund are to be invested pursuant to Section 6.01 hereof. Any Extension Payment received by the Trustee in connection with an extension of the Mandatory Tender Date pursuant to Section 3.03 hereof shall also be deposited into the Negative Arbitrage Account. Upon receipt by the Trustee of a Cash Flow Projection provided on behalf of the Borrower, the Trustee is hereby authorized to release from the Negative Arbitrage Account the amount set forth in the Cash Flow Projection to be released to or at the written direction of the Borrower from such account.

So long as there are any Outstanding Bonds, to the extent the Borrower has not received a credit against Loan Payments, all Loan Payments under the Loan Agreement shall be paid on or before each Bond Payment Date directly to the Trustee, and deposited in the Bond Fund, in at least the amount necessary to pay the interest and the principal due on the Bonds on such Bond Payment Date.

Bond Debt Service Charges shall be payable, as they become due (a) in the first instance from the money on deposit in the Bond Fund (excluding the Negative Arbitrage Account of the Bond Fund), (b) next from money on deposit in the Negative Arbitrage Account of the Bond Fund, (c) next from money on deposit in the Collateral Fund and transferred as necessary to the Bond Fund and (d) thereafter, from money on deposit in the Project Fund and transferred as necessary to the Bond Fund.

Except as provided in Section 4.05 hereof, moneys in the Bond Fund shall be used solely for the payment of the principal of and interest on the Bonds when due.

Section 4.03 *Custody of the Bond Fund.* The Bond Fund shall be in the custody of the Trustee but in the name of the Issuer, and the Issuer hereby authorizes and directs the Trustee (a) to withdraw sufficient funds from the Bond Fund to pay the principal of and interest on the Bonds as the same become due and payable, and (b) to make such funds so withdrawn available to the Trustee, as paying agent, for the purpose of paying such principal and interest, which authorization and direction the Trustee accepts.

Section 4.04 *Non-Presentation of Bonds.* Subject to the provisions of Section 10.20 hereof, in the event any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, if funds sufficient to pay such Bonds shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, all liability of the Issuer to the Holder thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such funds, without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such funds, for any claim of whatever nature on its part under this Indenture or on, or with respect to, such Bond. Any such Bonds shall cease to bear interest on the specified maturity and such Bonds or portions thereof shall no longer be protected by or subject to the benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture.

Section 4.05 *Payment to Borrower of Excess Moneys in Bond Fund.* Any amounts remaining in the Bond Fund (except for amounts then held by the Trustee for payment of principal of, or interest on any of the Bonds) after payment in full of the purchase price of the Bonds on Conversion, and other costs associated with the conversion of the Bonds, and payment in full, or provision for payment, of the final Rebate Amount and payment in full of any outstanding fees and expenses of any paying agent, the Issuer and the Trustee and any other fees and expenses due under the Documents, shall, upon written instruction to the Trustee from the Borrower, be deposited into the [Funding Loan Fund] established under the Funding Loan Agreement or used for any other purpose provided that in the latter case the Trustee is furnished with an opinion of Bond Counsel to the effect that such investment or purpose will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 4.06 *Rebate Fund; Rebate Amount.* The Trustee shall deposit into the Rebate Fund amounts paid by the Borrower pursuant to the Tax Certificate.

(a) The determination of the Rebate Amount shall be made in accordance with the Tax Certificate and the Rebate Amount shall be paid at such times and in such installments as provided

therein. As further provided in the Tax Certificate, the Borrower shall be responsible for calculating or causing to be calculated and paying the Rebate Amount.

(b) Neither the Issuer nor the Trustee shall be obligated to pay any portion of the Rebate Amount (except from funds on deposit in the Rebate Fund). In addition, neither the Issuer nor the Trustee shall have any responsibility with respect to the calculation of the Rebate Amount or for the adequacy or correctness of any rebate report.

(c) Any moneys held as part of the Rebate Fund and not immediately required to be paid to the United States pursuant to the Tax Certificate shall be invested or reinvested by the Trustee, at the written direction of the Authorized Borrower Representative and approved by the Issuer, in Eligible Investments. In connection with the investment of moneys held as part of the Rebate Fund (as provided in Section 6.01 hereof), interest and other income received on the investment of moneys held as part of the Rebate Fund shall be credited to the Rebate Fund.

(d) As provided in the Tax Certificate, the Borrower is required to (i) obtain a rebate calculation with respect to the Rebate Amount upon the redemption or final maturity of the Bonds and either (ii) (a) pay to the Trustee for deposit into the Rebate Fund an amount of money as determined by such calculation within thirty (30) days of such calculation or (b) provide the Trustee with written notice (signed by the Authorized Borrower Representative and the Rebate Analyst) that (1) no deposit is required or (2) the amount in the Rebate Fund is in excess of the amount required to be on deposit as determined by the most recent rebate calculation, in which case the Trustee shall, with the prior written consent of the Issuer, pay such excess over to the Borrower. If the Trustee does not receive either of the items required in (ii)(a) or (ii)(b) above within 30 days after the redemption or final maturity of the Bonds, the Trustee shall notify the Issuer; *provided, however*, that the Trustee shall not incur any liability if it should fail to provide such notice.

Section 4.07 *Costs of Issuance Fund.* On the Closing Date, the Trustee shall deposit the Costs of Issuance Deposit (if any) in the Costs of Issuance Fund to pay the costs of issuance from amounts available therein, which costs of issuance shall not exceed the amounts set forth in a certificate of the Borrower. The Trustee shall disburse funds on deposit in the Costs of Issuance Fund upon receipt by the Trustee of a Requisition substantially in the form attached as APPENDIX C hereto. Any funds remaining in the Costs of Issuance Fund more than one hundred eighty (180) days after the Closing Date, and not specifically committed to the payment of Costs of Issuance, shall be returned to the Borrower, to the extent such funds are not Bond proceeds or otherwise restricted funds. If such remaining funds are Bond proceeds or otherwise restricted, such funds shall be deposited by the Trustee into the Bond Fund.

Section 4.08 *Collateral Fund; Project Fund.* To the extent moneys are not otherwise provided to the Trustee to make the necessary interest and principal payments on each Bond Payment Date, including moneys deposited into the Bond Fund or the Collateral Fund, the Trustee shall, without further written direction, transfer from the Project Fund to the Bond Fund sufficient Eligible Funds to make such necessary interest and principal payments on each Bond Payment Date in accordance with Section 4.02 herein. Upon the receipt of a Requisition for disbursement from the Project Fund subject and pursuant to the terms of Section 5.01 hereof and the receipt of Eligible Funds in amounts equal to or greater than such requests, the Trustee shall concurrently take the following steps:

(i) deposit such Eligible Funds into the Collateral Fund; and

(ii) disburse Bond proceeds from the Project Fund in an amount equal to the Eligible Funds received and deposited pursuant to subparagraph (i) above, in accordance with ARTICLE V hereof; provided to the extent money on deposit in the Project Fund is invested in Eligible Investments, the Trustee shall not sell or otherwise terminate such Eligible Investments prior to their stated maturity date and instead the Trustee is hereby instructed to make the following allocations and exchanges, which allocations and exchanges shall occur prior to the disbursement of amounts on deposit in the Project Fund to pay Costs of the Project, as described in further detail in Section 4.12: (a) allocate all or a portion of the Eligible Investments in the Project Fund, in the amount specified in the Requisition for disbursement, to the Collateral Fund, and (b) transfer to the Project Fund a like amount of Eligible Funds on deposit in the Collateral Fund to be disbursed in accordance with this subparagraph (ii).

Each deposit into the Collateral Fund shall constitute an irrevocable deposit solely for the benefit of the Holders, subject to the provisions hereof.

The Trustee shall cause to be kept and maintained accurate records pertaining to the Project Fund and all disbursements therefrom. If requested by the Issuer or the Borrower, after the Project has been completed and a certificate of payment of all costs is filed as provided herein, the Trustee shall file copies of the records pertaining to the Project Fund and disbursements therefrom with the Issuer and the Borrower.

Each Requisition submitted to the Trustee shall evidence and request disbursements from the Project Fund and/or the Costs of Issuance Fund.

Notwithstanding any other provision of this Indenture to the contrary, after the Closing Date the Trustee shall not disburse moneys from the Project Fund, other than to pay Bond Debt Service Charges on the Bonds, unless and until the Trustee receives satisfactory evidence that Eligible Funds in an amount equal to or greater than the requested disbursement amount (the “Collateral Deposit”) has been deposited in the Collateral Fund. Prior to making any disbursement, the Trustee shall verify that upon making the disbursement, the aggregate amount to be held in (i) the Collateral Fund and (ii) the Project Fund (less the requested disbursement amount) will be at least equal to the then-Outstanding principal amount of the Bonds. In the event that, following receipt of a Collateral Deposit, the Trustee determines that it cannot correspondingly disburse Bond proceeds in an amount equal to the Collateral Deposit to or at the direction of the Borrower and the Construction Lender, the Trustee shall immediately notify the Borrower and the Construction Lender, as applicable, of the reason for such determination and shall immediately return the subject Collateral Deposit to the Construction Lender.

Upon the occurrence and continuance of an Event of Default hereunder because of which the principal amount for the Bonds has been declared to be due and immediately payable under this Indenture, any moneys remaining in the Project Fund shall be promptly transferred by the Trustee to the Bond Fund for payment of Bond Debt Service Charges.

Section 4.09 Expense Fund. On the Closing Date, the Trustee shall deposit the Expense Fund Deposit into the Expense Fund. The Trustee shall apply money on deposit in the Expense Fund solely for the following purposes in the following order of priority:

(a) to transfer money to the Rebate Fund to the extent necessary to pay the Rebate Amount (if any) when due pursuant to Section 4.06 hereof;

(b) to pay the fees and expenses of the Trustee when due, including Extraordinary Fees and Extraordinary Expenses;

(c) to pay Ordinary Issuer Fees and Expenses, Extraordinary Issue Fees and Expense not previously paid;

(d) to pay the Remarketing Expenses when due; and

(e) to pay the fees and expenses of the Dissemination Agent when due.

To the extent moneys in the Expense Fund are not sufficient to pay the foregoing fees and expenses, such deficiency shall be paid by the Borrower pursuant to Section 4.02 of the Loan Agreement immediately upon written demand.

Section 4.10 Construction Loan Prepayment Fund. On the Mandatory Tender Date, the Trustee shall deposit into the Construction Loan Prepayment Fund the proceeds of the Funding Lender Purchase Price and other funds of the Borrower (including equity funds), if any, such that the amount in the Construction Loan Prepayment Fund equals the Construction Loan Prepayment Amount, which amount shall be used on the Mandatory Tender Date to prepay all or a portion of the Construction Loan.

Section 4.11 Disposition of Excess Funds in the Bond Fund, the Collateral Fund, and the Project Fund Prior to the Mandatory Tender Date. If the Bonds are subject to mandatory redemption or acceleration prior to the Mandatory Tender Date, then to the extent any moneys remain in the Project Fund, the Bond Fund or the Collateral Fund after there are no Bonds Outstanding and payment in full, or provision for payment, of the final Rebate Amount and any remaining fees or expenses or other amounts owed to the Issuer or Trustee, such moneys will be paid directly to the Construction Lender and applied first to the payment of the outstanding balance of the Construction Loan to the extent such funds are not proceeds of the Bonds or otherwise restricted funds.

Section 4.12 Allocation and Reallocation of Eligible Investments Deposited to the Collateral Fund and the Project Fund. On the Closing Date, the Trustee shall allocate ownership of the Eligible Investments acquired pursuant to Section 4.08 hereof and deposited for the benefit of the Project Fund and the Collateral Fund as follows: The Trustee shall allocate to the Collateral Fund a percentage of such Eligible Investments equal to the amount of Eligible Funds presented to the Trustee for deposit to the Collateral Fund on the Closing Date divided by the aggregate outstanding principal amount of the Bonds and multiplied by 100 (the “Initial Collateral Fund Percentage”) and the remainder (i.e., 100% minus the Initial Collateral Fund Percentage, referred to as the “Initial Project Fund Percentage”) shall be allocated to the Project Fund. On each subsequent month when additional Eligible Funds are presented to the Trustee for deposit to the Collateral Fund (the “Subsequent Allocation Date”), the dollar amount of such Eligible Funds shall be added to all prior Eligible Funds so deposited, and the percentage of such Eligible Investments allocated to the Collateral Fund shall be adjusted to that percentage equal to the aggregate Eligible Funds so deposited through such date divided by the aggregate outstanding principal amount of

the Bonds and multiplied by 100 (the “Collateral Fund Percentage”) and the remainder (i.e., 100% minus the Collateral Fund Percentage, referred to as the “Project Fund Percentage”) shall be allocated to the Project Fund. On each Subsequent Allocation Date, the Trustee shall be deemed to have liquidated that portion of the Eligible Investments allocated to the Project Fund and purchased equivalent Eligible Investments to be allocated to the Collateral Fund.

