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**TRUST INDENTURE**

**Between**

**THE CITY OF OVERLAND PARK, KANSAS**

**and**

**MANUFACTURERS AND TRADERS TRUST COMPANY**

**THE CITY OF OVERLAND PARK, KANSAS  
TRANSPORTATION DEVELOPMENT DISTRICT  
SPECIAL ASSESSMENT BONDS  
SERIES 2006  
(TALLGRASS CREEK PROJECT)**

**DATED AS OF NOVEMBER 1, 2006**

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## TRUST INDENTURE

THIS TRUST INDENTURE (the "Indenture") dated as of November 1, 2006 is made by and between the City of Overland Park, Kansas (the "Issuer"), a municipal corporation duly organized and existing under the laws of the State of Kansas, and Manufacturers and Traders Trust Company as trustee (the "Trustee"), a New York banking corporation authorized to exercise corporate trust powers:

### WITNESSETH:

WHEREAS, the Issuer has by Resolution No. 3542 created the transportation development district as more particularly described on **Exhibit A** attached hereto and incorporated by reference (the "District");

WHEREAS, pursuant to K.S.A. 2005 Supp. 12-17,140 through 12-17,149, as may be amended (the "Act"), the Issuer has by Ordinance No. \_\_\_\_\_ (the "Bond Ordinance") authorized the issuance of its Transportation Development District Special Assessment Bonds, Series 2006 (Tallgrass Creek Project) (the "Bonds") in the Aggregate Principal Amount of not to exceed \$15,000,000 to (i) finance the construction of certain improvements including improvements to 139th Street and Riley Street within the City, drives and parking lots, storm sewer improvements, bike trails, sidewalks, traffic signals and street lights (collectively, the "Project") and related work necessary to complete the Project (ii) fund a reserve fund, (iii) fund capitalized interest on the Bonds and (iv) pay certain costs relating to the issuance of the Bonds;

WHEREAS, the Issuer has determined that, in the issuance and sale of the Bonds, it will be acting to further the public purposes of the Act; and

WHEREAS, all things necessary to make the Bonds, when issued, executed and delivered by the Issuer and authenticated by the Trustee, to the extent required pursuant to this Indenture, the valid, binding and legal limited obligations of the Issuer, and to constitute this Indenture as a valid assignment and pledge of the revenues herein pledged to the payment of the principal of, redemption premium, if any, and interest on the Bonds and a valid assignment and pledge of certain rights of the Issuer has been done and performed, and the creation, execution and delivery of this Indenture, and the execution, issuance and delivery of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that to secure the payment of principal of, redemption premium, if any, and interest on the Bonds according to their true intent and meaning, and all other amounts due from time to time under this Indenture, including those due to the Trustee, to secure the performance and observance of all of the covenants, agreements, obligations and conditions contained in the Bonds and in this Indenture, and to declare the terms and conditions upon and subject to which the Bonds are and are intended to be issued, held, secured and enforced and in consideration of the premises and the acceptance by the Trustee of the trusts created herein and of the purchase and acceptance of the Bonds by the Bondholders and for other good and valuable consideration, the receipt of which is acknowledged, the Issuer has executed and delivered this Indenture and absolutely and irrevocably pledges and assigns to

the Trustee and to its successors in trust, on the basis set forth herein, and its and their assigns, all right, title and interest of the Issuer in and to the Trust Estate as defined in Article I;

TO HAVE AND TO HOLD unto the Trustee and its successors in trust and its and their assigns forever;

BUT IN TRUST, NEVERTHELESS, and subject to the provisions hereof,

(a) For the equal and proportionate benefit, security and protection of all Bonds,

(b) For the enforcement of the payment of the principal of, redemption premium, if any, and interest on the Bonds, and all other amounts due from time to time under this Indenture, including those due to the Trustee, when payable, according to the true intent and meaning thereof and of this Indenture, and

(c) To secure the performance and observance of and compliance with the covenants, agreements, obligations, terms and conditions of this Indenture and the Bond Ordinance,

in each case, without preference, priority or distinction, as to lien or otherwise except as provided herein, of any one Bond over any other by reason of designation, number, date of the Bonds or of authorization, issuance, sale, execution, authentication, delivery or maturity thereof, or otherwise, so that each Bond and all Bonds shall have the same right, lien and privilege under this Indenture and shall be secured equally and proportionately by this Indenture, it being intended that the lien and security of this Indenture shall take effect from the date hereof, without regard to the date of the actual issue, sale or disposition of the Bonds, as though upon that date all of the Bonds were actually issued, sold and delivered to purchasers for value; provided, however, that, upon satisfaction of and in accordance with the provisions of Article IX, the rights assigned hereby shall cease, determine and be void to the extent described therein; otherwise, such rights shall be and remain in full force and effect;

IT IS DECLARED that all Bonds issued under and secured by this Indenture are to be issued, authenticated and delivered, and that all Revenues assigned or pledged hereby are to be dealt with and disposed of under, upon and subject to, the terms, conditions, stipulations, covenants, agreements, obligations, trusts, uses and purposes provided in this Indenture; and the Issuer has agreed and covenanted, and agrees and covenants with the Trustee and with each and all Bondholders, as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATIONS

**Section 1.01. Definitions.** Unless the context otherwise requires, the terms defined in this **Article I** shall, for all purposes of this Indenture and of any indenture supplemental hereto, have the meanings herein specified:

“**Act**” means K.S.A. 2005 Supp. 12-17,140 through 12-17,149, as may be amended.

**“Additional Bonds”** means the Additional Bonds authorized by **Section 2.13** hereof.

**“Administrative Expense Fund”** means the Trust Fund so designated which is described in **Section 4.07**.

**“Administrative Expenses”** means the following actual or reasonably estimated costs permitted in accordance with the Act and directly related to the administration and supervisor of the Project and the Bonds as determined by a consultant on behalf of the Issuer: the costs of computing the Special Assessment and of preparing the annual Special Assessment collection schedules; the costs of collecting the Special Assessment; the costs of remitting the Special Assessment to the Trustee; the costs of the Trustee and any fiscal agent (including its legal counsel) in the discharge of the duties required of it under this Indenture or any trustee or fiscal agent agreement; the costs of the Rebate Consultant; the costs of the Issuer or its designee in complying with disclosure requirements of applicable federal and state securities laws and of the Act, including, but not limited to, public inquiries regarding the Special Assessment; the costs of commencing foreclosure and pursuing collection of delinquent Special Assessment and the reasonable fees of legal counsel of the Issuer incurred in connection with the foregoing.

**“Aggregate Principal Amount”** means the outstanding principal amount of the Bonds.

**“Agreement for Administration Services”** means the Agreement for Administration Services dated as of November 1, 2006, by and among the Issuer, the Consultant and the Developer.

**“Attesting Officer”** means the City Clerk of the Issuer.

**“Authorized Denomination”** means \$100,000 and any multiple of \$1,000 in excess thereof.

**“Bankruptcy Law”** means Title 11 of the United States Code, as it is amended from time to time and any successor to or replacement of such Title and any other applicable federal or state bankruptcy, insolvency or other similar law.

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

**“Bond”** or **“Bonds”** means the Issuer’s Transportation Development District Special Assessment Bonds, Series 2006 (Tallgrass Creek Project) issued under this Indenture in the amount of \$15,000,000.

**“Bond Counsel”** means, with respect to the Bonds, Kutak Rock LLP, Kansas City, Missouri, or any other firm of attorneys experienced in the matters covered by the opinion selected by the Issuer.

**“Bondholder”** or **“holder of Bonds”** or **“Owner of Bonds”** means the Person who owns a Bond, provided that, pursuant to **Section 2.08**, the Person in whose name a Bond is registered in the Bond Register shall be regarded for all purposes as such owner.



**“Bond Order”** means an order dated \_\_\_\_\_, 2006, of the Issuer providing certain terms and use of proceeds of the Bonds.

**“Bond Ordinance”** means Ordinance No. 2643 authorizing the Bonds.

**“Bond Register”** and **“Bond Registrar”** shall have the respective meanings specified in **Section 2.08**.

**“Book Entry Bonds”** means those Bonds for which a Securities Depository or its nominee is the Bondholder.

**“Business Day”** means any day of the year other than (a) a Saturday or Sunday; (b) any day on which banks located in the City of Kansas City, Missouri or the city in which the Office of the Trustee is located are required or authorized by law to remain closed; or (c) any day on which the New York Stock Exchange is closed.

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

**“Conditional Redemption”** means a redemption where the Issuer has stated in the redemption notice to the Trustee that (a) the redemption is conditioned upon deposit of funds; or (b) the Issuer has retained the right to rescind the redemption, as further described in **Section 3.10**.

**“Construction Fund”** means the trust fund so designated which is described in **Section 4.02**.

**“Construction Lender”** means Mercantile-Safe Deposit Trust Company, or, alternatively, another commercial lender or lenders as a lender and administrative agent, and any other lenders named in the Construction Loan Agreement, as Administrative and Collateral Agent for the Lenders (as defined in the Construction Loan Agreement).

**“Construction Loan”** means the construction loan in an amount not less than \$50,000,000 made by the Construction Lender pursuant to the terms of the Construction Loan Agreement.

**“Construction Loan Agreement”** means the Construction Loan Agreement between the Owner and the Construction Lender pursuant to which the Development (apart from the Project) will be financed.

**“Consultant”** means MuniCap, Inc.

**“Corporation”** means, collectively, the Owner and the Developer and their successors and assigns.

**“Costs of the Project”** or **“Costs”** means any acquisition or construction cost properly incurred in connection with the Project.

“**Counsel**” means an attorney or law firm (who may be counsel for the Issuer), acceptable to the Trustee.

“**County**” means Johnson County, Kansas.

“**Debt Service Fund**” means the trust fund so designated which is described in **Section 4.03**.

“**Default**” means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“**Defeasance Obligations**” means noncallable, non-redeemable direct obligations of the United States of America or noncallable obligations which are fully and unconditionally guaranteed by the United States of America.

“**Depository Participants**” means any Person for which the Securities Depository holds Bonds as securities depository.

“**Determination Letter**” means the favorable determination letter issued by the Department of Treasury of the Internal Revenue Service that the Nonprofit is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

“**Developer**” means Erickson Retirement Communities LLC, a Maryland limited liability company.

“**Developer’s Counsel**” means the lawyer or law firm retained from time to time to represent the Developer in connection with the development of property within the District.

“**Development**” means the development of a continuing care retirement community with a total of approximately 1,100 units of independent living, 88 units of assisted living units and 64 skilled nursing units.

“**Development Agreement**” means the Infrastructure, Development and Indemnity Agreement dated November \_\_, 2006 among the Issuer, the Owner, and the Nonprofit and agreed as to **Section 4.11** and **Article VI** and acknowledged otherwise by the Developer.

“**DTC**” shall have the meaning given to such term in **Section 2.12**.

“**Eligible Investments**” means, to the extent permitted by then applicable Kansas law, provided the Issuer shall not be a party to any such investment, the following:

(a) Governmental Obligations.

(b) Bonds, notes, debentures, or other similar obligations of the United States of America or its agencies, including (i) federal land banks, federal intermediate credit banks, banks for cooperative, federal farm credit banks, or any other entity authorized to issue debt obligations under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et. seq.*);

(ii) the federal home loan banks and the federal home loan mortgage corporation; and  
(iii) any other agency created by Act of Congress.

(c) Interest bearing obligations of any county, township, city, town, incorporated town, municipal corporation or school district, which obligations are registered in the name of the Issuer or held under a custodial agreement at a bank, if such obligations at the time of purchase are in one of the two highest general classifications established by a rating service of nationally recognized expertise in rating bonds of states and their political subdivisions.

(d) Interest bearing certificates of deposit, interest bearing savings or money market accounts, interest bearing time deposits, or other investments constituting direct obligations of any bank as defined by the Kansas Banking Act which are insured by the Federal Deposit Insurance Corporation; or which are with a bank rated in the highest short-term rating category established by a national recognized rating service.

(e) Repurchase agreements collateralized by securities described in (a) or (b) above which are in possession of a third party and are marked to market not less than quarterly.