ARTICLE V

PROJECT FUND DISBURSEMENTS

Section 5.01 *Procedure for Making Disbursements from Project Fund.* On the Closing Date, the Borrower shall submit the initial Requisition from the Project Fund for \$[_____] and shall cause Eligible Funds in an equal amount to be delivered to the Trustee for deposit into the Collateral Fund. Thereafter, upon each deposit of Eligible Funds into the Collateral Fund, as provided in Sections 4.08 and 4.12 hereof, the Trustee shall disburse from the Project Fund an equal amount of Bond proceeds on such date solely to pay the Costs of the Project and only upon the receipt by the Trustee of a Requisition in substantially the form attached as APPENDIX B hereto, which includes the certification by an Authorized Borrower Representative that such costs are Qualified Project Costs. The Trustee shall not disburse money from the Project Fund, other than to pay interest and principal on the Bonds, unless and until a Collateral Deposit or other Eligible Funds in an amount equal to or greater than the requested disbursement amount have been deposited into the Collateral Fund and the Trustee has determined that the aggregate account balance in (a) the Collateral Fund and (b) the Project Fund (less the requested disbursement amount) is at least equal to the then-Outstanding principal amount of the Bonds. The Borrower shall determine in good faith whether an architect or engineer is required to execute any Requisition hereunder, and the Trustee shall in no instance be required to make such determination. For purposes of complying with the requirements of this Section, the Trustee may, in the absence of bad faith, conclusively rely and shall be protected in acting or refraining from acting upon the requisition signed by an Authorized Borrower Representative. The Trustee shall not be bound to make an investigation into the facts or matters stated in any Requisition. The Trustee shall not be responsible for determining whether the funds on hand in the Project Fund are sufficient to complete the Project. The Trustee shall not be responsible to collect lien waivers.

To the extent money on deposit in the Project Fund is invested in Eligible Investments and the Borrower has requested in writing that the Trustee not sell or otherwise terminate such Eligible Investments prior to their stated maturity date, the Trustee is hereby authorized to make the following allocations and exchanges in accordance with Section 4.08 and Section 4.12 hereof, which allocations and exchanges shall occur prior to the disbursement of amounts on deposit in the Project Fund to pay Costs of the Project: (i) allocate all or a portion of the Eligible Investments in the Project Fund, in the amount specified in the Requisition, to the Collateral Fund, and (ii) transfer to the Project Fund a like amount of Eligible Funds on deposit in the Collateral Fund.

Money in the Project Fund shall be disbursed in accordance with the provisions of Section 3.03 of the Loan Agreement and this Section 5.01. To the extent moneys are not otherwise provided to the Trustee to make the necessary interest and principal payments on each Bond Payment Date, including moneys deposited into the Bond Fund or the Collateral Fund, the Trustee shall, without further written direction, transfer from the Project Fund to the Bond Fund sufficient Eligible

Funds to make interest and principal payments on each Bond Payment Date in accordance with Section 4.02 herein.

Notwithstanding anything contained in this Indenture or any of the Borrower Documents to the contrary, with respect to Eligible Funds funded by the Construction Lender for deposit into the Collateral Fund, the Trustee shall be irrevocably and unconditionally obligated to disburse an equal amount of funds from the Project Fund to either the Construction Lender, the Borrower or the Title Company pursuant to a Requisition from the Project Fund as directed in writing pursuant to a Requisition by the Construction Lender and the Borrower. Such disbursements shall not be made more frequently than once per month, unless approved by the Construction Lender.

Subject to the Trustee's obligation to return the Eligible Funds to the Construction Lender as set forth in this Section 5.01, the Trustee and the Issuer shall not, in any event, be responsible or liable to any person (other than the Borrower, but only in the case of the Trustee, and only in the event of a failure by the Trustee to make disbursements following request for disbursements in accordance with this Section 5.01, when such failure is within the Trustee's sole control, and after receipt of written notice of such failure and a 3-day opportunity to cure such failure) for the disbursement of, or failure to disburse, moneys from the Project Fund or any part thereof, and no contractor, subcontractor or material or equipment supplier or their respective successors and assigns shall have any right or claim against the Trustee or the Issuer under this Indenture.

Notwithstanding anything contained in this Indenture or any of the Borrower Documents to the contrary, if for any reason the Trustee is not able to disburse a corresponding amount of Bond proceeds from the Project Fund to or at the written direction of the Construction Lender immediately following receipt of Eligible Funds from the Construction Lender for deposit into the Collateral Fund, the Trustee shall promptly wire transfer such funds back to the Construction Lender and not deposit same into the Collateral Fund.

Section 5.02 *Trustee May Rely on Requisitions and Certifications.* In making any disbursement from the Project Fund, the Trustee may conclusively rely on any Requisitions or certifications delivered to it pursuant to Section 5.01 hereof, and the Trustee shall be relieved of all liability with respect to making such disbursements in accordance with such Requisitions and certifications. In making any disbursements from the Costs of Issuance Fund, the Trustee may conclusively rely on any Requisitions delivered to it pursuant to Section 4.07 hereof, and the Trustee shall be relieved of all liability with respect to making such disbursements in accordance with such Requisitions.

Section 5.03 *Completion of Project.* The completion of the Project and the payment of all costs and expenses incident thereto shall be evidenced for the Project by the Borrower providing to the Trustee (a) the Completion Certificate required by the provisions of the Regulatory Agreement and (b) a certificate signed by the Authorized Borrower Representative stating that all obligations and costs in connection with the Project and payable out of the Project Fund have been paid and discharged except for amounts retained by the Trustee for the payment of Costs of the Project not then due and payable or then in dispute as provided in the Loan Agreement; provided, however, that no amounts necessary to pay principal and interest on the Bonds at maturity shall be held by the Trustee in the Project Fund beyond the Maturity Date. Additionally, the Borrower has agreed pursuant to Section 3.08 of the Loan Agreement that in the event that there are insufficient moneys available in the Project Fund to pay the Costs of the Project, the Borrower will complete

the Project and pay the portion of the Costs of the Project in excess of the moneys available therefor in the Project Fund.

Section 5.04 *Disposition of Moneys in Project Fund After Completion of Project.* Subject to the proviso in Section 5.03 hereof, as soon as practicable after the date of the certificate referred to in clause (b) of Section 5.03 hereof, any balance remaining in the Project Fund (other than the amounts retained by the Trustee referred to in Section 5.03 hereof) shall be deposited into the Bond Fund and used to pay principal of the Bonds when due. To the extent any moneys from any payments made by the Borrower pursuant to the Loan Agreement remain in the Project Fund or Bond Fund after there are no Bonds Outstanding and payment in full, or provision for payment, of the final Rebate Amount, the repayment of the Construction Loan and any remaining fees or expenses or other amounts owed to the Issuer or Trustee, such moneys will be paid directly to the Borrower to the extent such funds are not proceeds of the Bonds or otherwise restricted funds. If such remaining funds are proceeds of the Bonds or otherwise restricted, such funds shall be deposited by the Trustee into the Bond Fund.

Notwithstanding the provisions of this Section or any other provision herein set forth (subject to the Trustee's right to rely on Requisitions and certifications as provided in Section 5.02), none of the moneys in the Project Fund will be disbursed for or be used to pay any cost, or to reimburse the Issuer or the Borrower for any cost, which is not permitted by the Act, the Code, the Loan Agreement or this Indenture.

ARTICLE VI

INVESTMENT OF FUNDS AND ACCOUNTS

Section 6.01 *Investment of Special Funds.* Amounts held by the Trustee in the Special Funds shall be invested and reinvested by the Trustee, and at all times held in Eligible Investments at the written direction of the Borrower, such written direction of the Borrower to specify the particular investment in Eligible Investments to be made. If the Trustee is required to sell or otherwise dispose of any Eligible Investments prior to maturity at a price below par, the Borrower shall, at the Borrower's expense, deliver to the Trustee (i) a Cash Flow Projection and (ii) Eligible Funds in the amount set forth in such Cash Flow Projection, if any. Ratings of Eligible Investments shall be determined at the time of purchase of such Eligible Investments and without regard to ratings subcategories. In the absence of written direction of the Borrower, the Trustee shall keep the moneys held by it hereunder fully invested in [_____ Money Market (CUSIP: _____)], which fund qualifies as an Eligible Investment on the date hereof, or if such fund is unavailable, the Trustee shall invest in another fund that satisfies paragraph (b) of the definition of Eligible Investments.

At no time shall the Borrower direct that (a) any funds constituting gross proceeds of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code or (b) any funds be held other than in Eligible Investments. Following the Closing Date, at the direction of the Borrower, the Trustee is permitted to purchase, sell or exchange Eligible Investments with a Cash Flow Projection. Notwithstanding anything herein to the contrary, (i) earnings received by the Trustee with respect to Eligible Investments purchased for the purpose of paying Bond Debt Service Charges shall be held uninvested as cash and (ii) Bond proceeds and the Negative Arbitrage Deposit shall be held uninvested as cash until the Trustee has purchased,

sold or exchanged Eligible Investments.

Investments of money in the Special Funds shall mature or be redeemable at the option of the Trustee at the times and in the amounts necessary to provide money to pay any amounts due on the Bonds as they become due on each Bond Payment Date (including each Mandatory Tender Date). In addition, investment of money in the Project Fund shall mature or be redeemable at the option of the Trustee (at the direction of the Borrower) at the times and in the amounts as may be necessary to make anticipated payments from the Project Fund.

The Trustee shall sell or redeem investments credited to the Bond Fund to produce sufficient money applicable hereunder to and at times required for the purposes of paying any amounts due on the Bonds, and shall do so without necessity for any order on behalf of the Issuer or the Borrower and without restriction by reason of any order. An investment made from money credited to an applicable fund or account shall constitute part of that respective fund or account. All investment earnings from amounts on deposit in the Special Funds shall be credited to and become part of the Bond Fund to the extent necessary to pay the expected Bond Debt Service Charges to be paid on the Bonds to and including the Maturity Date and any excess amounts shall be transferred upon receipt to the Project Fund and used to pay Costs of the Project. All gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Special Funds shall be credited to and become part of the Bond Fund. Following the Closing Date, at the direction of the Borrower, the Trustee is permitted to purchase, sell or exchange Eligible Investments with a Cash Flow Projection. Notwithstanding anything herein to the contrary, (i) earnings received by the Trustee with respect to Eligible Investments purchased for the purpose of paying Bond Debt Service Charges shall be held uninvested as cash and (ii) Bond proceeds and the Initial Borrower Deposit shall be held uninvested as cash until the Trustee has purchased, sold or exchanged Eligible Investments.

Any investments may be purchased from or sold to the Trustee, or any bank, trust company or savings and loan association which is an affiliate or subsidiary of the Trustee; *provided* that all such investments must be Eligible Investments.

The Trustee shall not be liable for losses, fees, taxes or other charges on investments, reinvestments or liquidations made in compliance with the provisions of this Indenture. The Trustee is hereby authorized, in making or disposing of any investment permitted by this Indenture, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or any such affiliate is acting as agent of the Trustee or for any third person or dealing as principal for its own account. The parties hereto acknowledge and agree that the Trustee is not providing investment supervision, recommendations, or advice.

If the Trustee is required to sell or otherwise dispose of any Eligible Investments prior to maturity at a price below par in connection with a mandatory tender prior to the [Fixed] Mandatory Tender Date, the Borrower shall, at the Borrower's expense, deliver to the Trustee (i) a Cash Flow Projection and (ii) Eligible Funds in the amount set forth in such Cash Flow Projection, if any.

Although the Issuer and the Borrower each recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Issuer and the Borrower hereby agree that confirmations of permitted investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement

need be rendered for any fund or account if no activity occurred in such fund or account during such month.