(f) Money market mutual funds registered under the Investment Company Act of 1940 as amended invested solely in obligations listed in paragraph (a) and (b) above and in agreements to repurchase such obligations including any such fund maintained by the Trustee, including any proprietary mutual fund of the Trustee or any affiliate of the Trustee for which the Trustee or an affiliate of the Trustee serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefore;

together with such other investments as shall from time to time be lawful for the investment of Issuer funds and shall be approved by the holders of fifty-one percent (51%) of aggregate principal amount of Bonds outstanding; provided that “Eligible Investments” shall not include a financial instrument, commonly known as a “derivative,” whose performance is derived, at least in part, from the performance of any underlying asset, including, without limitation, futures, options on securities, options on futures, forward contracts, swap agreements, structured notes and participations in pools of mortgages or other assets.

**“Event of Bankruptcy”** means the filing of a petition in bankruptcy (or other commencement of a bankruptcy or similar proceedings) by or against the Issuer, as debtor, under Bankruptcy Law.

**“Event of Default”** means any of the events specified in **Section 7.01** to be an Event of Default.

**“Funds”** means the Construction Fund, the Debt Service Fund, the Reserve Fund, the Administrative Expense Fund and the Rebate Fund, and (a) any account within each such Fund, and (b) any other Fund designated as such with respect to the Bonds.

**“Governing Body”** means the Governing Body of the City of Overland Park, Kansas.

**“Governmental Obligations”** means (a) direct obligations of the United States of America; (b) obligations the timely payment of the principal of, and interest on which, is fully and unconditionally guaranteed by the United States of America; and (c) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in (a) or (b).

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

**“Interest Payment Date”** means, (a) for the Bonds, the first day of February and August of each year beginning February 1, 2007; (b) for Bonds subject to redemption in whole or in part on any date, the date of such redemption; and (c) for all Bonds any date determined pursuant to **Section 7.08**.

**“Issuance Costs”** means costs incurred by or on behalf of the Issuer including, without limitation, the following: payment of financial, legal, accounting, consultant and appraisal fees, expenses and disbursements; the Issuer’s fees and expenses attributable to the issuance of the Bonds; the cost of printing, engraving and reproduction services; legal fees and expenses for Bond Counsel, Issuer’s counsel, Trustee’s counsel, Developer’s Counsel, Construction Lender’s Counsel and Underwriter’s counsel relating to the issuance of the Bonds; the initial set up or acceptance fee and first annual fee of the Trustee; and all other fees, charges and expenses incurred in connection with the issuance of the Bonds and the preparation and filing or recording of this Indenture and of any document relating to the issuance of the Bonds.

**“Issue Date”** means the date of issuance and delivery of the Bonds to the Underwriter.

**“Issued Amount”** means the initial principal amount of the Bonds at the date of issuance.

**“Issuer”** means the City of Overland Park, Kansas and its successors and assigns.

**“Issuer Representative”** means the Deputy City Manager of the Issuer.

**“Legislative Authority”** means the Governing Body and Mayor of the Issuer.

**“Letter of Representations”** means when all the Bonds are Book Entry Bonds, the Blanket Letter of Representations previously executed by the Issuer and delivered to the Securities Depository and any amendments thereto or successor blanket agreements between the Issuer and any successor Securities Depository, relating to a system of Book Entry Bonds to be maintained by the Securities Depository with respect to any bonds, notes or other obligations issued by the Issuer.

**“Levying Ordinance”** means Ordinance No. 2639 passed by the City on October 16, 2006, levying the Special Assessments.

**“Mayor”** means the Mayor of the Issuer.

**“Moody’s”** means Moody’s Investors Service, Inc., New York, New York, a nationally recognized securities rating service that shall have assigned a rating respect to the Bonds.

“**Nonprofit**” means Tallgrass Creek, Inc., a Maryland non-stock corporation, its successors and assigns.

“**Office of any Paying Agent**” means the office of any Paying Agent designated in writing to the Trustee.

“**Office of the Trustee**” means the designated corporate trust office or offices of the Trustee, which office or offices at the date of acceptance by the Trustee of the duties and obligations imposed on the Trustee by this Indenture are set out in **Section 11.04**.

“**Officer’s Certificate of the Developer**” means a written certificate, statement, request, direction or order signed in the name of the Developer by its Chief Financial Officer and General Counsel or such other person as may be designated and authorized to sign for the Developer and forwarded to the Trustee.

“**Officer’s Certificate of the Issuer**” means a written certificate, statement, request, direction or order signed in the name of the Issuer by its Mayor, Attesting Officer, an Issuer Representative, or such other person as may be designated and authorized in writing to sign for the Issuer and forwarded to the Trustee.

“**Outstanding**,” in connection with Bonds means, as of the date in question, all Bonds authenticated and delivered under this Indenture, except:

(a) Bonds theretofore cancelled or delivered to the Trustee for cancellation under **Section 2.11**;

(b) Bonds which are deemed to be no longer Outstanding in accordance with **Article IX**; and

(c) Bonds in substitution for which other Bonds have been authenticated and delivered pursuant to **Article II**.

“**Owner**” shall mean Kansas Campus, LLC, a Maryland limited liability company, and its successors and assigns.

“**Paying Agent**” or “**Co-Paying Agent**” means any national banking association, state bank, bank and trust company or trust company appointed by the Issuer and meeting the qualifications of, and subject to the obligations of, the Trustee in **Article VIII**. Initially, the Trustee shall be the Paying Agent.

“**Person**” or “**person**” means an individual, corporation, firm, association, partnership, limited liability company, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

“**Project**” means the constructing of certain improvements, including improvements to 139th Street and Riley Street, drives and parking lots, storm sewer improvements, bike trails, sidewalks, traffic signals and street lights and related appurtenances and all electrical, mechanical or other services necessary, useful or advisable to such design, installation,

construction and maintenance to support the construction by the Developer of a three-phase retirement community on land initially owned by the Owner which will lease the facility to the Nonprofit (an entity anticipated to be exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended).

**“Rating Service”** means any nationally recognized securities rating service that shall have assigned a rating that is then in effect with respect to the Bonds upon application of the Issuer.

**“Rebate Amount”** has the meaning ascribed in Section 1.148-3(b) of the Regulations and generally means the excess as of any date of the future value of all receipts on non purpose investments over the future value of all payments on nonpurpose investments all as determined in accordance with Section 1.148-3 of the Regulations.

**“Rebate Fund”** means the fund so designated which is described in **Section 4.06**.

**“Record Date”** means, (1) in the case of Bonds which are not Book Entry Bonds the Trustee’s close of business on the 15<sup>th</sup> day of the calendar month next preceding such Interest Payment Date, regardless of whether such day is a Business Day; and (2) in the case of Book Entry Bonds the Trustee’s close of business on the Business Day preceding the Interest Payment Date.

**“Regulations”** means any applicable Internal Revenue Service Regulations promulgated in proposed, temporary or final form. Proposed regulations are “applicable” only if, in the event they are adopted in final form, such regulations would apply to the Bonds.

**“Required Reserve”** means the least of (i) 10% of the stated principal amount of the Bonds; (ii) the maximum annual principal and interest requirements on the Bonds; or (iii) 125% of the average annual principal and interest requirements on the Bonds, as adjusted for prepayments as set forth in **Section 4.03** of this Indenture.

**“Reserve Fund”** means the trust fund so designated which is described in **Section 4.04**.

**“Responsible Officer,”** when used with respect to the Trustee, means any officer in the corporate trust department (or any successor thereto) of the Trustee, or any other officer or representative of the Trustee customarily performing functions similar to those performed by any of such officers and also means, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of that officer’s knowledge of and familiarity with the particular subject.

**“Resolution”** means Resolution No. 3542 of the Issuer adopted on September 11, 2006, creating the District.

**“Revenues”** means (a) the Special Assessments as and when received by the Issuer; and (b) investment income with respect to any moneys held by the Trustee in the Construction Fund, the Debt Service Fund, the Reserve Fund and the Administrative Expense Fund. The term “Revenues” does not include any moneys or investments or investment income in the Special Assessments Prepayment Account and in the Rebate Fund.

**“Securities Depository”** means a person that is registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934 or whose business is confined to the performance of the functions of a clearing agency with respect to exempted securities, as defined in Section 3(a)(12) of such Act for the purposes of Section 17A thereof.

**“S&P”** means Standard & Poor’s Ratings Services, New York, New York, a nationally recognized securities rating service that shall have assigned a rating with respect to the Bonds.

**“Special Assessment”** or **“Special Assessments”** means the assessment or assessments levied by the Issuer in accordance with the Levying Ordinance.

**“Special Assessment Requirement”** means the amount of Special Assessments that must be levied and collected for a given year to pay debt service on the Bonds.

**“Tax Counsel”** means a nationally recognized law firm with experience in matters of Federal income taxation selected by the Nonprofit and acceptable to the Issuer.

**“Trust Estate”** means all right, title and interest of the Issuer in and to (a) Revenues, (b) Funds (except for the Rebate Fund) and all money and investments therein, and (c) all other property of every name and nature from time to time hereafter by delivery or by writing mortgaged, pledged, delivered or hypothecated as and for additional security under this Indenture by the Issuer or by anyone on its behalf or with its written consent in favor of the Trustee.

**“Trustee”** means Manufacturers and Traders Trust Company, a New York banking corporation and any successor trustee under this Indenture, acting in its trust capacity.

**“Underwriter”** means Stone & Youngberg LLC.

**Section 1.02. Rules of Interpretation.** For purposes of this Indenture, except as otherwise expressly provided or the context otherwise requires:

(a) The words “herein,” “hereof” and “hereunder” and other similar words refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

(b) The definitions in this Article are applicable whether the terms defined are used in the singular or the plural.

(c) All accounting terms which are not defined in this Indenture have the meanings assigned to them in accordance with then applicable generally accepted accounting principles.

(d) Any pronouns used in this Indenture include both the singular and the plural and cover both genders.

(e) Any terms not defined in this Indenture but which are defined in the Bond Ordinance have the same meaning in this Indenture as are given to them in the Bond Ordinance, unless the context clearly indicates otherwise.

(f) Any terms defined elsewhere in this Indenture have the meanings attributed to them where defined.

(g) Words referring to the redemption or calling for redemption of Bonds shall not be deemed to refer to the payment of Bonds at their stated maturity.

(h) The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent, or control or affect the meaning or construction, of any provisions or sections hereof.

(i) Any references to Section numbers are to Sections of this Indenture unless stated otherwise.

## ARTICLE II

### AUTHORIZATION, EXECUTION, AUTHENTICATION, REGISTRATION AND DELIVERY OF BONDS

**Section 2.01. Authorization of Bonds; Limitation.** The Bonds are hereby authorized to be issued in the amount of \$15,000,000 designated “Transportation Development District Special Assessment Bonds, Series 2006 (Tallgrass Creek Project).”

**Section 2.02. Bonds Limited Special Obligations.** The Bonds shall be limited special obligations of the Issuer, payable solely from the Trust Estate. The Bonds shall constitute a valid claim of the respective owners thereof against the Trust Estate, which is pledged to secure the payment of the principal of, redemption premium, if any, and interest on the Bonds, and which shall be utilized for no other purpose, except as expressly authorized in this Indenture. The Bonds shall not constitute general obligations of the Issuer, the State of Kansas or any political subdivision thereof, and neither the full faith and credit nor the unlimited taxing power of the Issuer shall be pledged as security for payment of the Bonds. Under no circumstances shall the Bonds be payable from, nor shall the holders thereof have any rightful claim to, any income, revenues, funds or assets of the Issuer other than those pledged hereunder as security for the payment of the Bonds.

**Section 2.03. Details of Bonds.** The Bonds shall be issued in Authorized Denominations, shall be dated the date of delivery thereof, shall be numbered from R-1 upward, shall bear interest (calculated on the basis of a 360-day year of twelve 30-day months) on each Interest Payment Date at the rates per annum and shall mature on August 1 as follows:

<u>Maturity Date</u>	<u>Amount</u>	<u>Interest Rate</u>
August __, 2016	\$ _____	_____%
August __, 2028	\$ _____	_____%

All Bonds bear interest (a) from the Issue Date, if authenticated prior to the first Interest Payment Date, or (b) otherwise from the Interest Payment Date that is, or that immediately precedes, the date on which such Bond is authenticated (unless payment of interest is in default, in which case such Bond shall bear interest from the date to which interest has been paid).



The principal of, redemption premium, if any, and interest on the Bonds shall be payable in lawful money of the United States of America. Principal of and redemption premium, if any, on the Bonds shall be payable by the Paying Agent upon presentation and surrender of the Bonds as they become due at the corporate trust office of the Paying Agent. Interest on the Bonds shall be payable by the Paying Agent to the Bondholders of Bonds by check or draft mailed to such Bondholders at their addresses as they appear on the Bond Register on the Record Date. Principal of, redemption premium, if any, and interest payable to any person holding Bonds in aggregate principal amount of \$1,000,000 or more will be paid, upon the written request of any such Bondholder in form and substance satisfactory to the Paying Agent, by wire transfer of immediately available funds to an account within the United States of America designated by such Bondholder on or before the Record Date.

**Section 2.04. Execution of Bonds.** The Bonds shall be signed by the manual or facsimile signature of the Mayor of the Issuer and attested by the manual or facsimile signature of the Attesting Officer of the Issuer. The Bonds shall bear the seal of the Issuer or a facsimile thereof will be affixed to or imprinted on the Bonds. In case any officer whose signature or a facsimile of whose signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes as if such officer had remained in office until such delivery.

**Section 2.05. Authentication of Bonds.** The Bonds shall bear a certificate of authentication, substantially in the form set forth in **Appendix A**, duly executed by the Trustee. The Trustee shall authenticate each Bond with the manual signature of a Responsible Officer of the Trustee, but it shall not be necessary for the same Responsible Officer to authenticate all of the Bonds. Only such authenticated Bonds shall be entitled to any right or benefit under this Indenture. Such certificate on any Bond issued hereunder shall be conclusive evidence that the Bond has been duly issued and is secured by the provisions hereof.

**Section 2.06. Forms of Bonds.** The Bonds shall be substantially in the form set forth in **Appendix A** with such appropriate variations, legends, omissions and insertions as permitted or required by this Indenture.

**Section 2.07. Delivery of Bonds.** The Trustee shall authenticate and deliver the Bonds when there has been filed with it the following:

- (a) A copy certified by the Attesting Officer of the Issuer of the Bond Ordinance;
- (b) An original executed counterpart of this Indenture;
- (c) An opinion or opinions of Bond Counsel, addressed to the Issuer and the Trustee, to the effect that this Indenture and the Bonds have each been validly authorized, are binding and enforceable against the Issuer, subject to bankruptcy and equitable principles, that the issuance of the Bonds has been duly authorized and that interest on the Bonds is not included in gross income for federal income tax purposes under the Code;
- (d) A request and authorization of the Issuer, signed by its Mayor, to the Trustee to authenticate and deliver the Bonds to such person or persons named therein

upon payment for the account of the Issuer of a specified sum plus accrued interest to the date of delivery; and

(e) A Certificate of the Underwriter setting forth the Reserve Requirement for the Bonds.

Simultaneously with the delivery of the Bonds, the Trustee shall apply, or arrange for the application of, the proceeds thereof in accordance with an Officer's Certificate of the Issuer dated the Issue Date.

**Section 2.08. Registration of Transfer and Exchange of Bonds; Persons Treated as Bondholders.** The Trustee shall act as initial bond registrar (the "Bond Registrar") and in such capacity shall maintain a bond register (the "Bond Register") for the registration and transfer of Bonds. Upon surrender of any Bonds at the Office of the Trustee, together with an assignment duly executed by the current Bondholder of such Bonds or such Bondholder's duly authorized attorney or legal representative in such form as shall be satisfactory to the Trustee, such Bonds may, at the option of the Bondholder, be exchanged for an equal aggregate principal amount of Bonds of the same maturity, of Authorized Denominations and bearing interest at the same rate and in the same form as the Bonds surrendered for exchange, registered in the name or names requested by the assignee of the then Bondholder; provided the Trustee is not required to exchange or register the transfer of Bonds after the giving of notice calling such Bond for redemption, in whole or in part. The Issuer shall execute and the Trustee shall authenticate any Bonds whose execution and authentication is necessary to provide for exchange of Bonds pursuant to this Section and the Issuer may rely on a representation from the Trustee that such execution is required.

Any exchange or registration of transfer of Bonds shall be at the expense of the Issuer except that the Trustee may make a charge to any Bondholder requesting such exchange or registration in the amount of any tax or other governmental charge required to be paid with respect thereto but will not impose any other charge.

Prior to due presentment for registration of transfer of any Bond, the Trustee shall treat the Person shown on the Bond Register as owning a Bond as the Bondholder and the Person exclusively entitled to payment of principal thereof, redemption premium, if any, and interest thereon and, except as otherwise expressly provided herein, the exercise of all other rights and powers of the owner thereof, and neither the Issuer, the Trustee nor any agent of the Issuer or the Trustee shall be affected by notice to the contrary.

**Section 2.09. Temporary Bonds.** Prior to the preparation of definitive Bonds, the Issuer may issue temporary Bonds in registered form and in such denominations as the Issuer may determine but otherwise in substantially the form provided for definitive Bonds with appropriate variations, omissions and insertions. The Issuer shall promptly prepare, execute and deliver to the Trustee before the first Interest Payment Date for such Bonds, definitive Bonds and, upon presentation and surrender of Bonds in temporary form, the Trustee shall authenticate and deliver in exchange therefor definitive Bonds of the same maturity for the same aggregate principal amount. Until exchanged for definitive Bonds, Bonds in temporary form shall be entitled to the lien and benefit of this Indenture.

**Section 2.10. Mutilated, Lost or Destroyed Bonds.** If any Bond has been mutilated, lost or destroyed, the Issuer shall execute, and the Trustee shall authenticate and deliver to the Bondholder, a new Bond of like date and tenor in exchange and substitution for, and upon cancellation of, such mutilated Bond or in lieu of and in substitution for such lost or destroyed Bond but only if the Bondholder has paid the reasonable expenses and charges of the Issuer and the Trustee in connection therewith and, in the case of a lost or destroyed Bond, (a) filed with the Trustee evidence satisfactory to the Trustee that such Bond was lost or destroyed; and (b) furnished to the Trustee and the Issuer indemnity satisfactory to each. If any such Bond has matured or been called for redemption and is payable, instead of issuing a new Bond the Trustee may pay the same without issuing a replacement Bond.

If, after the delivery of such replacement Bond, the original Bond in lieu of which such replacement Bond was issued is presented for payment or registration, the Trustee shall seek to recover such replacement Bond from the person to whom it was delivered or any person taking there from and shall be entitled to recover from the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Trustee or the Issuer in connection therewith.

**Section 2.11. Cancellation and Disposition of Bonds.** The Issuer may deliver Bonds to the Trustee for cancellation at any time and for any reason and the Trustee is hereby authorized to cancel such Bonds. All Bonds that have been paid (whether at maturity or upon redemption pursuant to **Section 3.11**) or delivered to the Trustee for cancellation shall not be reissued. Unless otherwise directed by the Issuer, the Trustee shall treat such Bonds in accordance with its document retention policies.

**Section 2.12. Securities Depository Provisions.** All Bonds shall be Book Entry Bonds. All Book Entry Bonds shall be registered in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”). The Issuer acknowledges that it has executed and delivered the Letter of Representations to DTC. All payments of principal of, redemption premium, if any, and interest on the Book Entry Bonds and all notices with respect thereto, including notices of full or partial redemption, shall be made and given at the times and in the manner set out in the Letter of Representations. The terms and provisions of the Letter of Representations shall govern in the event of any inconsistency between the provisions of this Indenture and the Letter of Representations. The Letter of Representations may be amended without Bondholder consent.

The book-entry registration system for all of the Book Entry Bonds may be terminated and certificates delivered to and registered in the name of the Beneficial Owners, under either of the following circumstances:

- (a) DTC notifies the Issuer and the Trustee that it is no longer willing or able to act as Securities Depository for the Book Entry Bonds and a successor Securities Depository for the Book Entry Bonds is not appointed by the Issuer at the direction of the Issuer prior to the effective date of such discontinuation; or

(b) The Issuer determines that continuation of the book-entry system through DTC (or a successor securities depository) is not in the best interest of the Owners of the Book Entry Bonds.

In the event a successor Securities Depository is appointed by the Issuer, the Book Entry Bonds will be registered in the name of such successor Securities Depository or its nominee. In the event certificates are required to be issued to Beneficial Owners, the Trustee and the Issuer shall be fully protected in relying upon a certificate of DTC or any DTC participant as to the identity of and the principal amount of Book Entry Bonds held by such Beneficial Owners.

The Beneficial Owners of Bonds will not receive physical delivery of certificates except as provided herein. For so long as there is a Securities Depository for Bonds, all of such Bonds shall be registered in the name of the nominee of the Securities Depository, all transfers of beneficial ownership interests in such Bonds will be made in accordance with the rules of the Securities Depository, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of such Bonds is to receive, hold or deliver any certificate. The Issuer and the Trustee shall have no responsibility or liability for transfers of beneficial ownership interests in such Bonds.

The Issuer and the Trustee will recognize the Securities Depository or its nominee as the Bondholder of Book Entry Bonds for all purposes, including receipt of payments, notices and voting; provided the Trustee may recognize votes by or on behalf of Beneficial Owners as if such votes were made by Bondholders of a related portion of the Bonds when such votes are received in compliance with an omnibus proxy of the Securities Depository or otherwise pursuant to the rules of the Securities Depository or the provisions of the Letter of Representations or other comparable evidence delivered to the Trustee by the Bondholders or as provided in **Section 11.11** of this Indenture.

With respect to Book Entry Bonds, the Issuer and the Trustee shall be entitled to treat the Person in whose name such Bond is registered as the absolute owner of such Bond for all purposes of this Indenture, and neither the Issuer nor the Trustee shall have any responsibility or obligation to any Beneficial Owner of such Book Entry Bond. Without limiting the immediately preceding sentence, neither the Issuer nor the Trustee shall have any responsibility or obligation with respect to (a) the accuracy of the records of any Securities Depository or any other Person with respect to any ownership interest in Book Entry Bonds; (b) the delivery to any Person, other than a Bondholder, of any notice with respect to Book Entry Bonds, including any notice of redemption or refunding; (c) the selection of the particular Bonds or portions thereof to be redeemed or refunded in the event of a partial redemption or refunding of part of the Bonds Outstanding; or (d) the payment to any Person, other than a Bondholder, of any amount with respect to the principal of, redemption premium, if any, or interest on Book Entry Bonds.

### **Section 2.13. Authorization of Additional Bonds.**

(a) Additional Bonds may be issued hereunder upon compliance with the conditions hereinafter provided in this Section to provide funds for refunding all of the Bonds then Outstanding, including the payment of any premium thereon and interest to

accrue to the designated redemption date and any expenses in connection with such refunding.

(b) Before any Additional Bonds shall be issued under the provisions of this Section, the Issuer shall pass an Ordinance (i) authorizing the issuance of such Additional Bonds, fixing the amount and terms thereof and describing the Bonds to be refunded; and (ii) authorizing the Issuer to enter into a Supplemental Indenture for the purpose of issuing such Additional Bonds.

(c) Such Additional Bonds shall have the same designation as the Bonds authorized herein, except for an identifying series letter or date and the addition of the word "Refunding", shall be dated, shall be stated to mature on such dates in such year or years, shall bear interest at such rate or rates not exceeding the maximum rate then permitted by law, and shall be redeemable at such times and prices, all as may be provided by the Supplemental Indenture authorizing the issuance of such Additional Bonds.

(d) Such Additional Bonds shall be executed substantially in the form and manner set forth in this Article and **Article IV** hereof and shall be deposited with the Trustee for authentication, but prior to or simultaneously with the authentication and delivery of such Additional Bonds by the Trustee, there shall be filed with the Trustee the following:

(i) An original or certified copy of the Ordinance passed by the governing body of the Issuer authorizing the issuance of such Additional Bonds and the execution of such Supplemental Indenture.

(ii) An original executed counterpart of the Supplemental Indenture providing for the issuance of the Additional Bonds.