Section 6.02 *Investment of Other Funds.* Any amounts held as part of the Rebate Fund, Costs of Issuance Fund, Expense Fund or Construction Loan Prepayment Fund and not immediately required for the purposes thereof, shall be invested or reinvested by the Trustee, at the written direction of the Authorized Borrower Representative, in Governmental Obligations or in any money market or short term investment fund investing in or consisting solely of and secured by Governmental Obligations, including any such fund maintained by the Trustee or an affiliate thereof having maturities consonant with the need for funds as estimated by the Borrower. In the absence of written direction from an Authorized Borrower Representative, the Trustee shall hold such moneys uninvested. All investment earnings, gains resulting from the sale of, or income from, any investment made from amounts on deposit in any aforementioned funds shall be retained in the respective fund from which the investment was made.

Section 6.03 *Accounting for Termination of Investments; No Arbitrage.* In the event the moneys in the Project Fund or the Bond Fund are invested in any investment which fails to satisfy the requirements of Section 6.01, the Trustee shall, at the written direction of the Borrower, terminate any such investment, and the proceeds of such termination, shall be credited to the Project Fund or the Bond Fund, respectively. The Trustee shall be entitled to assume that any investment which at the time of purchase is an Eligible Investment remains an Eligible Investment thereafter (including for reinvestment purposes), absent receipt of written notice of the Borrower to the contrary.

Section 6.04 *Trustee's Own Bond or Investment Department.* The Trustee may make any and all investments permitted under Section 6.01 and Section 6.02 through its own bond or investment department or that of any Affiliate, and may charge its ordinary and customary fees for such trades, including investment maintenance fees.

Section 6.05 *Moneys to be Held in Trust.* All moneys required to be deposited with or paid to the Trustee for account of the Bond Fund, the Collateral Fund or the Project Fund under any provision of this Indenture shall be held by the Trustee in trust, and shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the lien and claim created by this Indenture.

All moneys required to be deposited with or paid to the Trustee for the account of the other funds created under Section 4.01 shall also be held by the Trustee in trust but shall not be part of the Trust Estate. The Trustee, acting in its capacity as Trustee and not as sponsor, advisor or manager in connection with any investments hereunder, shall not be liable for any loss, fee, tax or other charge arising from investments made in accordance with this Indenture, or for any loss, fee, tax or other charge resulting from the redemption or sale of any such investments as authorized by this Section.

Upon receipt of written instructions from an Authorized Borrower Representative, the Trustee shall exchange any coin or currency of the United States of America or Eligible Investments held by it pursuant to this Indenture or any Supplemental Indenture for any other coin or currency of the United States of America or investment securities of like amount.

ARTICLE VII

GENERAL COVENANTS

Section 7.01 *Payment of Bonds.* Each and every covenant made in this Indenture, including all covenants made in the several sections of this Article, is predicated upon the condition that the Bonds are limited obligations of the Issuer payable solely from and secured by the Trust Estate pledged therefor. Nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer.

The Issuer covenants that it will promptly cause the Trustee to pay, as provided herein, the principal of, premium, if any, and interest on the Bonds when due solely from the Trust Estate at the place, on the date and in the manner provided herein and in the Bonds.

Section 7.02 *Performance of Covenants.* The Issuer will observe and perform faithfully at all times all covenants, agreements, authority, actions, undertakings, stipulations and provisions to be observed or performed on its part under the Loan Agreement, this Indenture, the Bond Resolution, the Regulatory Agreement and the Bonds that are executed, authenticated and delivered under this Indenture, and under all proceedings of the Issuer pertaining thereto.

The Issuer represents and warrants that:

(a) The Issuer is duly authorized by the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds, to execute and deliver this Indenture, the Loan Agreement and the Regulatory Agreement and to provide the security for payment of the Bond Debt Service Charges in the manner and to the extent set forth in this Indenture.

(b) All actions required on its part to be performed for the issuance, sale and delivery of the Bonds and for the execution and delivery of this Indenture and the Loan Agreement have been taken duly and effectively.

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

Anything in this Indenture to the contrary notwithstanding, it is expressly understood by the parties to this Indenture that (a) the Issuer may rely exclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer or the Trustee or any Holder as to the existence of any fact or state of affairs, (b) the Issuer shall not be under any obligation under this Indenture to perform any record keeping or to provide any legal services, it being understood that such services shall be performed or caused to be performed by the Trustee or by the Holders, and (c) none of the provisions of this Indenture shall require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under this Indenture, unless it shall first have been adequately indemnified to its satisfaction against any costs, expenses and liability which it may incur as a result of taking such action.

Section 7.03 *Priority of Pledge.* The Issuer covenants and agrees that it will not create any lien or claim upon the Revenues other than the liens and claims hereby created. Except for the assignment to the Trustee, the Issuer will not sell, lease or otherwise dispose of or encumber any of the Revenues or any other part of the Trust Estate.

Section 7.04 *Books and Documents Open to Inspection.* The Issuer covenants and agrees that, all books and documents in its possession relating to the Bonds, the Project, and the moneys, revenues and receipts derived from the Project, if any, that shall at any time be in its possession, shall, within a reasonable time of a request by the Trustee, be open to inspection during the Issuer's regular business hours by such accountants or other agents as the Trustee may from time to time designate.

Section 7.05 *Tax-Exempt Status of Bonds.* The Issuer and the Trustee each agrees that it will not (a) take any action, (b) fail to take any action, or (c) make any use of the Project or the proceeds of the Bonds, which it actually knows would cause the interest on any of the Bonds to be or become includible in the gross income of the Owners thereof for federal income tax purposes (except for minimum or preference tax purposes or other indirect taxation). In connection with the foregoing, the Issuer and the Trustee may rely upon the advice of Bond Counsel.

Section 7.06 *Foreign Account Tax Compliance Act.* The Issuer acknowledges that, under the provisions of the Foreign Account Tax Compliance Act, the Trustee is obligated to withhold a percentage of the proceeds from any disbursement to a payee that has not delivered to the Trustee a tax identification number on a correctly completed IRS Form W-9. If requested by the Trustee, the Issuer shall provide the Trustee with a copy of any such completed Form W-9 form for the initial disbursement to any payee pursuant to any provision hereof.

ARTICLE VIII

DISCHARGE

Section 8.01 *Release of Indenture.* If (a) the Issuer shall pay all of the Outstanding Bonds, or shall cause them to be paid and discharged, or if there otherwise shall be paid to the Holders of the Outstanding Bonds, all Bond Debt Service Charges due or to become due thereon, and (b) provision also shall be made for the payment of all other sums payable hereunder or under the Loan Agreement, the Tax Certificate and the Note, then this Indenture shall cease, terminate and become null and void (except for those provisions surviving by reason of Section 8.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 8.02 hereof), and the covenants, agreements and obligations of the Issuer hereunder shall be released, discharged and satisfied.

Thereupon, and subject to the provisions of Section 8.03 hereof if applicable,

(a) the Trustee shall release this Indenture (except for those provisions surviving by reason of Section 8.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 8.02 hereof), and shall execute and deliver to the Issuer any instruments or documents in writing as shall be requisite to evidence that release and discharge or as reasonably may be requested by the Issuer;

(b) the Trustee shall release and satisfy the Note and deliver such release and satisfaction to the Borrower; and

(c) the Trustee shall assign and deliver to the Issuer any property subject at the time to the lien of this Indenture which then may be in its possession, except amounts in the Bond Fund required (i) to be deposited in the [Funding Loan Fund] under Section 4.05 or paid to the Construction Lender under Section 4.11 hereof, or (ii) to be held by the Trustee under Section 4.04 hereof or otherwise for the payment of Bond Debt Service Charges.

Section 8.02 *Payment and Discharge of Bonds.* All or any part of the Bonds shall be deemed to have been paid and discharged within the meaning of this Indenture, including without limitation, Section 8.01 hereof, if:

(a) the Trustee as paying agent shall have received, in trust for and irrevocably committed thereto, sufficient money, or

(b) the Trustee shall have received (i) in trust for and irrevocably committed thereto, noncallable Governmental Obligations; (ii) certification by an independent public accounting firm of national reputation to the effect that the Governmental Obligations have such maturities or redemption dates and interest payment dates, and bear such interest, as will be sufficient together with any money to which reference is made in subparagraph (a) above, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (which earnings are to be held likewise in trust and so committed, except as provided herein), for the payment of all Bond Debt Service Charges on those Bonds at their maturity; and (iii) an opinion of Bond Counsel to the effect that the conditions of this Section 8.02 have been satisfied.

Any money held by the Trustee in accordance with the provisions of this Section may be invested by the Trustee only in noncallable Governmental Obligations having maturity dates, or having redemption dates which, at the option of the Holder of those obligations, shall be not later than the date or dates at which money will be required for the purposes described above. To the extent that any income or interest earned by, or increment to, the investments held under this Section is determined from time to time by the Trustee to be in excess of the amount required to be held by the Trustee for the purposes of this Section, that income, interest or increment shall be transferred at the time of that determination in the manner provided in Section 4.05 hereof for transfers of excess amounts remaining in the Bond Fund.

If any Bonds shall be deemed paid and discharged pursuant to this Section 8.02, then within 15 days after such Bonds are so deemed paid and discharged the Trustee shall cause a written notice to be given to each Holder on the date on which such Bonds are deemed paid and discharged. Such notice shall state the numbers of the Bonds deemed paid and discharged or state that all Bonds are deemed paid and discharged, and set forth a description of the obligations held pursuant to subparagraph (b) of the first paragraph of this Section 8.02.

Section 8.03 *Survival of Certain Provisions.*

Notwithstanding the foregoing, any provisions of the Bond Resolution and this Indenture which relate to the maturity of Bonds, interest payments and dates thereof, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping

and cancellation of Bonds, nonpresentment of Bonds, the holding of money in trust, and repayments to the Borrower from the Bond Fund, the rebate of money to the United States in accordance with Section 4.06 hereof, and the rights and duties of the Trustee in connection with all of the foregoing, shall remain in effect and be binding upon the Trustee and the Holders notwithstanding the release and discharge of this Indenture. The provisions of this Article shall survive the release, discharge and satisfaction of this Indenture. The obligations of the Borrower to pay the Trustee its fees and expenses hereunder and all rights to indemnification under the Documents shall survive the release, discharge and satisfaction of this Indenture.

ARTICLE IX

DEFAULTS AND REMEDIES

Section 9.01 *Events of Default and Acceleration.* The occurrence of any of the following events is hereby defined as and declared to be and to constitute an “Event of Default”:

(a) any interest on any Bond is not paid on the date on which the same becomes due;
or

(b) any principal of any Bond (including purchase price) is not paid on the date on which the same becomes due, whether at the stated maturity thereof, by redemption, tender, acceleration or otherwise; or

(c) a “Default” (as defined in Section 7.01 of the Loan Agreement) occurs and is continuing under the Loan Agreement; or

(d) the Issuer fails to duly and promptly perform, comply with, or observe any covenant, condition, agreement or provision (other than as specified in (a) or (b) of this Section 9.01) contained in the Bonds or in this Indenture on the part of the Issuer to be performed, and such failure shall continue for a period of ninety (90) days after written notice specifying such failure and requiring the same to be remedied shall have been given to the Issuer, the Borrower and the Investor Limited Partner by the Trustee, which notice may be given by the Trustee in its discretion and shall be given at the written request of the Holders of not less than 100% in principal amount of the Bonds then Outstanding; *provided, however*, that if such default be such that it is correctable but cannot be corrected within ninety (90) days, it shall not be an Event of Default if the Issuer, the Borrower or the Investor Limited Partner certifies to the Trustee in writing that it is taking appropriate corrective action to cure such failure and if such failure will not impair the security for the Loan or the Bonds.

If any Loan Payment required under the Loan Agreement to avoid a default under (a) or (b) of this Section shall not have been received at the close of business on the last Business Day preceding the day on which payment must be made to avoid a default under such (a) or (b), the Trustee shall use its best efforts to give telephonic notice of such default to the Borrower, the Construction Lender and the Investor Limited Partner, which telephonic notice shall be confirmed by written notice to the Borrower. If any other default shall occur under the provisions of this Section, the Trustee shall, within five (5) days after having actual knowledge of such default, use its best efforts to give written notice of such default to the Issuer, the Borrower, the Construction Lender, the Investor Limited Partner and the Holders of the Bonds. A default or an Event of

Default specified in (a) through (d) above shall occur even though the Trustee fails to give the notice required by this paragraph, the giving of such notice being intended solely to aid in the enforcement of the rights of Bondholders and not in limitation of such rights.

If an Event of Default specified in (a) or (b) of this Section 9.01 shall occur and be continuing, the Trustee shall declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing to that effect delivered to the Issuer, the Investor Limited Partner, the Construction Lender and the Borrower, and upon such declaration such principal, together with interest accrued thereon, shall become immediately due and payable at the place of payment provided therein, anything in this Indenture or in the Bonds to the contrary notwithstanding.

If an Event of Default specified in (c) or (d) of this Section 9.01 shall occur and be continuing, the Trustee, upon written request of the Holders of a majority in principal amount of the Bonds then Outstanding shall declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing to that effect delivered to the Issuer, the Investor Limited Partner, the Construction Lender and the Borrower, and upon such declaration such principal, together with interest accrued thereon, shall become immediately due and payable at the place of payment provided therein, anything in this Indenture or in the Bonds to the contrary notwithstanding.

The Investor Limited Partner or Construction Lender shall be entitled (but shall not be obligated) at its election to cure any Event of Default hereunder for which a cure right is provided to the Borrower upon the same terms and conditions and within the same time frame provided to the Borrower. The Issuer and the Trustee agree that cure of any default or Event of Default made or tendered by the Investor Limited Partner or Construction Lender shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

Section 9.02 *Trustee to Enforce Rights of Issuer.* Only in accordance with the provisions of this Indenture, the Trustee, as the assignee of all the right, title and interest of the Issuer in and to each of the documents constituting a part of the Trust Estate (except the Unassigned Issuer's Rights), may enforce the rights granted to the Issuer pursuant to such documents. In the enforcement of any rights or remedies under such documents, no provision of such documents shall require, and none shall be construed to require, that the Trustee post a bond or establish any surety of any kind as a condition precedent to exercising any such rights or remedies.

Section 9.03 *Remedies in Addition to Acceleration.* Upon the occurrence of, and during the continuance of, any Event of Default, then and in every such case the Trustee shall be entitled (but not obligated) to, and upon the written request of the Holders of not less than 51% in principal amount of the Bonds then Outstanding and receipt of satisfactory indemnity shall (in addition to its right or duty to accelerate as provided in Section 9.01):

(a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondholders, and require the Issuer or the Borrower to carry out any agreements with or for the benefit of the Bondholders and to perform its or their duties under the Act and the Documents;

(b) bring suit upon the Bonds; or

(c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders.

Section 9.04 *Termination of Proceedings.* In case any proceeding taken by the Trustee on account of any Default or Event of Default shall have been discontinued or abandoned for any reason, the Default or Event of Default has been cured, or shall have been determined adversely to the Trustee, then and in every such case, the Issuer, the Trustee, the Bondholders, and the Borrower shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

Section 9.05 *Right of Bondholders to Direct Proceedings.* No Holder of any of the Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust hereunder, or any other remedy hereunder or on the Bonds, unless such Holder previously shall have given to the Trustee written notice of an Event of Default as hereinabove provided and unless also the Holders of not less than 51% in principal amount of the Bonds then outstanding shall have made written request of the Trustee to do so, after the right to exercise such powers or rights of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers hereinabove granted, or to institute such action, suit or proceeding in its or their name; nor unless there also shall have been offered to the Trustee security and satisfactory indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the trusts of this Indenture or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Bonds hereby secured shall have any right in any manner whatever by its or their action to affect, disturb or prejudice any other Holders or the security of this Indenture, or to enforce any right hereunder or under the Bonds, except in the manner herein provided and for the equal benefit of all Holders of Outstanding Bonds. For purposes of the foregoing sentence, the Trustee shall be deemed to have failed to act within a reasonable time if it fails to take action within sixty (60) days after receipt of notice and compliance with the foregoing terms and conditions, whereupon the Holders of 51% aggregate principal amount of the Bonds may take such action in the place of the Trustee. Nothing contained in this Indenture shall, however, affect or impair the right of any Holder of Bonds to enforce the payment of the principal of and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of and interest on each of the Bonds issued hereunder to the respective Holders of the Bonds at the time, place, from the source and in the manner herein and in such Bonds expressed.

Section 9.06 *Remedies Vested in Trustee.* All rights of action under this Indenture or under any of the Bonds secured hereby which are enforceable by the Trustee may be enforced by it without the possession of any of the Bonds, or the production thereof in any trial or other proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the equal and ratable benefit of the Holders of the Bonds, subject to the provisions of this Indenture.

Section 9.07 Remedies Non-Exclusive and Cumulative. No remedy herein conferred upon or reserved to the Trustee or to the Holders of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 9.08 Delays or Omissions by Trustee. No delay or omission of the Trustee or of any Holder of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or any acquiescence therein; and every power and remedy given by this ARTICLE IX to the Trustee and to the Holders of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

Section 9.09 Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this ARTICLE IX shall, after payment in full of the costs, fees and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses and advances incurred or made by the Trustee and the Issuer with respect thereto including fees of the Trustee for Extraordinary Services and Extraordinary Expenses (including without limitation, reasonable attorneys' fees, costs and expenses), be deposited in the Bond Fund and all moneys so deposited in the Bond Fund during the continuance of an Event of Default (other than moneys for the payment of Bonds which have matured or otherwise become payable prior to such Event of Default or for the payment of interest due prior to such Event of Default, which moneys shall continue to be held for such payments) shall be applied as follows:

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

First - To the payment to the persons entitled thereto of all installments of interest then due on the Bonds, in the direct order of the maturity of the installments of such interest and, if the amounts available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege;

Second - To the payment to the persons entitled thereto of the unpaid principal, on any of the Bonds, which shall have become due (other than Bonds which have matured or otherwise become payable prior to such Event of Default and moneys for the payment of which are held in the Bond Fund or otherwise held by the Trustee), and if the amount available shall not be sufficient to pay in full the amount of principal, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto, without any discrimination or privilege;

Third - To the payment to the persons entitled thereto of all other of the Issuer's Obligations and the Borrower's Obligations, and, if the amount available shall not be sufficient to pay such obligations in full, then to the payment ratably, according to the amounts then due, to the persons entitled thereto without discrimination or privilege; and

Fourth - The remainder, if any, shall be paid over to the Borrower, its successors or assigns, or whomever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(b) If the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal of and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest to the persons entitled thereto without any discrimination or privilege. Any remaining funds shall be applied in accordance with the paragraphs designated “*Third*” and “*Fourth*” of subsection (a) above.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts or principal 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, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 9.10 *Severability of Remedies.* It is the purpose and intention of this Article to provide rights and remedies to the Trustee and Bondholders which may be lawfully granted under the provisions of the Act, but should any right or remedy herein granted be held to be unlawful, the Trustee and the Bondholders shall be entitled, as above set forth, to every other right and remedy provided in this Indenture and by law.

ARTICLE X

THE TRUSTEE AND REMARKETING AGENT

Section 10.01 *Acceptance of Trusts.* The Trustee hereby accepts the trusts hereby created, but only upon the additional terms set forth in this Article, to all of which the Issuer agrees and the respective Holders of the Bonds agree upon and by their acceptance of delivery of any of the Bonds. The Trustee, prior to the occurrence of an Event of Default and after the curing of all events of default which may have occurred, undertakes to perform such duties and only such duties as are specifically and expressly set forth in this Indenture and no implied covenants or obligations should be read into this Indenture against the Trustee. If any Event of Default under this Indenture shall have occurred and be continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use the same degree of care as a prudent person would exercise or use in the circumstances in the conduct of such prudent person's own affairs.

Section 10.02 *Trustee Not Responsible for Recitals, Statements and Representations.* Except as otherwise expressly provided herein, any representations or warranties by the Issuer in this Indenture or in the Bonds contained shall be taken and construed as made by and on the part

of the Issuer, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

Except for information, if any, provided by the Trustee concerning the Trustee, the Trustee shall have no responsibility for any information in any Official Statement or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

Section 10.03 *Action by Trustee Through and Reliance Upon Others.* The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, receivers or employees. The Trustee shall be entitled to request and receive written instructions from the Issuer and/or the Borrower. The Trustee shall be entitled to advice of counsel of and other professionals its selection concerning all matters of trust and its duties hereunder, and the written advice or opinion of such counsel and other professionals shall be full and complete authorization and protection for any action taken or omitted by it in good faith and in accordance with such advice or opinion. The Trustee may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may be reasonably employed in connection with the trusts hereof, such compensation to be paid as described under Section 10.04 hereof. The Trustee shall not be answerable for the exercise of any discretion or power under this Indenture or for anything whatever in connection with the trust, except only for negligence or willful misconduct with respect to its responsibilities hereunder.

Except for fraud, willful misconduct and gross negligence, , no personal recourse may be taken, directly or indirectly, against any officer, director, employee or agent of the Trustee with respect to the obligations of the Trustee under this Indenture, any related documents or any certificate or other writing delivered in connection therewith. The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties and functions under this Indenture and any related documents shall extend to the Trustee's officers, directors, agents, attorneys and employees.

The Trustee's rights, privileges, benefits, immunities and protections from liability and its right to payment of compensation and indemnification in connection with performance of its duties and functions under this Indenture and any of the other Documents shall survive the Trustee's resignation or removal and the final payment of the Bonds.

Whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may conclusively rely upon a certificate of the Issuer or the Borrower. All references in this Article X to the term "Indenture" shall be deemed to include all of the "Documents." All of the provisions of this Indenture related to the rights, standard of care, protections, privileges, benefits, indemnitees and immunities from liability afforded the Trustee under the Indenture shall apply to the Trustee in the performance of its duties and obligations under any of the Documents.

Section 10.04 *Fees and Expenses of Trustee.* The Trustee shall be entitled to payment and/or reimbursement of such fees as the Trustee, the Issuer and the Borrower shall agree upon, or in the absence of such agreement, to payment and/or reimbursement of reasonable fees, for its services rendered hereunder, and all advances, counsel fees and other expenses made or incurred

by or on behalf of the Trustee in connection with such services. Any amounts payable to the Trustee pursuant to this Section 10.04 shall be payable by the Borrower upon demand on the Borrower.

Section 10.05 *Trustee's Obligations to Take or Have Notice of Default.* The Trustee shall not be required to take notice, or to be deemed to have notice, of any default or Event of Default under this Indenture other than an Event of Default under Section 9.01(a) or Section 9.01(b) hereof, unless specifically notified in writing of such default by the Issuer or by the Holders of not less than 25% in principal amount of the Bonds then Outstanding. The Trustee may, however, at any time, in its discretion and without obligation, require of the Issuer information and advice as to the performance of any of the covenants, conditions and agreements contained herein.

Section 10.06 *Duties of Trustee.*

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise its rights and powers hereunder and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default,

- (1) The Trustee need perform only those duties that are specifically and expressly set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture or any of the other Documents against the Trustee, and
- (2) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine those certificates and opinions to determine whether they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that

- (i) This paragraph does not limit the effect of paragraph (b) of this Section,
- (ii) The Trustee shall not be liable for any actions taken, or errors of judgment made in good faith by it or a Responsible Officer of the Trustee, unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts,
- (iii) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it in accordance with this Indenture or any of the other Documents, and

- (iv) No provision of this Indenture 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.

(d) The Trustee may refuse to perform any discretionary duty or exercise any discretionary right or power hereunder unless it receives indemnity (satisfactory to it in its sole and absolute discretion) against any loss, liability or expense, but the Trustee shall not require indemnity as a condition to declaring the principal of and interest on the Bonds to be due immediately hereunder.

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

(f) Except as otherwise provided in this Article, the Trustee shall be under no obligation to take any action in respect of any default or otherwise, or toward the execution or enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other proceeding in connection therewith, unless requested in writing to do so by the Holders of not less than 51% in principal amount of the Bonds then Outstanding, and if in its opinion such action may tend to involve it in expense or liability, unless furnished, from time to time as often as it may require, with security and satisfactory indemnity. The foregoing provisions are intended only for the protection of the Trustee, and shall not affect any discretion or power given by any provision of this Indenture to the Trustee to take action in respect of any default without such notice or request from the Bondholders, or without such security or indemnity.

(g) Upon written request by the Rating Agency, the Trustee shall furnish to the Rating Agency the balance of funds on hand with the Trustee and other information contained in the books and records of the Trustee as may be reasonably required to maintain the rating on the Bonds.

(h) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, pandemics, epidemics, recognized public emergencies, quarantine restrictions, nuclear or natural catastrophes or acts of God, interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, and hacking, cyber-attacks, or other use or infiltration of the Trustee's technological infrastructure exceeding authorized access.