(iii) A request and authorization to the Trustee, on behalf of the Issuer, executed by the Mayor of the Issuer and attested to by the Attesting Officer, to authenticate the Additional Bonds and to deliver said Additional Bonds to the purchasers therein identified upon payment to the Trustee, for the account of the Issuer, of the purchase price thereof. The Trustee shall be entitled to rely conclusively upon such request and authorization as to the names of the purchasers and the amount of such purchase price.

(iv) Such additional documents as shall be reasonably required by the Trustee to evidence that provision has been duly made in accordance with the provisions of **Article IX** of this Indenture for the payment of all of the Bonds to be refunded.

(v) Such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the delivery of such Additional Bonds.

(vi) A Certificate of the Underwriter for such Additional Bonds setting forth the Reserve Requirement for such Additional Bonds.

(e) When the documents mentioned in Subsection (d) of this Section shall have been filed with the Trustee, and when such Additional Bonds shall have been executed and authenticated as required by this Indenture, the Trustee shall deliver such Additional Bonds to or upon the order of the purchasers thereof, but only upon payment to the Trustee of the purchase price of such Additional Bonds. The proceeds, excluding accrued interest and premium, if any, which shall be deposited in the debt service fund for such Additional Bonds, after payment or making provision for payment of all expenses incident to such financing, shall be deposited in a special trust fund, appropriately designated, and shall be held in trust for the sole and exclusive purpose of paying the principal of, premium, if any, and interest on the Bonds to be refunded, as provided in **Section 9.02** hereof and in the Supplemental Indenture authorizing the issuance of such refunding bonds.

### ARTICLE III

#### REDEMPTION OF BONDS

**Section 3.01. Redemption Dates and Prices.** The Bonds may not be called for redemption by the Issuer except as provided in this **Article III**.

**Section 3.02. Mandatory Sinking Fund Redemption of Bonds.**

(a) The Trustee shall redeem Bonds maturing on August 1, 2016 in the years and in the principal amounts and at a price of 100% of the principal amount of the Bonds to be redeemed plus interest accrued to the redemption date, as follows:

<u>Year</u>	<u>Principal Amount</u>
2009	
2010	
2011	
2012	
2013	
2014	
2015	
2016*	

\*Final Maturity

(b) The Trustee shall redeem Bonds maturing on August 1, 2028 in the years and in the principal amounts and at a price of 100% of the principal amount of the Bonds to be redeemed plus interest accrued to the redemption date, as follows:

<u>Year</u>	<u>Principal Amount</u>
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028*	

\*Final Maturity

(c) On or before the thirtieth (30th) day prior to each such sinking fund redemption date, the Trustee shall proceed to call the principal amount of the Bonds indicated above for redemption on the next March 1, and give notice of such call. At its option, to be exercised by delivery of an Officer's Certificate of the Developer to the Trustee not more than 360 days nor less than 65 days preceding the applicable sinking fund redemption date (or such period as may be acceptable to the Trustees), the Developer may (a) deliver to the Trustee for cancellation, Bonds of the applicable maturity date subject to redemption pursuant to the terms of the mandatory sinking fund provided in this Section in an aggregate principal amount desired; or (b) receive credit in respect of its sinking fund redemption obligation for any Bonds of the applicable maturity date subject to redemption pursuant to the terms of the mandatory sinking fund provided in this Section, which prior to said date have been canceled (otherwise than through the operation of the sinking fund redemption schedule) by the Trustee and not theretofore applied as a credit against such sinking fund redemption obligation. Each Bond of the applicable maturity date so delivered or previously redeemed shall be credited by the Trustee at the principal amount thereof against the obligation of the Issuer on such sinking fund redemption date, and the principal amount of Bonds to be redeemed by operation of such sinking fund redemption schedule on such date shall be accordingly reduced; and any excess over the principal amount of Bonds to be redeemed by operation of the sinking fund redemption schedule on any sinking fund redemption date shall be credited as specified in an Officer's Certificate of the Developer or, in the absence of such certificate against the next scheduled sinking fund redemption.

**Section 3.03. Optional Redemption of Bonds.** The Bonds maturing on March 1, 2028, are subject to redemption by the Issuer on or after September 1, 2016, in Authorized Denominations in whole at any time or in part on any Interest Payment Date from any moneys

that may be available for such purpose, upon payment of 100% of the principal amount to be redeemed, plus interest accrued to the redemption date.

**Section 3.04. Special Mandatory Redemption from Surplus Bond Proceeds.** To the extent that moneys are transferred from the Construction Fund to the Debt Service Fund pursuant to **Section 4.02(c)** for purposes of redeeming the Bonds, the Bonds are subject to special mandatory redemption in part in Authorized Denominations on the next scheduled Interest Payment Date for which notice of redemption can be given at a redemption price equal to 100% of the aggregate principal amount of the Bonds to be redeemed plus accrued interest to the redemption date.

**Section 3.05. Redemption Resulting from Special Assessment Prepayments.** The Bonds are subject to redemption prior to maturity as a whole at any time from prepayment of Special Assessments on or after August 1, 2011 from amounts in the Debt Service Fund as a result of transfers from the Special Assessment Prepayments Account and the Reserve Fund pursuant to **Section 4.03(d)**, at a redemption price expressed as a percentage of the principal amount of the Bonds to be redeemed, plus accrued interest thereon to the date set for redemption:

<u>Redemption Dates</u> (both dates inclusive)	<u>Redemption Prices</u>
August 1, 2011 through July 31, 2012	101%
August 1, 2012 and thereafter	100%

The redemption provided in this paragraph is subject to the deposit of funds for such redemption by the Owner or on behalf of the Owner by the Construction Lender or the Corporation.

**Section 3.06. Selection of Bonds for Redemption.** If less than all of the Bonds are called for redemption pursuant to **Sections 3.03, 3.04, 3.05, 3.08, or 3.09** they shall be redeemed in inverse order of maturity and by lot or other method deemed appropriate and fair by the Trustee within any maturity (provided, however, that if an Event of Default has occurred any Bonds called for redemption shall be redeemed in proportion by maturity and within maturities by lot or other method deemed appropriate and fair by the Trustee), subject to selection by the Trustee as provided below. Any such redemption will be applied to reduce the last mandatory sinking fund redemption under **Section 3.02**. The portion of any Bond to be redeemed shall be an Authorized Denomination or any multiple thereof and in selecting Bonds for redemption, each Bond shall be considered as representing that number of Bonds which is obtained by dividing the principal amount of such Bond by the minimum Authorized Denomination. If a portion of a Bond shall be called for redemption, a new Bond in principal amount equal to the unredeemed portion thereof shall be issued to the Bondholder upon the surrender thereof. If for any reason the principal amount of Bonds called for redemption would result in a redemption of Bonds less than the Authorized Denomination, the Trustee, to the extent possible within the principal amount of Bonds to be redeemed, is hereby authorized to adjust the selection of Bonds for such purpose in order to minimize any such redemption. Notwithstanding the foregoing, the Securities Depository for Book Entry Bonds shall select the Bonds for redemption within particular maturities according to its stated procedures.



**Section 3.07. Extraordinary Redemption on Federal Taxability Event.** The Bonds are subject to extraordinary redemption prior to maturity by the Issuer in whole at a redemption price equal to 108% of the principal amount of the Bonds, plus accrued interest, if any, to the redemption date upon the happening of any of the following events (each, a “Taxability Event”): (a) any day within 60 days after the Issuer, the Owner, the Developer, the Nonprofit or the Trustee receives written notice from a registered owner or former registered owner of a Bond or from the Issuer of a final determination by the Internal Revenue Service or a court of competent jurisdiction that the interest paid or to be paid on any Bond is or was includible in the gross income of the owner of such Bond for Federal income tax purposes; (b) any day within 90 days after the Owner or the Nonprofit has received correspondence from the Internal Revenue Service stating that the Nonprofit is not exempt from Federal income tax under Section 501(c)(3) of the Code, provided that such correspondence does not constitute a Taxability Event if within 45 days after receipt of such correspondence the Trustee receives either (i) a Determination Letter addressed to the Owner or the Nonprofit or (ii) an opinion of Bond Counsel addressed to the Issuer, Trustee, Owner and Nonprofit stating that the interest on the Bonds remains exempt from Federal income tax despite the fact that the Internal Revenue Service has sent correspondence stating that the Nonprofit is not exempt from Federal income tax under Section 501(c)(3) of the Code; or (c) on November 29, 2009, if the Trustee has not received (i) a copy of the Determination Letter, and (ii) a certificate of the Owner and the Nonprofit together with an opinion of Bond Counsel providing that the transfer of ownership of the Project by the Owner to the Nonprofit or to a governmental entity for Federal income tax purposes has occurred and (iii) an opinion of counsel to the Nonprofit to the effect that the Nonprofit is a 501(c)(3) organization dating back to the date of its formation or (iv) an opinion of Bond Counsel that, notwithstanding the nondelivery of the items referred to in (i) and (ii) above the tax-exempt status of the interest in the Bonds is not adversely affected.

The Corporation is required pursuant to the Development Agreement to provide the Trustee, within 30 days of receipt, with a copy of the Determination Letter and any correspondence from the Internal Revenue Service stating that the Nonprofit is not exempt from Federal income tax under Section 501(c)(3) of the Code.

The Developer has agreed pursuant to the Development Agreement to guaranty the redemption price in the event of a Taxability Event.

**Section 3.08. Special Redemption of Bonds on Event of Default of Construction Loan Agreement.** The Bonds are subject to redemption as a whole, or in part on any Interest Payment Date, at any time by the Issuer pursuant to written instructions received from the Owner or on behalf of the Owner by the Construction Lender following the occurrence of an event of default under the Construction Loan Agreement, at a redemption price of par plus accrued interest to the date set for redemption. The redemption provided in this paragraph is subject to the deposit of funds for such redemption in the Debt Service Fund by the Owner or on behalf of the Owner by the Construction Lender if funds for such redemption are not irrevocably deposited in the Debt Service Fund prior to the giving of notice of such redemption.

**Section 3.09. Special Optional Redemption Upon Fire, Casualty or Condemnation.** The Bonds are subject to optional redemption at the written direction of the Owner to the Trustee in whole at any time or in part on any Interest Payment Date by the Issuer pursuant to written

instructions received from the Owner or on behalf of the Owner by the Construction Lender following the occurrence of an event of default under the Construction Loan Agreement at a redemption price equal to the principal amount to be redeemed, together with accrued interest to the date fixed for redemption, without premium, from amounts in the Debt Service Fund consisting of the proceeds received by the Owner or on behalf of the Owner by the Construction Lender in connection with a fire, casualty or condemnation of any of the Project or any other property dedicated to, or owned by, the Owner within the District and allocable to the Bonds as determined by the Consultant and which proceeds are not used to rebuild the Project.

### **Section 3.10. Notice of Redemption.**

(a) When Bonds (or portions thereof) are to be redeemed pursuant to this **Article III** (other than **Section 3.02**) the Issuer shall give or cause to be given notice of the redemption of the Bonds to the Trustee no later than forty-five (45) days prior to the redemption date or such shorter time as may be acceptable to the Trustee. The notice may state (1) that it is conditioned upon the deposit of moneys, in an amount equal to the amount necessary to effect the redemption, with the Trustee no later than the date that is five (5) Business Days prior to the redemption date; or (2) that the Issuer retains the right to rescind such notice on or prior to the scheduled redemption date (in either case, a “Conditional Redemption”), and such notice and optional redemption shall be of no effect if such moneys are not so deposited or if the notice is rescinded as described in subsection (d) of this Section. The Trustee, at the expense of the Issuer, shall send notice of any redemption, identifying the Bonds or portions thereof to be redeemed, the redemption date and the method and place of payment and the information required by subsection (b) of this Section, by first-class mail to each holder of a Bond called for redemption to the holder’s address listed on the Bond Register. Such notice shall be sent by the Trustee by first-class mail between thirty (30) and sixty (60) days prior to the scheduled redemption date. With respect to Book Entry Bonds, if the Trustee sends notice of redemption to the Securities Depository pursuant to the Letter of Representations, the Trustee shall not be required to give the notice set forth in the immediately preceding sentence. If notice is given as stated in this paragraph (a), failure of any Bondholder to receive such notice, or any defect in the notice, shall not affect the redemption or the validity of the proceedings for the redemption of the Bonds.