(i) The Trustee shall have no duty to review or make independent investigation with respect to any reports, information and documents received by the Trustee in connection herewith, and shall hold the same solely as repository. Neither the Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Issuer or the Borrower, or any of their directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Trustee may assume performance by all such

Persons of their respective obligations. The Trustee shall have no enforcement or notification obligations relating to breaches of representations or warranties of any other Person.

(j) The rights, privileges, protections, immunities, and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(k) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a) through (j) of this Section.

Section 10.07 Trustee May Make Advances to Effect Performance. If the Issuer shall fail to perform any of the covenants or agreements contained in this Indenture other than the covenants or agreements in respect of the payment of the principal of and interest on the Bonds, the Trustee may, in its absolute discretion and without notice to the Bondholders, at any time and from time to time, make advances to effect performance of the same on behalf of the Issuer, but the Trustee shall be under no obligation to do so; and any and all moneys paid or advanced by the Trustee for any such purposes shall be a claim in favor of the Trustee upon the Trust Estate prior to the claim of the Bonds; but no such advance shall operate to relieve the Issuer from any default hereunder.

Section 10.08 Trustee May Rely Upon Instruments and Instructions. The Trustee shall be under no duty to make any investigation or inquiry as to and, absent bad faith, may conclusively rely and shall be protected in acting or refraining from acting upon any statements contained or matters referred to in any indenture, notice, telegram, request, consent, waiver, certificate, statement, resolution, instrument, opinion, report, notice, request, direction, order, judgment, decree, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board, body or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture or the Documents, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements (not only as to due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein), and shall be protected and shall incur no liability in acting or proceeding in good faith in reliance thereon, except as otherwise provided in Section 10.06(c)(ii) hereof. The Trustee shall not be bound to recognize any person as a Holder of any Bond or to take any action at his request unless such Bond shall be deposited with the Trustee or satisfactory evidence of the ownership of such Bond shall be furnished to the Trustee. The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions (“Instructions”) given pursuant to this Indenture and delivered using Electronic Means; provided, however, that the Borrower shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such Instructions (“Authorized Trustee Officers”) and containing specimen signatures of such Authorized Trustee Officers, which incumbency certificate shall be amended by the Borrower whenever a person is to be added or deleted from the listing. If the Borrower elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee’s understanding of such Instructions shall be deemed controlling. The Borrower understands and agrees that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Trustee Officer listed on the incumbency certificate provided to the Trustee have been

sent by such Authorized Trustee Officer. The Borrower shall be responsible for ensuring that only Authorized Trustee Officers transmit such Instructions to the Trustee and that the Borrower and all Authorized Trustee Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Borrower. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction, provided the Trustee shall call the Borrower to confirm any change in the Instructions most recently provided to the Trustee pursuant to this Section. The Borrower agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Borrower; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures. Notwithstanding the foregoing, the Trustee shall attempt to confirm by telephone call back to the applicable Authorized Trustee Officer instructions delivered to it by Electronic Means (i) directing withdrawals greater than \$50,000 to parties other than the Construction Lender, the Borrower or either parties' affiliates or (ii) changing deposit account information previously provided to the Trustee or information concerning Authorized Trustee Officers.

Section 10.09 *Trustee May Own and Deal in Bonds and Deal with Issuer and Borrower.*

The Trustee, in its individual or any other capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds issued hereunder and secured by this Indenture, and may join in any action which any Bondholder may be entitled to take with like effect as if the Trustee were not a party to this Indenture. The Trustee, either as principal or agent, in its individual or any other capacity, may also engage in or be interested in any financial or other transaction with the Issuer or the Borrower or any related entity, and may act as depository, trustee, or agent for any committee or body of Holders of the Bonds secured hereby or other obligations of the Issuer as freely as if it were not Trustee hereunder.

Section 10.10 *Financial Liability of the Trustee.* No provision of this Indenture will require the Trustee to expend or risk its own funds or otherwise incur or risk any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights or powers.

Except as may otherwise be provided in this Indenture, the Trustee will have the right to demand, in respect to the authentication of any Bonds or the release of any property, any showings, certificates, opinions (including Opinions of Counsel), appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof or of the Loan Agreement required as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Issuer or the Borrower to the authentication of any Bonds, or the release of any property.

Section 10.11 *Trustee May Construe Ambiguous or Inconsistent Provisions.* The Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provisions hereof, and any construction of any such provisions hereof by the Trustee in good faith shall be binding upon the Bondholders.

Section 10.12 *Resignation of Trustee.* The Trustee may at any time resign and be discharged of the duties and obligations created by this Indenture by giving not less than 30 calendar days written notice to the Issuer (with a copy to the Borrower and the Investor Limited Partner) specifying the date when such resignation shall take effect and such resignation shall take effect upon the day specified in such notice unless previously a successor shall have been appointed, in which event such resignation shall take effect immediately on the appointment of such successor, provided that such resignation shall not take effect unless and until a successor shall have been appointed.

Section 10.13 *Removal of Trustee.* The Trustee shall be removed by the Issuer within 30 calendar days if so requested by an instrument or concurrent instruments in writing, filed with the Trustee and the Issuer, and signed by the Holders of a majority in principal amount of the Bonds then Outstanding or their attorney-in-fact duly authorized, excluding any Bonds held by or for the account of the Issuer. The Issuer may also remove the Trustee at any time for cause or breach of trust or for acting or proceeding in violation of, or failing to act or proceed in accordance with any provision of this Indenture with respect to the duties and obligations of the Trustee by filing with the Trustee an instrument signed by an authorized officer of the Issuer. A copy of each such instrument providing for any such removal shall be delivered by the Issuer to any Bondholder who shall have filed its name and address with the Issuer and, if requested, to the Borrower and the Investor Limited Partner; provided that such removal shall not take effect unless and until a successor shall have been appointed.

Section 10.14 *Appointment of Successor Trustee.* In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged as bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, the Issuer covenants and agrees that it will thereupon appoint a successor Trustee.

If in a proper case no appointment of a successor Trustee shall be made pursuant to the foregoing provision of this Section within 45 calendar days after the Trustee shall have given to the Issuer written notice, as provided in Section 10.12 or after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, the Trustee (at the expense of the Borrower) or the Holder of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee and for other appropriate relief. Said court may thereupon, after such notice, if any, as such court may deem proper, prescribe and appoint a successor Trustee and grant such other relief.

Any successor Trustee appointed under the provision of this Section 10.14 in succession to the Trustee shall be a bank or trust company or national banking association with trust powers, having a combined capital, surplus and undivided profits of at least \$50,000,000 if there be such a bank or trust company or national bank association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

Section 10.15 *Appointment of Successor Trustee by Court.* In case at any time the Trustee shall resign and no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article prior to the date specified in the notice of resignation as the date when such resignation shall take effect, the retiring Trustee (at the expense of the Borrower) may forthwith apply to a court of competent jurisdiction for the appointment of a successor Trustee. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article within thirty days after a vacancy shall have occurred in the office of Trustee, the Holder of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper, prescribe and appoint a successor Trustee. A successor Trustee under Sections 10.14 and 10.15 shall notify the Borrower and the Investor Limited Partner, in writing, after being so appointed.

Section 10.16 *Acceptance of Trust by Successor Trustee.* Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer and the Rating Agency an instrument accepting such appointment hereunder, and thereupon such successor Trustee, without further act, deed or conveyance, shall become duly vested with all the estates, property, rights, powers, trust, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Trustee herein. Upon request of such successor Trustee, the Trustee ceasing to act and the Issuer shall execute and deliver an instrument transferring to such successor Trustee all the estates, property, rights, powers and trusts hereunder of the Trustee so ceasing to act, and the Trustee so ceasing to act shall pay over to the successor Trustee all moneys and other assets at the time held by it hereunder.

Section 10.17 *Merger or Consolidation of Trustee With Another Corporation.* Any Person into which any Trustee hereunder may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which any Trustee hereunder shall be a party, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, shall be the successor Trustee under this Indenture and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

Section 10.18 *Notice of an Event of Default.* Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default known to the Trustee, the Trustee shall, pursuant to Section 9.01 hereof, give written notice thereof to the Issuer, the Borrower, the Construction Lender, the Investor Limited Partner, the Rating Agency and (by Electronic Means) to each Bondholder, unless such Event of Default shall have been cured before the giving of such notice.

Section 10.19 *Trustee May Intervene.* In any judicial proceeding to which the Issuer is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Holders of the Bonds, the Trustee may intervene on behalf of the Holders of the Bonds and shall, upon receipt of satisfactory indemnity do so if requested in writing by the Holders of not less than 51% in principal amount of Bonds then outstanding, if such intervention is permitted by the court having jurisdiction in the premises.

Section 10.20 *Unclaimed Moneys.* Anything in this Indenture to the contrary notwithstanding, any moneys held by the Trustee in trust for the payment and discharge of any

Bonds and which remain unclaimed by the Holder of a Bond not presented for payment or check not cashed for a period of four years after the due date thereof, shall, subject to any applicable escheat laws, be paid to the Borrower free of any trust or lien, upon a request in writing by the Borrower. Thereafter, the Holder of that Bond shall look only to the Borrower for payment and then only to the amounts so received by the Borrower without any interest thereon, and the Trustee shall not have any responsibility with respect to such money.

Section 10.21 *Appointment of Co-Trustee.* It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as a trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Loan Agreement, and in particular in case of the enforcement thereof on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or co-trustee. The following provisions of this Section are adopted to these ends.

In the event that the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Approval in writing from the Issuer shall be required prior to the appointment of the separate or co-trustee by the Trustee. All such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer at the expense of the Borrower. In case any separate or co-trustee or a successor to either shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or co-trustee, so far as permitted by law and so approved by the Issuer, shall vest in and be exercised by the Trustee until the appointment of a successor to such separate or co-trustee. The Trustee shall notify the Borrower and the Investor Limited Partner, in writing, of any co-trustee appointed under this Section.

Section 10.22 *The Remarketing Agent.* The Remarketing Agent identified in Section 1.01 hereof shall serve as the Remarketing Agent for the Bonds. The Remarketing Agent shall designate to the Trustee its Designated Office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Borrower the Investor Limited Partner and the Trustee. In addition, the Remarketing Agent will agree particularly to:

- (a) keep such records relating to its computations of interest rates for the Bonds as shall be consistent with prudent industry practice and to make such records available for inspection by the Issuer, the Trustee, the Investor Limited Partner and the Borrower at all reasonable times; and

- (b) perform all of its functions and duties under this Indenture.

The Remarketing Agent shall be entitled to advice of legal counsel on any matter relating to the Remarketing Agent's obligations hereunder and shall be entitled to act upon the opinion of such counsel in the exercise of reasonable care in fulfilling such obligations.

Section 10.23 *Qualifications of Remarketing Agent.* The Remarketing Agent shall be a member in good standing of the Financial Industry Regulatory Authority having a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, and shall be authorized by law to perform all the duties imposed upon it by this Indenture.

Subject to the terms of the Remarketing Agreement, the Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least sixty (60) days' notice to the Issuer, the Trustee, the Borrower and the Investor Limited Partner. The Remarketing Agent may be removed by the Issuer without cause upon at least sixty (60) days' notice and for cause at any time at the direction or with the consent (which consent shall not be unreasonably withheld) of the Borrower by an instrument, signed by an Authorized Representative and filed with the Remarketing Agent, the Trustee, the Borrower and the Investor Limited Partner. The Issuer shall appoint a successor Remarketing Agent, with the consent (which consent shall not be unreasonably withheld) of the Borrower. Notwithstanding the foregoing, the Remarketing Agent shall not resign or be removed during the sixty-day period preceding any Remarketing Date; excepting only at the direction of the Borrower for cause.

Upon any resignation or removal of the Remarketing Agent, the departing Remarketing Agent shall pay over, assign and deliver any money and Bonds held by it in such capacity to its successor or, if there be no successor, to the Trustee to be held in a separate account to be established for such purpose hereunder.

In the event that the Remarketing Agent shall resign or be removed, or be dissolved, or if the property or affairs of the Remarketing Agent shall be taken under the control of any state or federal court or administrative body because of a bankruptcy or insolvency, or for any other reason, the Issuer shall appoint a successor Remarketing Agent, with the consent (which consent shall not be unreasonably withheld) of the Borrower.

The Trustee, within 30 days of the resignation or removal of the Remarketing Agent or the appointment of a successor Remarketing Agent, shall give notice thereof by registered or certified mail to the Rating Agency (if the Bonds are then rated) and to the Holders of the Bonds

Section 10.24 *Notices to Rating Agency and Remarketing Notice Parties.* The Trustee shall notify the Rating Agency and Remarketing Notice Parties of (a) the occurrence of an Event of Default of which the Trustee has actual notice, (b) the occurrence of any monetary or other material default under the Loan of which the Trustee has actual notice, (c) any change in the identity of the Trustee, (d) any amendments, modifications, supplements or changes to this Indenture, the Loan Agreement, the Note or the Bonds, including any extension of principal or modification of interest or redemption premium due on any of the Bonds, in each case only in the event the Trustee has actual notice, (e) any change or proposed change in the structure or identity of the Borrower of which the Trustee has actual knowledge, (f) any material change or notification

of proposed change of the Mandatory Tender Date or Remarketing Date, (g) any partial prepayment of the Loan or the giving of notice of the call for redemption of any Bonds, (h) any change in the investment of funds subject to the lien of this Indenture, (i) any defeasance or acceleration of the Bonds hereunder, (j) any change in the Remarketing Agent or the Construction Lender of which the Trustee has actual knowledge, or (k) any sale of Eligible Investments below par, as shown in a Cash Flow Projection delivered to the Rating Agency prior to the sale date.

Section 10.25 *Financing Statements.* Pursuant to Sections 5.05 and 5.10 of the Loan Agreement, the Borrower shall perfect, or shall cause to be perfected any security interest created hereunder by the filing of financing statements which fully comply with the applicable State law. Notwithstanding anything to the contrary contained herein, the Trustee shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code. The Trustee shall cause to be filed a continuation statement prepared by the Borrower with respect to each Uniform Commercial Code financing statement relating to the Bonds which was filed at the time of the issuance thereof, in such manner and in such places as the initial filings were made, provided that a copy of the filed original financing statement is timely delivered to the Trustee. Unless the Trustee shall have been notified in writing by the Borrower that the initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (i) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto, each as prepared by Borrower, pursuant to this Section 10.25 and (ii) filing any continuation statements prepared by Borrower in the same filing offices as the initial filings were made. The Borrower shall be responsible for the fees, costs and expenses incurred by the Trustee in the preparation and filing of all continuation statements hereunder, including reasonable counsel fees, costs and expenses.

Section 10.26 *Trustee Delivery of Information to Borrower and Investor Limited Partner.* The Trustee shall furnish to the Borrower and the Investor Limited Partner all information reasonably requested by the Borrower or the Investor Limited Partner with respect to the Bonds and the investment of funds and accounts maintained by the Trustee hereunder.

ARTICLE XI

MODIFICATION OF INDENTURE AND OTHER DOCUMENTS

Section 11.01 *Limitation on Amendments to this Indenture.* This Indenture shall not be modified or amended in any respect except as provided in accordance with and subject to the provisions of this Article.

Section 11.02 *Amendments to Indenture Not Requiring Consent of Bondholders.*

(a) The Issuer and the Trustee may, from time to time and at any time, without the consent of Bondholders, enter into agreements supplemental to this Indenture (each, a “Supplemental Indenture”) as follows:

- (i) to specify and determine any matters and things relative to Bonds

which shall not materially adversely affect the interest of the Bondholders;

(ii) to cure any formal defect, omission or ambiguity in this Indenture if such action does not materially adversely affect the rights of the Bondholders;

(iii) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with this Indenture as heretofore in effect;

(iv) to add to the covenants and agreements of the Issuer in this Indenture other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(v) to add to the limitations and restrictions in this Indenture other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(vi) to confirm, as further assurance, any pledge under and the subjection to any claim, lien or pledge created, or to be created by, this Indenture, of the Revenues or of any other moneys, securities or funds;

(vii) to evidence any succession to the Issuer and the assumption by its successor of the covenants, agreements and obligations of the Issuer under this Indenture, the Loan Agreement and the Bonds

(viii) to facilitate (i) the transfer of Bonds issued by the Issuer under this Indenture and held in Book-Entry Form from one Securities Depository to another and the succession of Securities Depositories, or (ii) the withdrawal of Bonds issued by the Issuer under this Indenture and delivered to a Securities Depository for use in a Book-Entry System and the issuance of replacement Bonds in fully registered form and in the form of physical certificates to others than a Securities Depository;

(ix) to permit the Trustee to comply with any obligations imposed upon it by law;

(x) to specify further the duties and responsibilities of the Trustee;

(xi) to achieve compliance of this Indenture with any applicable federal securities or tax law;

(xii) to make amendments to the provisions hereof relating to arbitrage matters under Section 148 of the Code, if, in the opinion of Bond Counsel, those amendments would not adversely affect the Federal Tax Status of the Bonds which amendments may, among other things, change the responsibility for making the relevant calculations, provided that in no event shall such amendment delegate to the Trustee, in its sole discretion the obligation to make or perform the calculations required under Section 148 of the Code; or

(xiii) to modify, amend or supplement this Indenture in any respect which

is not materially adverse to the interests of the Owners of the Bonds.

(b) Before the Issuer shall enter into any Supplemental Indenture pursuant to this Section, there shall have been filed with the Trustee an opinion of Bond Counsel stating that (1) such Supplemental Indenture and the execution thereof are authorized or permitted by this Indenture and comply with its terms and such Supplemental Indenture is the legal, valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms, and (2) the effectiveness of the Supplemental Indenture will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

(c) The Trustee shall send written notice to the Borrower, the Construction Lender, the Investor Limited Partner and the Rating Agency of any amendment to this Indenture and, if requested, copies of any such amendments.

(d) Notwithstanding the foregoing, the Issuer and the Trustee may not, without the prior written consent of Construction Lender, amend this Indenture in any manner that adversely affects the rights and interests of the Construction Lender to receive notices hereunder or the rights of the Construction Lender with respect to any of the trust funds established under Section 4.01, including with respect to Sections 4.08, 4.11 and 5.01.

Section 11.03 *Amendments to Indenture Requiring Consent of Bondholders.*

(a) Subject to the terms and provisions contained in this Section and not otherwise, the Holders of not less than a majority in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, to consent to and approve the execution and delivery by the Issuer and the Trustee of any agreement supplemental to this Indenture as shall be deemed necessary or desirable by the Issuer for the purposes of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in this Indenture; *provided, however*, that, unless approved in writing by the Holders of all of the Bonds then Outstanding, nothing herein contained shall permit, or be construed as permitting, (i) a change in the terms of maturity of the principal of or the interest on any Outstanding Bond, or a reduction in the principal amount of any Outstanding Bond or the rate of interest thereon, or (ii) the creation of a claim or lien upon, or a pledge or assignment of, the Trust Estate ranking prior to or on a parity with the claim, lien, assignment or pledge created by this Indenture, or the release of the Trust Estate or any part thereof (except to the extent permitted pursuant to the Documents), or (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (iv) a reduction in the aggregate principal amount of the Bonds required for any action or consent by Bondholders set forth in this Indenture, including (without limitation) that required for consent to such Supplemental Indentures. This Section shall not limit or otherwise affect the ability of the Issuer to enter into agreements supplemental to this Indenture without the consent of the Bondholders pursuant to Section 11.02 hereof.

(b) If at any time the Issuer and the Trustee shall determine to enter into any Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause written notice of the proposed Supplemental Indenture to be given to all Holders of the Bonds; *provided, however*, that failure to give such notice or any defect therein, shall not affect the validity of any proceedings pursuant hereto. Such notice shall be prepared by or on behalf of the Issuer at the Borrower's sole expense, briefly set forth the nature of the proposed Supplemental Indenture and

state that a copy thereof is on file at the Designated Office of the Trustee for inspection by all Bondholders.

(c) Within one hundred twenty (120) days after the date of giving such notice, the Issuer and the Trustee may enter into such Supplemental Indenture in substantially the form described in such notice only if there shall have first been filed with the Issuer (i) the written consents of Holders of not less than a majority in aggregate principal amount of the Bonds then outstanding (or 100% if required hereunder) and (ii) an Opinion of Counsel stating that (1) such Supplemental Indenture and the execution thereof are authorized or permitted by this Indenture and comply with its terms and such Supplemental Indenture is the legal, valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms, and (2) the effectiveness of the Supplemental Indenture will not adversely affect the exclusion of interest on the Bonds from gross income for federal income taxes.

(d) If the Holders of not less than the percentage of Bonds required by this Section shall have consented to and approved the Supplemental Indenture as herein provided, no Holder of any Bond shall have any right to object to such Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety thereof, or to enjoin or restrain the Issuer or the Trustee from entering into the same or from taking any action pursuant to the provisions thereof.

(e) Upon the effectiveness of any Supplemental Indenture entered into pursuant to the provisions of this Section, this Indenture shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Issuer, the Trustee and all Holders of Bonds then outstanding shall thereafter be determined, exercised and enforced under this Indenture subject in all respects to such modifications and amendments.

(f) The Trustee shall send written notice to the Rating Agency of any amendment to this Indenture pursuant to this Section; provided, that the failure of the Trustee to provide such notice shall not constitute a default in the Trustee's obligations under this Indenture nor shall the providing of such notice constitute a condition precedent to the validity or effectiveness of any such amendment.

Section 11.04 *Supplemental Indentures Part of Indenture.* Any Supplemental Indenture entered into in accordance with the provisions of this Article shall thereafter form a part of this Indenture and all the terms and conditions contained in any such Supplemental Indenture as to any provision authorized to be contained therein shall be and shall be deemed to be a part of the terms and conditions of this Indenture for any and all such purposes.

Section 11.05 *Required Consent.* Notwithstanding anything herein to the contrary, as long as no default has occurred and is continuing under any of the Documents, any Supplemental Indenture under this Article shall not become effective unless and until the Borrower shall have consented in writing to such Supplemental Indenture.

Section 11.06 *Amendments to Loan Agreement and Note Not Requiring Consent of Bondholders.* Without the consent of or notice to the Holders, the Issuer, the Borrower and the Trustee may consent to any amendment, change or modification of the Loan Agreement or the

Note, as may be required (a) by the provisions of the Note or the Loan Agreement, (b) for the purpose of curing any ambiguity, inconsistency or formal defect or omission in the Loan Agreement or the Note, or (c) in connection with an amendment or to effect any purpose for which there could be an amendment of this Indenture pursuant to Section 11.02 hereof.

Section 11.07 *Amendments to Loan Agreement and Note Requiring Consent of Holders.*

Except for the amendments, changes or modifications contemplated in Section 11.06 hereof, neither the Issuer nor the Trustee shall consent to:

(a) any amendment, change or modification of the Loan Agreement or the Note which would change the amount or time as of which Loan Payments and Collateral Deposits are required to be paid or funded, without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of all of the then Outstanding Bonds affected by such amendment, change or modification, or

(b) any other amendment, change or modification of the Loan Agreement or the Note, without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding affected by such amendment, change or modification.

The consent of the Holders shall be obtained as provided in Section 11.03 hereof with respect to Supplemental Indentures.

If the Issuer or the Borrower shall request at any time the consent of the Trustee to any proposed amendment, change or modification of the Loan Agreement or the Note contemplated in subparagraphs (a) or (b) of this Section, upon being indemnified satisfactorily with respect to expenses, the Trustee shall cause notice of the proposed amendment, change or modification to be provided in the manner which is required by Section 11.03 hereof with respect to notice of Supplemental Indentures. The notice shall be prepared by or on behalf of the Issuer or the Borrower, at the Borrower's sole expense, set forth briefly the nature of the proposed amendment, change or modification and state that copies of the instrument or document embodying it are on file at the Designated Office of the Trustee for inspection by all Holders.

Section 11.08 *[Reserved]*.

Section 11.09 *Opinion of Bond Counsel.*

Before the Trustee shall consent to any amendment, change or modification of any of the documents described in Sections 11.06 and 11.07 there shall be delivered to the Trustee an opinion of Bond Counsel that (a) any proposed amendment, change, or modification of any of the documents described in Sections 11.06 and 11.07 and the execution thereof comply with the provisions of this Indenture and such proposed amendment, change or modification is the legal, valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms, (b) it is proper for the Trustee to join in the execution of that amendment, change, or modification under the provisions of this Article and (c) such amendment, change or modification will not adversely affect the Federal Tax Status of the Bonds.

Section 11.10 Conversion, Bonds and Loan Agreement on the Mandatory Tender Date.