(b) In addition to the foregoing, the redemption notice shall contain with respect to each Bond being redeemed, (1) the CUSIP number, (2) the date of issue, (3) the interest rate, (4) the maturity date, and (5) any other descriptive information determined by the Trustee to be needed to identify the Bonds. If a redemption is a Conditional Redemption, the notice shall so state. The Trustee shall also send each notice of redemption at least thirty (30) days before the redemption date to (a) any Rating Service then rating the Bonds to be redeemed; and (b) at least one of the national information services that disseminate notices of redemption of bonds such as the Bonds such services to be identified by the Trustee.

(c) On or before the date fixed for redemption, subject to the provisions of subsections (a) and (d) of this Section, moneys shall be deposited with the Trustee to pay the principal of, redemption premium, if any, and interest accrued to the redemption date

on the Bonds called for redemption. Upon the deposit of such moneys, unless the Issuer has given notice of rescission as described in subsection (d) of this Section, the Bonds shall cease to bear interest on the redemption date and shall no longer be entitled to the benefits of this Indenture (other than for payment and transfer and exchange) and shall no longer be considered Outstanding.

(d) Any Conditional Redemption may be rescinded in whole or in part at any time prior to the fifth Business Day prior to the redemption date if the Issuer delivers an Officer's Certificate of the Issuer to the Trustee instructing the Trustee to rescind the redemption notice. The Trustee shall give prompt notice of such rescission to the affected Bondholders. Any Bonds subject to Conditional Redemption where redemption has been rescinded shall remain Outstanding, and the rescission shall not constitute an Event of Default. Further, in the case of a Conditional Redemption, the failure of the Issuer to make funds available in part or in whole on or before the redemption date shall not constitute an Event of Default, and the Trustee shall give prompt notice to the Securities Depository or the affected Bondholders that the redemption did not occur and that the Bonds called for redemption and not so paid remain Outstanding.

**Section 3.11. Purchase at Any Time.** The Trustee, upon the written request of the Issuer shall purchase Bonds as specified by the Issuer as directed by the Owner in the open market at a price not exceeding a price set by Issuer as directed by the Owner. Such purchase of Bonds shall be made with funds provided by the Issuer and derived from the Owner, and not with any portion of the Trust Estate or any Defeasance Obligations. Upon purchase by the Trustee, such Bonds shall be treated as delivered for cancellation pursuant to **Section 2.11**. Nothing in this Indenture shall prevent the Issuer from purchasing Bonds on the open market without the involvement of the Trustee and delivering such Bonds to the Trustee for cancellation pursuant to **Section 2.11**. Bonds purchased pursuant to this Section which are subject to the mandatory sinking fund redemption schedule in **Section 3.02** shall be credited against future mandatory sinking fund redemption payments in accordance with **Section 3.02**. The principal amount of Bonds to be redeemed by optional redemption under this Indenture may be reduced by the principal amount of Bonds purchased by the Issuer and delivered to the Trustee for cancellation at least forty-five (45) days prior to the redemption date.

## ARTICLE IV

### FUNDS AND ACCOUNTS

**Section 4.01. Creation of Funds.** The following funds are hereby created and the proceeds of the Bonds and all Revenues received by the Trustee are, subject to the provisions of **Section 7.08**, to be deposited by it in the Funds described herein and held in trust for the purposes set forth herein:

- (a) Construction Fund.
- (b) Debt Service Fund.
- (c) Reserve Fund.

- (d) Rebate Fund.
- (e) Administrative Expense Fund.

**Section 4.02. Construction Fund.** The Construction Fund shall consist of the Project Account and the Issuance Expense Account. The Project Account shall be used for the payment of Costs of the Project. The Issuance Expense Account shall be used for payment of Issuance Costs.

No disbursements shall be made from the Project Account until the Developer closes on a Construction Loan for use to fund the costs of the Development in an amount not less than \$50,000,000. Amounts in the Project Account shall be held in Escrow by the Trustee until such time as the Owner delivers to the Trustee a certificate signed by an authorized representative of the Owner certifying to the execution and delivery of the Construction Loan Agreement to evidence the closing of the Construction Loan, together with a fully executed copy of the Construction Loan Agreement.

The Construction Fund shall consist of the amounts required or permitted to be deposited therein pursuant to any provision hereof and the proceeds of the Bonds shall be deposited therein in the amount set out in the Issuer's Tax Compliance Certificate and Agreement delivered in connection with the delivery of the Bonds. Payments from the Construction Fund, shall be made by the Trustee as follows:

(a) Payments from the Construction Fund shall be made only upon receipt by the Trustee of a requisition executed by the Developer in the form of Request for Payment set forth in **Appendix B**. The Trustee shall have five (5) business days from receipt thereof to fund any such Request.

(b) Upon the later of six months from the Issue Date or the payment of all Issuance Costs (as evidenced by a certificate of Issuer delivered to the Trustee), any moneys remaining in the Issuance Expense Account shall be transferred to the Project Account.

(c) Upon completion of the Project (as evidenced by a Completion Certificate delivered by the Developer to the Trustee), any moneys remaining in the Construction Fund shall be transferred to the Debt Service Fund to redeem Bonds pursuant to **Section 3.04**, unless the Developer directs that such moneys be deposited into the Reserve Fund, accompanied in either case by an opinion of Bond Counsel to the effect that such application will not adversely affect any applicable exemption from federal income taxation of the interest on the Bonds.

(d) Notwithstanding anything to the contrary herein, to the extent an Event of Default described in clause (a) or (b) of **Section 7.01** shall have occurred and be continuing and no other moneys are available under this Indenture to cure such Event of Default, no moneys on deposit in the Construction Fund shall be applied in accordance with **Section 4.02(c)**. In such event, moneys on deposit in the Construction Fund shall be applied by the Trustee in accordance with **Article VII**.

(e) The Trustee shall not in any event be responsible or liable to any Person other than the Issuer and the Developer for the disbursement of, or failure to disburse, moneys from the Construction Fund and no Contractors, Sub-Contractors or suppliers shall have any rights or claim against the Trustee or the Trust Estate.

(f) If paying any Request under this **Section 4.02**, the Trustee shall be entitled to rely as to the completeness and accuracy of all statements therein, and execution thereof by the Developer to be conclusive evidence of the approval of such Request.

#### **Section 4.03. Debt Service Fund.**

(a) The Trustee shall deposit into the Debt Service Fund and as appropriate, the Capitalized Interest Account and the Special Assessments Prepayment Account (1) the portion of the proceeds of the Bonds representing accrued and capitalized interest as set out in the Bond Order of the Issuer; (2) all Revenues; (3) any amounts received from the Developer or the Owner to be used for a redemption of the Bonds; and (4) all other amounts required or permitted hereunder to be deposited in the Debt Service Fund.

(b) Moneys on deposit in the Debt Service Fund shall be applied in the order as follows:

(i) To the payment of interest, when due, on all Outstanding Bonds, including any accrued interest due in connection with redemptions of Bonds;

(ii) To the payment, when due, of the principal of or redemption premium on the Bonds then payable at maturity or upon redemption;

(iii) To the payments of any deficiencies in the Reserve Fund in accordance with the requirements of **Section 4.04**, including for reimbursement to the provider of any credit facility deposited in the Reserve Fund pursuant to **Section 4.04(c)**; and

(iv) To the Administrative Expense Fund after application to the uses set forth in (i), (ii) and (iii) above.

(c) There is hereby created within the Debt Service Fund established with the Trustee a separate account designated the "Capitalized Interest Account." Amounts deposited in the Capitalized Interest Account shall be used solely for the purpose of paying interest on the Bonds through November and shall be applied by the Trustee for such purpose without any further authorization or direction. All interest and other investment earnings on the Capitalized Interest Account shall be retained in the Capitalized Interest Account.

(d) There is hereby created within the Debt Service Fund a separate account designated "Special Assessments Prepayment Account." The Trustee shall deposit prepayments of the Special Assessments into the Special Assessments Prepayment Account as designated as such by the Owner in writing and shall apply such funds to redeem the Bonds pursuant to **Section 3.05** hereof. All interest and other investment

earnings on the Special Assessments Prepayment Account shall be retained in the Special Assessments Prepayment Account. In the event of prepayment, prior to giving notice of the redemption of the Bonds, the Trustee shall transfer from the Reserve Fund to the Special Assessment Prepayments Account the amount then on deposit in the Reserve Fund. The amount of the prepayment (including the amount transferred from the Reserve Fund) shall be transferred to the Debt Service Fund and used to redeem the Bonds.

(e) Moneys on deposit in the Debt Service Fund shall at all times be invested at a yield equal to or less than the yield on the Bonds or in obligations issued by any state or political subdivision the interest on which is exempt from inclusion in gross income of the holder under Section 103 of the Code, provided that such obligations are rated in one of the two highest general classifications established by a rating service of nationally recognized expertise in rating bonds of states and their political subdivisions, all as directed by written direction of the Developer. The Trustee shall not be responsible for determining whether any investment is at a yield at or below the yield on the Bonds or whether any obligation meets the requirements of this Section.

#### **Section 4.04. Reserve Fund.**

(a) The Trustee initially shall deposit in the Reserve Fund an amount equal to the Required Reserve on the Bonds from the proceeds of the Bonds, as set forth under Certificate of the Underwriter described in Section 2.07(e). The amount of any withdrawal for the purpose of subsections (b)(i) of this Section shall be immediately restored from available Revenues in the Debt Service Fund after satisfying the requirements of **Section 4.03(b)(i) and (ii)** immediately. In addition, if the fair market value of the investments in the Reserve Fund is less than the Required Reserve on any valuation date in accordance with **Section 5.03**, the difference between such Required Reserve and the value of the Reserve Fund shall be restored from the first available surplus Revenues in the Debt Service Fund.

(b) Moneys on deposit in the Reserve Fund shall be applied as follows:

(i) On the date five days prior to each required payment from the Debt Service Fund, moneys in the Reserve Fund shall be applied to cure any deficiency in the Debt Service Fund with respect to payments of principal of and interest on the Bonds when due and payable;

(ii) Upon delivery of an Officer's Certificate of the Developer delivered to the Trustee, any amount in the Reserve Fund in excess of the Required Reserve on any valuation date shall be (a) transferred to the Debt Service Fund and applied to the payment of the principal of and redemption premium, if any, or interest on the Bonds; or (b) transferred to the Administrative Expense Fund.

(c) The Developer shall be permitted to substitute a letter of credit, surety bond or other credit enhancement (each, a "credit facility") for funds on deposit in the Reserve Fund, provided that:

(i) The credit facility (including any replacement credit facility) is issued by a bank, trust company, national banking association or insurance company whose unsecured long term debt obligations (in the case of a bank, trust company or national banking association) or whose claims paying abilities (in the case of an insurance company) are rated by a Rating Service, at the time the credit facility is issued and at the time of each extension or renewal thereof, in one of the two highest rating categories maintained by such Rating Service at the time of substitution;

(ii) The issuer of the credit facility does not receive as security for any reimbursement obligation in respect of the credit facility any lien, security interest or other similar right or interest in any property within the Trust Estate which is on a parity with or is superior to the rights of the Trustee in respect of such property;

(iii) The credit facility (including any replacement credit facility, if provided by a different issuer) has an initial term of not less than three (3) years and any extension, renewal or replacement (if provided by the same issuer) thereof has a term of not less than one year;

(iv) The Trustee is authorized and has the duty and right to draw on the credit facility to satisfy the purposes for which the Reserve Fund was established; and

(v) The Trustee shall receive an opinion of Counsel to the effect that all of the requirements set forth above have been satisfied and an opinion of Bond Counsel to the effect that the substitution of the credit facility will not, in and of itself, adversely affect the tax-exempt status of the Bonds.

Upon such substitution, funds on deposit in the Reserve Fund which, when added to the face amount of the credit facility, exceed the Required Reserve on all Outstanding Bonds shall be applied as provided in subsection (b)(ii) above. Thereafter, the credit facility shall be considered a part of the Reserve Fund and the amount available thereunder shall be included in any calculation of the amount required to be retained in the Reserve Fund; provided that, (a) if the sum of the amount available under the credit facility and the amount of moneys on deposit in the Reserve Fund exceeds the amount required to be on deposit pursuant to subsection (a) of this Section, the Issuer shall be permitted to (i) cause the amount available under the credit facility to be reduced by an amount equal to such excess, or (ii) direct that the excess moneys be applied as permitted under subsection (b)(ii) of this Section; and (b) if the credit facility is not extended, renewed or replaced at least three (3) months prior to its scheduled expiration or termination date, the Trustee shall, not later than five days prior to such date, draw on the credit facility for the full amount thereof.

(d) If there are cash and Eligible Investments on deposit in the Reserve Fund in addition to a credit facility, such cash and Eligible Investments will be drawn on prior to any draws on such credit facility.

**Section 4.05. Revenues to Be Held for All Bondholders, With Certain Exceptions.**

Until applied as herein provided and except where moneys have been deposited with or paid to the Trustee pursuant to an instrument restricting the application of such moneys to particular Bonds, the moneys and investments held in all Funds (other than amounts required to be on deposit in the Rebate Fund) established hereunder and the proceeds of any remedies exercised under **Article VII** hereof shall be held in trust pursuant to the terms of this Indenture for the equal and proportionate benefit of the holders of all Outstanding Bonds, except that: (a) on and after the date on which the interest or redemption premium on or principal of any particular Bond or Bonds is due and payable from the Debt Service Fund or, with respect to which a call for redemption has been given and funds for such redemption have been deposited with the Trustee and, if a Conditional Redemption, the rescission date has passed, the unexpended balance of the amount deposited or reserved in the Debt Service Fund for the making of such payments shall, to the extent necessary therefor, be held solely for the benefit of the Bondholder or Bondholders entitled thereto; and (b) any special redemption fund established in connection with the defeasance of any Bonds in accordance with Article IX shall be held for the benefit of the holders of Bonds being defeased.

**Section 4.06. Rebate Fund.** The Consultant shall calculate “arbitrage rebate” under Section 148(f) of the Code with respect to the Bonds. Accordingly, no amounts are expected to be deposited in the Rebate Fund. The Developer may deposit with the Trustee or direct the Trustee to deposit in the Rebate Fund amounts held in any Fund hereunder for any or all Bonds (which direction shall specify the procedures for collection and payment of amounts due in respect of arbitrage rebate) if (a) required under to Section 148(f) of the Code, or (b) the Consultant determines that the funding of the Rebate Fund prior to the due date of any payment to the United States of America is desirable and appropriate. The Rebate Fund is a trust fund, but amounts therein do not constitute part of the Trust Estate. Amounts on deposit in the Rebate Fund may be used solely to make payments to the United States of America under Section 148 of the Code and to pay costs related to the calculation of the amounts due, all at the written direction of the Developer. Upon satisfaction of the Developer’s covenants described above, any amounts remaining in the Rebate Fund shall be applied in accordance with **Section 4.08**. The Trustee shall not be responsible for determining any rebate amount when or if any rebate amount is due or for paying any rebate amount other than at the written direction of the Developer.

**Section 4.07. Administrative Expense Fund.**

(a) Proceeds of the Bonds in the amount of \$\_\_\_\_\_ shall be deposited into the Administrative Expense Fund.

(b) The Administrative Expense Fund shall be used to pay Administrative Expenses in an amount not to exceed \$\_\_\_\_\_ for each year (provided that such limit does not apply to Administrative Expenses incurred by the City).

(c) Moneys on deposit in the Administrative Expense Fund shall be applied to the payment of any Administrative Expenses and shall be disbursed solely upon the written requisition signed by the Developer, which requisition shall be the form attached hereto as **Exhibit C**.



**Section 4.08. Repayment to the Issuer and the Owner from Amounts Remaining in Any Funds.** Any amounts remaining in any Funds and constituting Bonds proceeds (a) after all of the Outstanding Bonds shall be deemed paid and discharged under the provisions of this Indenture, and (b) after payment of all fees, charges and expenses of the Trustee, the Bond Registrar and any Paying Agents and of all other amounts required to be paid under this Indenture, shall be paid to the Issuer to the extent that such amounts are in excess of those necessary to effect the payment and discharge of the Outstanding Bonds and payment of the Rebate Amount, if any. Any amounts remaining in Funds not constituting Bond proceeds after all of the Outstanding Bonds shall be deemed paid and discharged under the provisions of this Indenture and after payment of all fees, charges and expenses of the Trustee, the Bond Registrar and any Paying Agent and of all other amounts required to be paid under this Indenture shall be paid to the Owner or other entity last paying the Special Assessments.

**Section 4.09. Additional Funds and Accounts.** In addition to the funds and accounts specifically authorized under this Article, the Trustee shall have the authority to create and maintain such other funds and accounts as it may deem necessary for proper administration hereunder.

## ARTICLE V

### INVESTMENT OR DEPOSIT OF FUNDS

**Section 5.01. Deposits.** All moneys received by the Trustee under this Indenture for deposit in any Fund established hereunder shall be considered trust funds.

**Section 5.02. Investment or Deposit of Funds.** Moneys on deposit in the Funds established pursuant to **Article IV** shall be invested and reinvested by the Trustee as follows:

(a) All moneys on deposit in Funds shall be invested in Eligible Investments which shall mature, or be subject to repurchase, withdrawal without penalty or redemption at the option of the holder on or before the dates on which the amounts invested are reasonably expected to be needed for the purposes hereof.

(b) All purchases or sales of Eligible Investments shall be made at the direction of the Developer (given in writing or orally, confirmed in writing).

(c) (1) Any securities or investments held by the Trustee may be transferred by the Trustee, if required in writing by the Developer, from any of the Funds or accounts mentioned in Article IV to any other Fund or account mentioned in Article IV at the then current market value thereof without having to be sold and purchased or repurchased; provided, however, that after any such transfer or transfers, the investments in each such Fund or account shall be in accordance with the provisions as stated in this Indenture; and (2) whenever any other transfer or payment is required to be made from any particular Fund, such transfer or payment shall be made from such combination of maturing principal, redemption premiums, liquidation proceeds and withdrawals of principal as the Trustee deems appropriate for such purpose.

(d) Neither the Issuer nor the Trustee shall be accountable for any depreciation in the value of Eligible Investments or for any losses incurred upon any authorized disposition thereof.

(e) Subject to the foregoing, the Trustee is expressly authorized to invest moneys in two or more Funds in a single investment, provided that a portion of the investment allocable to each such Fund, and all payments received with respect to such allocable portion, shall be applied in accordance with the applicable provisions governing such Fund hereunder.

(f) Prior to the completion of the Project, investment income on amounts on deposit in the Debt Service Fund (other than the Capitalized Interest Account) and the Administrative Expense Fund shall be transferred to the Project Account to the extent that no deficiency will exist in the Debt Service Fund after such transfer or shall be applied to such other purpose or purposes as directed by the Issuer with an opinion of Bond Counsel addressed to the Trustee to the effect that such application will not cause interest on the Bonds to be includable in gross income for federal income tax purposes. Investment income on amounts on deposit in the Reserve Fund shall be transferred to the Debt Service Fund (Capitalized Interest Account prior to completion of the Project) to the extent that no deficiency will exist in the Reserve Fund after such transfer. Investment income on amounts on deposit in the Reserve Fund, after completion of the Project, to the extent no deficiency will exist in the Reserve Fund after such transfer, shall be transferred to the Administrative Expense Fund. In all other situations, earnings from investments (except earnings on the Rebate Fund and the Special Assessments Prepayment Account) shall be transferred to the Debt Service Fund.

(g) The Developer shall be responsible for directing the investment of moneys held by the Trustee under this Indenture in accordance with the provisions hereof. In directing the investments of such moneys the Developer shall certify that such investments constitute Eligible Investments, are permitted by applicable law and do not violate the covenants of the Issuer set forth in **Section 6.03**. The Trustee shall not be responsible for determining whether any investment made by it is authorized under any applicable law or violates the covenants set forth in **Section 6.03**.

**Section 5.03. Valuation of Funds.** The Trustee shall determine the market value of the assets in each of the Funds established hereunder annually on a date not earlier than three days prior to \_\_\_\_\_ of each year. As soon as practicable after each such valuation date, the Trustee shall furnish to the Issuer a report of the status of each Fund as of such date. The Trustee shall also advise the Issuer at such time of the amount then available in the Debt Service Fund as a credit against the Issuer's obligation to levy and collect the special taxes for deposit to the Debt Service Fund prior to the next valuation date. In computing the value of assets in any Fund, investments shall be valued at the fair market value thereof and shall include accrued but unpaid interest on each investment, and all investments (valued as aforesaid) and accrued interest thereon shall be deemed a part of such Funds. All Eligible Investments that mature within six (6) months of any valuation date or are payable on demand shall be valued at par plus any accrued and unpaid interest. Upon the request of the Issuer, the Trustee shall also provide the Issuer with monthly or other periodic statements showing amounts deposited into and withdrawn from each

Fund, the investments made with amounts in each Fund and the investment income received from such investments.

## ARTICLE VI

### COVENANTS AND AGREEMENTS OF THE ISSUER

**Section 6.01. Covenants and Agreements of the Issuer.** In addition to any other covenants and agreements of the Issuer contained in this Indenture or the Bond Ordinance, the Issuer further covenants and agrees with the Bondholders and the Trustee as follows:

- (a) To take all actions, if any which shall be necessary, in order further to provide for the levy of the Special Assessment;
- (b) To not take any action which would adversely affect the levy of the Special Assessment levied pursuant to the Levying Ordinance;
- (c) To comply with all requirements of the Act, the Bond Ordinance and other applicable present and future laws concerning the levy of the Special Assessment levied pursuant to the Levying Ordinance, to pay the principal of and interest on the Bonds as they come due;
- (d) To not encumber, pledge or place any charge or lien upon any of the Special Assessments or other amounts pledged to the Bonds superior to, or on a parity with, or junior to, the pledge and lien created in the Indenture for the benefit of the Bonds, except as permitted by, or specifically set forth in, this Indenture;
- (e) To take all actions which are necessary to be taken (and avoid any actions which it is necessary to avoid being taken) so that interest on the Bonds will not be or become included in gross income for federal income tax purposes under existing law; and
- (f) To take all actions which are necessary to be taken to enforce the Issuer's rights under the Development Agreement.

**Section 6.02. Representatives, Observance and Performance of Covenants, Agreements, Authority and Actions.** The Issuer hereby agrees to observe and perform at all times all covenants, agreements, authority, actions, undertakings, stipulations and provisions to be observed or performed on its part under this Indenture, the Bond Ordinance and the Bonds which are executed, authenticated and delivered under this Indenture.

The Issuer represents that:

- (a) It 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 and to provide the security for payment of the principal of, redemption premium, if any, and interest on the Bonds 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 have been or will be taken duly and effectively; provided no representation is made as to compliance with any state securities or “Blue Sky” laws.

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

### **Section 6.03. Tax Covenants.**

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

(b) The Issuer covenants that it (i) will take, or use its best efforts to require to be taken, all actions that may be required of the Issuer for the interest on the Bonds to be and remain not included in gross income for federal income tax purposes; and (ii) will not take or authorize to be taken any actions within its control that would adversely affect that status under the provisions of the Code.

(c) The Issuer further covenants as follows with respect to the requirements of Section 148(f) of the Code, relating to the rebate of “excess arbitrage profits” (the “Rebate Requirement”) to the United States:

(i) Unless an applicable exception to the Rebate Requirement is available to the Issuer, the Issuer will meet the Rebate Requirement.

(ii) Relating to applicable exceptions, the Issuer shall make such elections under the Code as it shall deem reasonable and in the best interests of the Issuer. If such election may result in a “penalty in lieu of rebate” as provided in the Code, and such penalty is incurred (the “Penalty”), then the Developer shall pay such Penalty.

(iii) The Developer shall, not less frequently than annually, cause to be transferred to the Rebate Fund the amount determined to be the accrued liability under the Rebate Requirement or Penalty. The Developer shall cause to be paid to the United States, from time to time as required, amounts sufficient to meet the Rebate Requirement or to pay the Penalty.

(iv) Interest earnings in the Debt Service Fund and the Reserve Fund are hereby authorized to be transferred at the written direction of the Developer, from time to time as required, to the Rebate Fund for the purposes herein provided; and proceeds of the Bonds, investment earnings or amounts on deposit in any of the other funds and accounts created hereunder are also hereby authorized to be used to meet the Rebate Requirement or to pay the Penalty, but only if necessary after application of investment earnings as aforesaid.