Upon Conversion and upon the execution and delivery of the Funding Loan Agreement, Governmental Note(s) and the Borrower Loan Agreement, and this Indenture, the Bonds and the Loan Agreement shall be deemed amended, restated and superseded in full by the respective terms thereof, and no consent of the Holders shall be sought or required for conversion.

ARTICLE XII

MISCELLANEOUS

Section 12.01 Issuer's Successors. In the event of any dissolution of the Issuer, all the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of, or for the benefit of, the Issuer, shall, consistent with applicable law, bind or inure to the benefit of the successors of the Issuer from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the Issuer shall be transferred.

Section 12.02 Limitation of Rights. With the exception of rights conferred expressly in this Indenture, 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 Remarketing Agent, the Borrower, the Investor Limited Partner and the Holders of the Bonds any legal or equitable right, remedy, power or claim under or with respect to this Indenture or any covenants, agreements, conditions and provisions contained herein. This Indenture and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the parties hereto, the Remarketing Agent, the Borrower, the Investor Limited Partner and the Holders of the Bonds, as provided herein.

Section 12.03 Entire Agreement; Severability. This Indenture and the exhibits hereto set forth the entire agreement and understanding of the parties related to this transaction and supersedes all prior agreements and understandings, oral or written. In case any one or more of the provisions of this Indenture or of the Bonds for any reason, is held to be illegal or invalid such illegality or invalidity shall not affect any other provisions of this Indenture or the Bonds, and this Indenture and the Bonds shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced as if such illegal or invalid provisions had not been contained therein.

Section 12.04 No Recourse. All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Indenture shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any of its officers or employees or members of its governing body, past, present or future, in his or her individual capacity, and no recourse shall be had for the payment of the principal of, premium, if any, or purchase price of or interest on the Bonds or for any claim based thereon or on this Indenture or any other documents relating to the Bonds against any such member, officer, employee or agent of the Issuer, past present or future, or any natural person executing the Bonds.

Section 12.05 Governing Law. This Indenture and the Bonds are contracts made under the laws of the State and shall be construed in accordance with and governed by the Constitution and the laws of the State applicable to contracts made and performed in the State. This Indenture and the Bonds shall be enforceable in the State, and any action arising hereunder or in connection with

the Bonds shall (unless waived by the Issuer in writing) be filed and maintained in the Superior Court of California, County of Santa Clara.

Section 12.06 Notices; Publication of Notice.

(a) All notices, advice, certifications or other communications hereunder between the Issuer and the Trustee shall be sufficiently given and shall be deemed given when delivered by hand or overnight courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, or transmitted by Electronic Means addressed to the appropriate Notice Address (which for purposes of the holders of the Bonds shall be deemed to include the electronic notice system of the DTC). The Issuer or the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, advice, certifications or other communications shall be sent. Notices to persons other than the Issuer or the Trustee (such as, for example, notices to Owners of Bonds) shall be governed by the other applicable provisions of this Indenture.

(b) Whenever the Issuer or the Trustee is required or permitted to give or publish notice of any event or occurrence under this Indenture, such notice shall be given or published in such manner and by such means as the Issuer or the Trustee, as the case may be, shall determine to be appropriate. Such publication may be by (but is not limited to) any of the following means: (1) publication in one or more newspapers or trade journals selected by the Issuer or the Trustee, as the case may be; (2) publication by or through one or more financial information reporting services; (3) delivery to one or more “nationally recognized municipal securities information repositories” (as such term is defined in Securities and Exchange Commission Rule 15c2-12) or any successor repository or entity fulfilling a substantially similar or like role; or (4) by mailing a copy of such notice by first class mail, postage prepaid, to the person entitled to receive the notice at such person’s address as shown on the records of the Issuer or the Trustee.

Section 12.07 Trustee as Paying Agent and Bond Registrar. The Trustee is hereby designated and agrees to act as paying agent and Bond registrar for and in respect to the Bonds.

Section 12.08 Execution of Instruments by Bondholders and Proof of Ownership of Bonds. Subject to Section 2.11 hereof, any request, direction, consent or other instrument in writing required or permitted by this Indenture to be signed or executed by Bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument and of the ownership of the Bonds shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

(a) The fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments within such jurisdiction, to the effect that the person signing such instrument acknowledged before him the execution thereof, or by an affidavit of a witness to such execution.

(b) The ownership of Bonds shall be conclusively proved by the registration books kept under the provisions of Section 2.08 of this Indenture.

Nothing contained in this Section shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which to it may seem sufficient. Any request or consent of the Holder of any Bond shall bind every future Holder of the same Bond and the Holder of every Bond issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee, Issuer or Borrower pursuant to such request or consent.

Section 12.09 *Construction Loan Documents Independent.*

(a) Enforcement of the covenants in this Indenture will not result in, and neither the Issuer nor the Trustee has or shall be entitled to assert, any claim against the Borrower (except with respect to the Unassigned Issuer's Rights), the Project, the Construction Loan proceeds (other than Construction Loan proceeds which have been deposited into the Collateral Fund by or at the direction of the Construction Lender), any reserves or deposits required by the Construction Lender in connection with the Construction Loan transaction, or the rents or deposits or other income of the Project.

(b) [Reserved].

(c) Notwithstanding anything in this Indenture, the Loan Agreement, the Note or the Bond Purchase Agreement to the contrary, (i) the Property (as defined in the Construction Loan Security Instrument) shall not include any portion of the Trust Estate and the Construction Lender shall not have any claim to or lien upon the Trust Estate under this Indenture and funds held by the Trustee under this Indenture and pledged to secure the repayment of the Bonds, except for Eligible Funds that may be returned to the party that deposited said funds with the Trustee as may be required under Sections 4.08 and 5.01 hereof; and (ii) the Trust Estate shall not include any portion of the Property (as defined in the Construction Loan Security Instrument).

Section 12.10 *Counterparts.* This Indenture may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute but one and the same instrument, and the words "executed," "signed," "signature," and words of like import as used above and elsewhere in the Indenture, Loan Agreement or in any other certificate, agreement, bond, note or document related to this transaction shall include, in addition to manually executed signatures, images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, any electronic sound, symbol or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by Electronic Means) with respect to this Indenture shall be of the same legal effect, validity, enforceability and admissibility as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code. The parties hereto also agree that this Indenture may be signed with a signature stamp. The parties hereto agree that any signatures made with a signature stamp appearing on this Indenture are the same as handwritten signatures for the purposes of validity, enforceability and admissibility. The exchange of copies of this

Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture and signature pages for all purposes. If this Indenture is originally executed via electronic signature, the Issuer may nevertheless subsequently request the parties' exchange of original manual signatures at any future date.

Section 12.11 U.S.A. Patriot Act Requirements of the Trustee. To help the government of the United States of America fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a trust or other legal entity, the Trustee may request and shall receive documentation from the Issuer and Borrower to verify such Person's formation and existence as a legal entity and the identity of the owners or controlling persons thereof. The Trustee may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

Section 12.12 Recycling Transactions. Notwithstanding any provisions of the Indenture or the Bonds to the contrary, the Issuer shall be permitted to direct those payments representing prepayments or repayments of principal on the Note be delivered to a custodian or trustee selected by the Issuer, in lieu of application to repay a like portion of the Bonds, so long as the Issuer simultaneously causes other funds to be applied to repay such portion of the Bonds. The preceding provisions shall apply only for purposes of preserving or "recycling" private activity bond volume cap in accordance with Section 146(i)(6) of the Code. For purposes of effectuating the foregoing, the Trustee is hereby authorized and directed to open and create such funds or accounts, which may be temporary in nature, as may be necessary or desirable, and to close such funds or accounts following the completion of the transfers set forth in such written direction.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Issuer and the Trustee have caused this Trust Indenture to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

CITY OF SAN JOSE, as Issuer

By: _____
Maria Öberg
Director of Finance

Approved as to form

By: _____
Hana Hardy Gunther
Senior Deputy City Attorney

[Signature Page to Trust Indenture – Berryessa TOD 2026]

UMB BANK, NATIONAL ASSOCIATION,
as Trustee

By: _____
[Name]
[Title]

[Signature Page to Trust Indenture – Berryessa TOD 2026]

CONSENT AND AGREEMENT OF BORROWER

For and in consideration of the issuance of the Bonds by the Issuer, the Borrower consents to and approves the Indenture in all respects. The Borrower acknowledges that it has reviewed the Indenture. In addition, the Borrower agrees that whenever the Indenture by its terms imposes any duty or obligation on the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Indenture, and the Borrower agrees to perform fully and faithfully all the duties and obligations which the Issuer has covenanted and agreed to in the Indenture to cause the Borrower to perform and any duties and obligations which the Borrower or the Issuer is required by the Indenture to perform. The foregoing shall not apply to any duty or undertaking of the Issuer which, by its nature, cannot be delegated or assigned.

BERRYESSA AFFORDABLE HOUSING L.P.,
a California limited partnership

By: AHG Berryessa, LLC,
a California limited liability company,
its Administrative General Partner

By: Affirmed Housing Group, Inc.
a Delaware Corporation
its Manager

By: _____
James P. Silverwood, President

By: CFAH Housing LLC,
a California limited liability company,
its Managing General Partner

By: Compass for Affordable Housing,
a California nonprofit public benefit corporation
its Manager

By: _____
Robin Martinez, Executive Director

[Signature Page to Trust Indenture – Berryessa TOD 2026]

APPENDIX A

FORM OF SERIES 2026 BONDS

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE INDENTURE) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), 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.

No. R-1

\$_[_____]

\$_[82,584,672]

City of San José

Multifamily Housing Revenue Bonds, Series 2026A

(Berryessa TOD)

DATED DATE	INITIAL INTEREST RATE	FIXED MANDATORY TENDER DATE	MATURITY DATE	CUSIP NUMBER
[April __], 2026	[__]%	[May] 1, 2029	[May] 1, 2066	[_____]

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: [_____] DOLLARS (\$[_____])

FOR VALUE RECEIVED, the City of San José (the “Issuer”), a municipal corporation and charter city, organized and existing under the laws of the State of California (the “State”), hereby promises to pay (but only out of the Trust Estate pledged therefor) to the Registered Owner identified above, or its successor or registered assignee or legal representative, unless previously called for redemption, the Principal Amount set forth above, on the Maturity Date identified above, in lawful money of the United States of America which on the date of payment is legal tender for the payment of public and private debts, upon the presentation and surrender of this Bond at the designated corporate trust office of UMB Bank, National Association, as trustee, or its successor in trust (the “Trustee”), and to pay interest thereon (but only out of the Revenues) to the registered owner hereof from the Dated Date identified above to but not including the Fixed Mandatory Tender Date identified above at the Initial Interest Rate per annum identified above and thereafter at the Remarketing Rate (as defined in the Indenture), if applicable, (subject to adjustment or change as provided in the Indenture), payable at the times and in the manner hereinafter set forth. Principal hereof shall be payable, upon the request of any registered Holder of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number specified

by such holder to the Trustee in writing. All interest hereon shall be paid by check mailed by the Trustee to the registered Owner hereof at his or her address as it appears on the registration books of the Issuer, or, upon the request of any registered Holder of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number provided by such registered Owner to the Trustee in writing, such interest being payable semi-annually on each [May] 1 and [November] 1, commencing [November] 1, 20[26], until the principal amount of the Bonds is paid or duly provided for in lawful money of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. Capitalized terms used herein have the same meanings as set forth in the Trust Indenture, dated as of [April] 1, 2026, by and between the Issuer and the Trustee (the “Indenture”). Capitalized terms used but not otherwise defined herein shall have their meanings as set forth in the Indenture.

THIS BOND IS ISSUED UNDER THE PROVISIONS OF CHAPTER 7 OF PART 5 OF DIVISION 31 OF THE CALIFORNIA HEALTH AND SAFETY CODE, AS AMENDED. THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY FROM THE TRUST ESTATE UNDER THE INDENTURE. NONE OF THE ISSUER, ANY OF ITS MEMBERS, THE STATE, 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.

This Bond is one of an issue of the \$[82,584,672] City of San José Multifamily Housing Revenue Bonds, Series 2026A (Berryessa TOD) (the “Bonds”), of like date and tenor, except as to number and denomination, issued pursuant to the Act, the Indenture and a resolution duly adopted by the governing body of the Issuer. The proceeds of the Bonds are being loaned to Berryessa Affordable Housing, L.P. (the “Borrower”), a California limited partnership, by the Issuer under a Loan Agreement dated as of [April] 1, 2026], by and between the Borrower and the Issuer (the “Loan Agreement”), which loan is evidenced by a promissory note dated [April __], 2026, from the Borrower in favor of the Issuer (the “Note”), for the purpose of financing the construction and development of a multifamily rental housing facility to be located at 1565 Mabury Road, San José, California 95133, as more fully described in the Loan Agreement.

The Bonds are issued under the Indenture, and to the extent provided therein, are, together with all other Bonds that may be issued thereunder, equally and ratably secured and entitled to the protection given by the Indenture. Pursuant to the Indenture, the Issuer has assigned to the Trustee (among other things) the Revenues. Pursuant to the Note and the Loan Agreement, payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Borrower to the Trustee for the account of the Issuer. The obligations of the Borrower under the Note and the Loan Agreement are secured by the proceeds of the Bonds deposited into

the Project Fund and Eligible Funds deposited into the Collateral Fund created pursuant to Section 4.01 of the Indenture.

Reference is made to the Indenture, the Note, and the Loan Agreement and to all amendments and supplements thereto for a description of the property pledged and assigned and the provisions, among others, with respect to the nature and extent of the security, the rights, duties and other obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the rights of the Holders of the Bonds and provisions for defeasance of such rights. The terms and conditions set forth herein concerning payment and other rights and remedies of the Owners of the Bonds are descriptive only and are subject in all cases to the terms and conditions as set forth in the Indenture.

The Bonds are issuable in the form of registered Bonds without coupons in denominations of \$5,000 each or any integral multiple of \$1,000 in excess thereof (the “Authorized Denominations”).

This Bond is negotiable and is transferable, as provided in the Indenture, only upon the books of the Issuer kept at the office of the Trustee, by the registered owner hereof in person or by his duly authorized attorney, and may be exchanged for new Bonds of the same aggregate principal amount of Authorized Denominations, maturity and interest rate, in registered form, but only upon presentation and surrender of this Bond, all in the manner and subject to the limitations and conditions provided in the Indenture. The Issuer and the Trustee may deem and treat the person in whose name this Bond is registered as the absolute Owner hereof for all purposes; and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

The Bonds are subject to mandatory tender in whole on each Mandatory Tender Date. Holders will not have the right to elect to retain their Bonds. Upon presentation and surrender of the Bonds by the Holder on the date fixed for tender, the Holder shall be paid the principal amount of the Bonds to be tendered, plus accrued interest on such Bonds to the Mandatory Tender Date.

The Bonds are subject to mandatory redemption and optional redemption prior to maturity as provided in the Indenture.

The Holder 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 default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture. The Trustee shall treat the registered Owner of this Bond as the person exclusively entitled to payment of principal and interest, and the exercise of all rights and powers of the owner of this Bond.

The Bonds shall not constitute the personal obligation, either jointly or severally, of any of the Issuer’s officers or employees or members of its governing body. No recourse shall be had for the payment of the Bonds against any of the Issuer’s officers or employees or members of its governing body, and none of the Issuer’s officers or employees or members of its governing body shall have any monetary liability arising out of Issuer’s obligations under the Bonds or in connection with any covenant, representation, or warranty made by the Issuer.

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

In the case of any conflict between the terms of this Bond and the terms of the Indenture, the terms of the latter shall control.

[Signature Page Follows]

IN WITNESS WHEREOF, the City of San José has executed this Bond by the manual or facsimile signature of its Authorized Officer as of the Dated Date identified above.

CITY OF SAN JOSE

By: _____
Maria Öberg
Director of Finance

Approved as to form

By: _____
Hana Hardy Gunther
Senior Deputy City Attorney

FORM OF CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the Indenture referred to in this Bond.

UMB BANK, NATIONAL ASSOCIATION, as
Trustee

By: _____
Authorized Signatory

Date of Authentication: [April __], 2026

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto

(Please Print or Type Name and Address of Assignee)

Social Security or Taxpayer Identification Number: _____

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

Attorney to transfer the said Bond on the books of the within-named Issuer maintained by the
Trustee for the registration thereof, with full power of substitution in the premises.

Notice: The signature to this assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration or enlargement or any change whatever. The signature must be guaranteed.

Signature guaranteed by:

Authorized Signature

(Signature(s) must be guaranteed by a broker or other financial institution which is a participant in the Securities Transfer Agent's Medallion Program (STAMP, SEMP, MSP)).

DTC FAST RIDER

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

APPENDIX B

FORM OF REQUISITION (PROJECT FUND)

City of San José
Multifamily Housing Revenue Bonds, Series 2026A
(Berryessa TOD)

REQUISITION NO. __ REQUESTING DISBURSEMENT OF
FUNDS FROM PROJECT FUND PURSUANT TO
SECTION 3.03 OF THE LOAN AGREEMENT

Pursuant to Section 3.03 of the Loan Agreement dated as of [April] 1, 2026 (the “Loan Agreement”) between the City of San José (the “Issuer”) and Berryessa Affordable Housing, L.P. (the “Borrower”), a California limited partnership, the undersigned Authorized Borrower Representative hereby requests and authorizes UMB Bank, National Association, as trustee (the “Trustee”), as depository of the Project Fund created by the Trust Indenture dated as of [April] 1, 2026 (the “Indenture”), between the Issuer and the Trustee, to pay to the Borrower out of the money deposited in the Project Fund the aggregate sum of \$ _____ to pay the costs of the items listed in the Disbursement Schedule. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Indenture and in the Tax Certificate.

In connection with the foregoing request and authorization, the undersigned hereby certifies that:

(a) Each item for which disbursement is requested hereunder is properly payable out of the Project Fund in accordance with the terms and conditions of the Loan Agreement and none of those items has formed the basis for any disbursement heretofore made from said Project Fund.

(b) Each such item is or was incurred in connection with the construction, installation, development or improvement of the Project.

(c) Each such item is a Qualified Project Cost (as defined in the Indenture).

(d) The Borrower has received, or will concurrently with payment receive and deliver to the Title Company, appropriate waivers of any mechanics’ or other liens with respect to each item for which disbursement is requested hereunder.

(e) After taking into account the proposed disbursement,

(i) no more than 5% of the net proceeds of the Bonds will have been used for costs that are not Qualified Project Costs;

(ii) less than 25% of the net proceeds of the Bonds will have been used for the cost of acquiring land; and

(iii) not more than 2% of the net proceeds of the Bonds will have been

used for Costs of Issuance.

(f) There is no current or existing Default or Event of Default pursuant to the terms of the Loan Agreement or the Regulatory Agreement and no event exists which by notice or passage of time or both would constitute an event of default under any of the foregoing documents.

(g) There are no liens on the Project except Permitted Encumbrances and those permitted or provided for by the Loan Agreement.

(h) This statement and all exhibits hereto, including the attached Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warranty, protection and authority to the Trustee for its actions taken pursuant hereto.

(i) (i) It has reviewed any wire instructions set forth in this written disbursement direction to confirm such wire instructions are accurate, (ii) agrees to indemnify and hold harmless the Trustee from and against any and all claim, demand, loss, liability, or expense sustained, including, but not limited to, attorneys' fees, costs and expenses resulting directly or indirectly as a result of making the disbursement requested, and (iii) agrees it will not seek recourse from the Trustee as a result of losses incurred by it for making the disbursement in accordance with the disbursement direction.

The Borrower will provide a copy of each payee's Form W-9 or Form W-8, as applicable (unless previously provided). The Borrower further acknowledges the Trustee cannot process such disbursement request until the Trustee is in receipt of a valid Form W-9 or Form W-8, as applicable, in accordance with Internal Revenue Service regulations and the Foreign Account Tax Compliance Act.

[WIRE INSTRUCTIONS TO BE INSERTED]

With respect to this Requisition, the Borrower (i) certifies that it has reviewed any wire instructions set forth hereunder to confirm such wire instructions are accurate, (ii) agrees to indemnify and hold harmless the Trustee from and against any and all claim, demand, loss, liability, tax or expense sustained, including but not limited to attorneys' fees and expenses and fees and expenses resulting directly or indirectly as a result of making the disbursement requested, and (iii) agrees that it will not seek recourse from the Trustee as a result of losses incurred by Borrower for making the disbursement in accordance with this Requisition.

[Remainder of Page Intentionally Left Blank]

This statement constitutes the approval of the Borrower of each disbursement hereby requested and authorized.

This ____ day of _____, 20__.

BERRYESSA AFFORDABLE HOUSING L.P.,
a California limited partnership

By: AHG Berryessa, LLC,
a California limited liability company,
its Administrative General Partner

By: Affirmed Housing Group, Inc.
a Delaware Corporation
its Manager

By: _____
James P. Silverwood, President

By: CFAH Housing LLC,
a California limited liability company,
its Managing General Partner

By: Compass for Affordable Housing,
a California nonprofit public benefit corporation
its Manager

By: _____
Robin Martinez, Executive Director

Approved:

**DEUTSCHE BANK AG, NEW YORK
BRANCH, as Construction Lender**

By: _____
Name:
Title:

By: _____
Name:
Title:

DISBURSEMENT SCHEDULE

To Statement No. _____ requesting and authorizing disbursement of funds from Project Fund pursuant to Section 3.03 of the Loan Agreement

APPENDIX C

FORM OF REQUISITION (COSTS OF ISSUANCE FUND)

UMB Bank, National Association, as Trustee

Re: \$[82,584,672] City of San José Multifamily Housing Revenue Bonds,
 Series 2026A (Berryessa TOD)

Trustee:

You are requested to disburse funds from the Costs of Issuance Fund pursuant to Section 4.07 of the Indenture in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the “Requisition”). The terms used in this requisition shall have the meaning given to those terms in the Trust Indenture dated as of [April] 1, 2026 (the “Indenture”), by and between the City of San José, as issuer, and UMB Bank, National Association, as trustee, securing the above referenced Bonds.

REQUISITION NO.: _____

PAYMENT DUE TO: BERRYESSA AFFORDABLE HOUSING, L.P.

AMOUNT TO BE DISBURSED: \$ _____

The undersigned, on behalf of Berryessa Affordable Housing, L.P., a California limited partnership, certifies that:

(a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Costs of Issuance Fund, have not been included in any previous requisition and are set forth in the Schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and

(b) the money requisitioned is not greater than the amount necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance.

(c) (i) it has reviewed any wire instructions set forth in this written disbursement direction to confirm such wire instructions are accurate, (ii) agrees to indemnify and hold harmless the Trustee from and against any and all claim, demand, loss, liability, or expense sustained, including, but not limited to, attorneys' fees, costs and expenses resulting directly or indirectly as a result of making the disbursement requested, and (iii) agrees it will not seek recourse from the Trustee as a result of losses incurred by it for making the disbursement in accordance with the disbursement direction

The Borrower will provide a copy of each payee’s Form W-9 or Form W-8, as applicable (unless previously provided). The Borrower further acknowledges the Trustee cannot process such disbursement request until the Trustee is in receipt of a valid Form W-9 or Form W-8, as applicable, in accordance with Internal Revenue Service regulations and the Foreign Account Tax Compliance Act.

[WIRE INSTRUCTIONS TO BE INSERTED]

With respect to this Requisition, the Borrower (i) certifies that it has reviewed any wire instructions set forth hereunder to confirm such wire instructions are accurate, (ii) agrees to indemnify and

hold harmless the Trustee from and against any and all claim, demand, loss, liability, tax or expense sustained, including but not limited to attorneys' fees and expenses and fees and expenses resulting directly or indirectly as a result of making the disbursement requested, and (iii) agrees that it will not seek recourse from the Trustee as a result of losses incurred by Borrower for making the disbursement in accordance with this Requisition.

Date of Requisition: _____

[Signature Page Follows]

BERRYESSA AFFORDABLE HOUSING L.P.,
a California limited partnership

By: AHG Berryessa, LLC,
a California limited liability company,
its Administrative General Partner

By: Affirmed Housing Group, Inc.
a Delaware Corporation
its Manager

By: _____
James P. Silverwood, President

By: CFAH Housing LLC,
a California limited liability company,
its Managing General Partner

By: Compass for Affordable Housing,
a California nonprofit public benefit corporation
its Manager

By: _____
Robin Martinez, Executive Director

*[Signature Page to Requisition (Costs of Issuance Fund) –
Berryessa TOD]*

APPENDIX D

FORM OF FUNDING LOAN AGREEMENT

See item number [] in the transcript.

APPENDIX E

FORM OF BORROWER LOAN AGREEMENT

See item number [] in the transcript.