**Section 6.04. Special Limited Obligations.** The Bonds shall constitute special limited obligations of the Issuer, payable from the Revenues and other moneys deposited in the Funds established pursuant to Article IV other than the Rebate Fund. The Bonds shall not constitute general obligations of the Issuer and neither the full faith and credit nor the unlimited taxing power of the Issuer shall be pledged as security for payment of the Bonds

**Section 6.05. Levy and Extension of Special Assessment.**

(a) Pursuant to the Levying Ordinance there has been levied a Special Assessment upon all taxable real property within the District sufficient to pay and discharge the principal of the Bonds at maturity or mandatory sinking fund redemption dates and to pay interest on the Bonds for each year at the interest rates set forth in **Section 2.03** of this Indenture.

(b) The Special Assessment shall be divided among all taxable real property within the District in accordance with the terms of the Levying Ordinance.

**ARTICLE VII**

**EVENTS OF DEFAULT AND REMEDIES**

**Section 7.01. Events of Default Defined.** Each of the following is an “Event of Default” hereunder:

(a) Default in the payment of any installment of interest on any Bond when it becomes due and payable;

(b) Default in the payment of principal of (or redemption premium, if any, on) any Bond when it becomes due and payable;

(c) Subject to the provisions of **Section 7.07**, default in the performance, or breach, of any covenant or representation of the Issuer contained in this Indenture (other than a default under subsections (a) and (b) of this Section); or

(d) (1) An Event of Bankruptcy of the Issuer; (2) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar official of the Issuer or of any substantial portion of its property; or (3) the ordering of the winding up or liquidation of the affairs of the Issuer.

**Section 7.02. Remedies Upon Default.**

(a) If an Event of Default under **Section 7.01** occurs, the Trustee may, and upon the written request to the Trustee by the holder or holders of not less than 25% in aggregate principal amount of the Bonds then Outstanding shall, subject to the requirements of **Section 8.02(e)**, by written notice to the Issuer, proceed to protect and enforce its rights and the rights of the holders of the Bonds by a suit, action or special proceeding in equity or at law, by mandamus or otherwise, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any

power herein granted or for any enforcement of any proper legal or equitable remedy as the Trustee, being advised by counsel, shall deem most effective to protect and enforce any of the rights or interests of the holders of the Bonds under the Bonds or this Indenture.

(b) During the continuance of an Event of Default, all moneys received by the Trustee under this Indenture from the Issuer or from any other source shall be applied by the Trustee in accordance with the terms of **Section 7.08** hereof. Upon the occurrence of an Event of Default described in **Section 7.01(a) or (b)** of this Indenture, which occurs during such time as amounts remain on deposit in the Construction Fund, upon the written request of the holders of 25% in principal amount of the outstanding Bonds, the Trustee shall transfer any amounts on deposit in the Construction Fund to the Debt Service Fund to be applied by the Trustee in accordance with **Section 7.08** hereof;

(c) Any judgment against the Issuer shall be enforceable only against the amounts pledged pursuant to this Indenture. There shall not be authorized any deficiency judgment against any assets of, or the general credit of, the Issuer.

(d) The Bonds shall not be subject to acceleration upon the occurrence of an Event of Default.

**Section 7.03. Additional Remedies.** Without limiting the generality of the foregoing **Section 7.02**, the Trustee shall at all times have the power to institute and maintain such proceedings as it may deem expedient: (1) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Indenture, and (2) to protect its interests and the interests of the Bondholders in the Trust Estate and in the issues, profits, revenues and other income arising therefrom, including the power to maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule or order which may be unconstitutional or otherwise invalid, if the enforcement of, or compliance with, such enactment, rule or order would impair the Trust Estate or be prejudicial to the interests of the Bondholders or the Trustee.

**Section 7.04. Marshaling of Assets.** Upon the occurrence of an Event of Default, all moneys in all Funds (other than moneys in the Rebate Fund) shall be available to be utilized by the Trustee in accordance with this Article. The rights of the Trustee under **Section 8.05** shall be applicable. During the continuance of any such Event of Default, all provisions of this Indenture relating to the utilization of Funds, including but not limited to those set out in **Article IV**, shall be superseded by this Article. Subsequent to the curing or waiver of any such Event of Default, the provisions of this Indenture relating to utilization of Funds, including the provisions of **Article IV**, shall be reinstated.

**Section 7.05. Trustee May File Proofs of Claim.**

(a) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding under the Bankruptcy Code relating to the Issuer or any property of the Issuer, the Trustee whether or not the Trustee shall have made any demand upon the

Issuer for the payment of overdue principal, redemption premium, if any, and interest) shall be entitled and empowered, by intervention in such proceeding or other means:

(i) To file and prove a claim for the whole amount of the principal, redemption premium, if any, and interest owing and unpaid in respect of the Bonds then Outstanding or for breach of this Indenture and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and Counsel) and of the holders allowed in such proceeding; and

(ii) To collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator, sequestrator or similar official in any such judicial proceeding is hereby authorized by each holder to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and Counsel, and any other amounts due the Trustee under **Section 8.05.(b)**. No provision of this Indenture empowers the Trustee to authorize or consent to or accept or adopt on behalf of any holders of the Bonds any plan of reorganization, arrangement, adjustment or composition affecting any of the Bonds or the rights of any holder thereof, or to authorize the Trustee to vote in respect of the claim of any holder in any proceeding described in subsection (a) of this Section.

**Section 7.06. Possession of Bonds Not Required.** All rights under this Indenture and the Bonds may be enforced by the Trustee without possession of any Bonds or the production of them at trial or other proceedings. Any proceedings instituted by the Trustee may be brought in its name for itself or as representative of the Bondholders without the necessity of joining Bondholders as parties, and any recovery resulting from such proceedings shall, subject to Section 7.08, be for the ratable benefit of the Bondholders.

**Section 7.07. Notice and Opportunity to Cure Certain Defaults.** No default under **Section 7.01(c)** shall constitute an Event of Default until written notice of such default shall have been given to the Issuer and the Construction Lender by the Trustee or by the holders of at least 25% in aggregate principal amount of the Bonds Outstanding, and the Issuer and the Construction Lender shall have had thirty (30) days after receipt of such notice to correct such default or cause such default to be corrected, and shall have failed to do so. In the event, however, that the default be such that it cannot be corrected within such thirty (30) day period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer within such period and diligently pursued (as determined by the Trustee) until the default is corrected.

**Section 7.08. Priority of Payment Following Event of Default.**

(a) If at any time after the occurrence of an Event of Default the moneys held by the Trustee under this Indenture (other than amounts in the Rebate Fund) shall not be

sufficient to pay the principal of and interest on the Bonds as the same become due and payable, such moneys, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of remedies in this Article or otherwise, shall, subject to subsections (b) and (c) of this Section, be applied by the Trustee as follows:

(i) First, to the payment of all amounts due the Trustee under **Section 8.05**;

(ii) Second, to the payment of all installments of interest on the Bonds then due and payable in the order in which such installments became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment, ratably, according to the amounts due on such installments, without discrimination or preference;

(iii) Third, to the payment of the unpaid principal amount of any of the Bonds which shall have become due and payable, in the order of due dates (other than Bonds called for redemption or contracted to be purchased for the payment of which moneys are held pursuant to the provisions of this Indenture), with interest upon the principal amount of the Bonds from the respective dates upon which they shall have become due and payable, and, if the amount available shall not be sufficient to pay in full the principal of such Bonds due and payable on any particular due date, together with such interest, then to the payment first of such interest, ratably, according to the amount of principal due on such date, without any discrimination or preference; and

(iv) Fourth, to the payment of principal of, interest on and redemption premium if any, on Bonds called for redemption under Section 3.03, if any.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, the Trustee may, in its discretion, establish and maintain a reserve for future fees and expenses, and may apply moneys to be distributed at such times, and from time to time, as the Trustee shall determine, having due regard for 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 a 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 of principal to be paid on such dates, and for which moneys are available, shall cease to accrue. The Trustee shall also select a Record Date for such payment date if the payment date is not an Interest Payment Date. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any moneys and of the fixing of any such Record Date and payment 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 7.09. Bondholders May Direct Proceedings.** The owners of a majority in aggregate principal amount of the Bonds Outstanding shall, subject to the requirements of



**Section 8.02(e)**, have the right, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all remedial proceedings by the Trustee hereunder, provided that such direction shall not be in conflict with any rule of law or this Indenture and that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would be unduly prejudicial to the rights of Bondholders not parties to such direction or would subject the Trustee to personal liability or expense. Notwithstanding the foregoing, the Trustee shall have the right to select and retain Counsel of its choosing to represent it in any such proceedings. The Trustee may take any other action which is not inconsistent with any direction under this Section.

**Section 7.10. Limitations on Rights of Bondholders.**

(a) No Bondholder shall have any right to pursue any other remedy under this Indenture or the Bonds unless: (1) an Event of Default shall have occurred; (2) the owners of not less than 25% in aggregate principal amount of all Bonds then Outstanding have requested the Trustee, in writing, to exercise the powers hereinabove granted or to pursue such remedy in its or their name or names; (3) the Trustee has been offered indemnity satisfactory to it against costs, expenses and liabilities reasonably anticipated to be incurred; (4) the Trustee has declined to comply with such request, or has failed to do so, within sixty (60) days after its receipt of such written request and offer of indemnity; and (5) no direction inconsistent with such request has been given to the Trustee during such 60-day period by the holders of a majority in aggregate principal amount of the Bonds Outstanding.

(b) The provisions of subsection (a) of this Section are conditions precedent to the exercise by any Bondholder of any remedy hereunder. The exercise of such rights is further subject to the provisions of **Sections 7.09, 7.11 and 7.14**. No one or more Bondholders shall have any right in any manner whatever to enforce any right under this Indenture, except in the manner herein provided. All proceedings at law or in equity with respect to an Event of Default shall be instituted and maintained in the manner herein provided for the equal and ratable benefit of the Bondholders of all Bonds Outstanding.

**Section 7.11. Unconditional Right of Bondholder to Receive Payment.** Notwithstanding any other provision of this Indenture, any Bondholder shall have the absolute and unconditional right to receive payment of principal of, redemption premium, if any, and interest on the Bonds on and after the due date thereof, and to institute suit for the enforcement of any such payment; provided that the source of payment to Bondholders is limited to funds held under this Indenture.

**Section 7.12. Restoration of Rights and Remedies.** If the Trustee or any Bondholder has instituted any proceeding to enforce any right or remedy under this Indenture and any such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or such Bondholder, then the Trustee and the Bondholders shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and all rights and remedies of the Trustee and the Bondholders shall continue as though no such proceeding had been instituted.

**Section 7.13. Rights and Remedies Cumulative.** No right or remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other right or remedy, but each such right or remedy shall, to the extent permitted by law, be cumulative of and in addition to every other right or remedy given hereunder or now or hereafter existing at law, in equity or otherwise. The assertion or employment of any right or remedy hereunder shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

**Section 7.14. Delay or Omission Not Waiver.** No delay or omission by the Trustee or any Bondholder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of such Event of Default. Every right and remedy given by this Article or by law to the Trustee or the Bondholders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or the Bondholders, as the case may be.

**Section 7.15. Waiver of Defaults.**

(a) The holders of a majority in aggregate principal amount of the Outstanding Bonds may, by written notice to the Trustee and subject to the requirements of **Section 8.02(e)**, waive any existing default or Event of Default and its consequences, except an Event of Default under **Section 7.01(a) or (b)**. Upon any such waiver, the default or Event of Default shall be deemed cured and shall cease to exist for all purposes. No waiver of any default or Event of Default shall extend to or affect any subsequent default or Event of Default or shall impair any right or remedy consequent thereto.

(b) Notwithstanding any provision of this Indenture, in no event shall any Person, other than all of the affected Bondholders, have the ability to waive any Event of Default under this Indenture if such event results or may result, in the opinion of Bond Counsel, in interest on any of the Bonds becoming includable in gross income for federal income tax purposes.

**Section 7.16. Notice of Events of Default.** If an Event of Default occurs of which the Trustee has or is deemed to have notice under **Section 8.02(h)**, the Trustee shall give notice thereof to the Issuer within two (2) Business Days of acquiring knowledge. Within fifteen (15) days thereafter (unless such Event of Default has been cured or waived), the Trustee shall give notice of such Event of Default to each holder of Bonds then Outstanding, provided, however, that notice to Bondholders of any Event of Default under **Section 7.01(c)** shall be subject to the provisions of **Section 7.07** and shall not be given until the grace period has expired.

## ARTICLE VIII

### THE TRUSTEE

**Section 8.01. Duties and Responsibilities of the Trustee.**

(a) Prior to the occurrence of an Event of Default of which it has or is deemed to have notice hereunder, and after the curing or waiver of any Event of Default which may have occurred:

(i) The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) 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 therein, upon certificates, requests, requisitions or opinions furnished to the Trustee that conform to the requirements of this Indenture; but the Trustee is under a duty to examine such certificates and opinions to determine whether they conform to the requirements of this Indenture.

(b) In case an Event of Default of which the Trustee has or is deemed to have notice hereunder has occurred, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use in the conduct of such person's own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act, or its own willful misconduct, except that:

(i) This subsection shall not be construed to limit the effect of subsection (a) of this Section;

(ii) The Trustee is not liable for any error of judgment made in good faith by a Responsible Officer, unless it is proven that the Trustee was grossly negligent in ascertaining the pertinent facts;

(iii) The Trustee is not liable with respect to any action it takes or omits to be taken by it in good faith in accordance with the direction of the Bondholders under any provision of this Indenture relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture; and

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

(d) The Trustee shall maintain records of all investments and disbursements of proceeds in the funds and accounts established pursuant to this Indenture through the date ending six (6) years following the date on which all the Bonds have been retired.

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

(f) The Trustee shall provide to the Underwriter and any Beneficial Owner, upon request, copies of all monthly account statements and any information provided to

the Trustee by the Issuer pursuant to this Indenture and any information provided to the Trustee by the Developer.

**Section 8.02. Certain Rights of the Trustee.** Except as otherwise provided in **Section 8.01**:

(a) The Trustee may rely and is protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, requisition, consent, order, approval, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) Any request, direction, order or demand of the Developer under this Indenture shall be sufficiently evidenced by an Officer's Certificate of the Developer (unless other evidence thereof is specifically prescribed);

(c) Whenever in the administration of this Indenture the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence thereof is specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate of the Developer;

(d) The Trustee may consult with Counsel and the written advice of such Counsel or an opinion of Counsel shall be full and complete authorization and protection for any action taken, suffered or omitted by it in good faith and in accordance with such advice or opinion;

(e) The Trustee is under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Bondholders unless such holders have offered to the Trustee security or indemnity satisfactory to the Trustee as to its terms, coverage, duration, amount and otherwise with respect to the costs, expenses and liabilities which may be incurred by it in compliance with such request or direction, and the provision of such indemnity shall be mandatory for any remedy taken upon direction of the holders of 25% in aggregate principal amount of the Bonds;

(f) The Trustee is not required to make any inquiry or investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, requisition, direction, consent, order, approval, bond, debenture or other paper or document but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit and, if the Trustee determines to make such further inquiry or investigation, it is entitled to examine the books, records and premises of the Issuer in person or by agent or attorney;

(g) The Trustee may execute any of its trusts or powers or perform any duties under this Indenture either directly or by or through agents or attorneys, and may in all cases pay, subject to reimbursement as provided in **Section 8.05**, such reasonable compensation as it deems proper to all such agents and attorneys reasonably employed or

retained by it, and the Trustee shall not be responsible for any misconduct, negligence or gross negligence of any agent or attorney appointed with due care by it;

(h) The Trustee is not required to take notice or deemed to have notice of any default or Event of Default hereunder, except Events of Default under **Sections 7.01(a) and (b)**, unless a Responsible Officer of the Trustee has actual knowledge thereof or has received notice in writing of such default or Event of Default from the Issuer or the holders of at least 25% in aggregate principal amount of the Outstanding Bonds, and in the absence of any such notice, the Trustee may conclusively assume that no such default or Event of Default exists;

(i) The Trustee is not required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Indenture;

(j) In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of holders of Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Indenture, the Trustee, in its sole discretion, may determine what action, if any, shall be taken;

(k) The Trustee's immunities 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 and protections and right to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the defeasance or discharge of this Indenture and final payment of the Bonds;

(l) The permissive right of the Trustee to take the actions permitted by this Indenture shall not be construed as an obligation or duty to do so; and

(m) Except for information provided by the Trustee concerning the Trustee, the Trustee shall have no responsibility for any information in any offering memorandum 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 8.03. Trustee Not Responsible for Recitals.** The recitals contained in this Indenture and in the Bonds (other than the certificate of authentication on the Bonds) are statements of the Issuer, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the value, condition or sufficiency of any assets pledged or assigned as security for the Bonds, the right, title or interest of the Issuer therein, the security provided thereby or by this Indenture, the technical or financial feasibility of the Project, the compliance of the Project with the Act, or the tax-exempt status of the Bonds. The Trustee is not accountable for the use or application by the Issuer of any of the Bonds or the proceeds of the Bonds, or for the use or application of any moneys paid over by the Trustee in accordance with any provision of this Indenture or the Bond Ordinance.

**Section 8.04. Trustee May Own Bonds.** The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Bondholder may be entitled to take with like effect as if it were not Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the Issuer and may act as depository, trustee or agent for any committee of Bondholders secured hereby or other obligations of the Issuer as freely as if it were not Trustee. The provisions of this Section shall extend to affiliates of the Trustee.

**Section 8.05. Compensation and Expenses of the Trustee.** The Issuer covenants and agrees that the Administrative Expenses shall be paid from the Administrative Expense Fund as follows:

(a) To pay to the Trustee compensation for all services rendered by it hereunder and under the other agreements relating to the Bonds to which the Trustee is a party in accordance with terms agreed to from time to time, and, subsequent to default, in accordance with the Trustee's then-current fee schedule for default administration (the entirety of which compensation shall not be limited by any provision of law regarding compensation of a trustee of an express trust); and

(b) To reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture, any other agreement relating to the Bonds to which it is a party or in complying with any request by the Issuer or any Rating Service with respect to the Bonds, including the reasonable compensation, expenses and disbursements of its agents and Counsel, except any such expense, disbursement or advance attributable to the Trustee's negligence or bad faith.

In the event the Trustee incurs expenses or renders services in any proceedings under Bankruptcy Law relating to the Issuer the expenses so incurred and compensation for services so rendered are intended to constitute expenses of administration under Bankruptcy Law.

The Trustee shall have a lien prior to the lien securing the Bonds, which it may exercise through a right of setoff, upon all property or funds held or collected by the Trustee pursuant to this Indenture (other than moneys in the Rebate Fund). The obligations of the Issuer to make the payments described in this Section shall survive discharge of this Indenture, the resignation or removal of the Trustee and payment in full of the Bonds.

**Section 8.06. Qualifications of Trustee.** There shall at all times be a trustee hereunder which shall be a corporation or banking association organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise corporate trust powers, which has a combined capital and surplus of at least \$50,000,000, or is an affiliate of, or has a contractual relationship with, a corporation or banking association meeting such capital and surplus requirement which guarantees the obligations and liabilities of the proposed trustee), and which is subject to supervision or examination by federal or state banking authority. If such corporation or banking association publishes reports of condition at least annually, pursuant to law or the requirements of any supervising or reexamining authority above referred

to, then for purposes of this Section, the combined capital and surplus of such corporation or banking association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign promptly in the manner and with the effect specified in this Article.

**Section 8.07. Resignation or Removal of Trustee; Appointment of Successor Trustee.**

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under **Section 8.08**.

(b) The Trustee may resign at any time by giving written notice to the Issuer. Upon receiving such notice of resignation, the Issuer shall promptly appoint a successor Trustee by an instrument in writing. If an instrument of acceptance has not been delivered to the resigning Trustee within thirty (30) days after the giving of such notice of resignation, the resigning Trustee or any holder of a Bond then Outstanding may petition a court of competent jurisdiction for the appointment of a successor Trustee.

(c) Prior to the occurrence and continuance of an Event of Default hereunder, or after the curing or waiver of any such Event of Default, the Issuer, or the holders of a majority in aggregate principal amount of the Outstanding Bonds, may remove the Trustee and shall appoint a successor Trustee. In the event there shall have occurred and be continuing an Event of Default hereunder, the holders of a majority in aggregate principal amount of the Outstanding Bonds may remove the Trustee and shall appoint a successor Trustee. In each instance such removal and appointment shall be accomplished by an instrument or concurrent instruments in writing signed by the Issuer or such holders, as the case may be, and delivered to the Trustee, the Issuer and holders of the Outstanding Bonds.

(d) If at any time (1) the Trustee shall cease to be eligible and qualified under **Section 8.06** and shall fail or refuse to resign after written request to do so by the Issuer or the holder of any Bond; or (2) the Trustee shall become incapable of acting or shall be adjudged insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take charge or control of the Trustee, its property or affairs for the purpose of rehabilitation, conservation or liquidation, then in either such case (a) the Issuer may remove the Trustee and appoint a successor Trustee in accordance with the provisions of subsection (c) of this Section; or (b) any holder of a Bond then Outstanding may, on behalf of the holders of all Outstanding Bonds, petition a court of competent jurisdiction for removal of the Trustee and appointment of a successor Trustee.

(e) The Issuer shall give written notice of each resignation or removal of the Trustee and each appointment of a successor Trustee to each holder of Bonds then Outstanding as listed in the Bond Register. Each such notice shall include the name and address of the applicable corporate trust office of the successor Trustee.

**Section 8.08. Acceptance of Appointment by Successor Trustee.**

(a) Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer and the predecessor Trustee an instrument accepting its appointment. The resignation or removal of the retiring Trustee shall thereupon become effective, and the successor Trustee shall, without further act, deed or conveyance become vested with all the estates, properties, rights, powers and duties of the predecessor Trustee. Upon the request of the Issuer or the successor Trustee, the predecessor Trustee shall execute and deliver an instrument transferring to the successor Trustee all the estates, properties, rights, powers and duties of the predecessor Trustee under this Indenture, and shall duly assign, transfer, deliver and pay over to the successor Trustee all the Trust Estate and moneys and other property then held under this Indenture, subject, however, to the lien provided for in **Section 8.05**. The successor Trustee shall promptly give written notice of its appointment to the holders of all Bonds Outstanding in the manner prescribed herein, unless such notice has previously been given.

(b) No successor Trustee shall accept appointment as provided in this Section unless, as of the date of such acceptance, it is eligible and qualified under the provisions of **Section 8.06**.

**Section 8.09. Merger, Succession or Consolidation of Trustee.** Any corporation or association (a) into which the Trustee is merged or with which it is consolidated; (b) resulting from any merger or consolidation to which the Trustee is a party; or (c) succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor Trustee without the execution or filing of any document or the taking of any further action. Any such successor must nevertheless be eligible and qualified under the provisions of **Section 8.06**.

**ARTICLE IX**

**DISCHARGE AND DEFEASANCE**

**Section 9.01. Discharge.**

If:

(a) The principal of any Bonds and the interest due or to become due thereon together with any redemption premium required by redemption of any of the Bonds prior to maturity shall be paid, or is caused to be paid, or is provided for under **Section 9.02**, at the times and in the manner to which reference is made in the Bonds, according to the true intent and meaning thereof, or the outstanding Bonds shall have been paid and discharged in accordance with this Article, and

(b) All of the covenants, agreements, obligations, terms and conditions of the Issuer under this Indenture shall have been kept, performed and observed and there shall have been paid to the Trustee, the Bond Registrar and the Paying Agent all sums of money due or to become due to them in accordance with the terms and provisions hereof,



then the right, title and interest of the Trustee in the Trust Estate shall there upon cease and the Trustee, on request and at the expense of the Issuer, shall release this Indenture and the Trust Estate and shall execute such documents to evidence such release as may be reasonably required by the Issuer and shall turnover to the Issuer, or to such other Person as may be entitled to receive the same, all balances remaining in any Funds hereunder except for amounts required to pay such Bonds or held pursuant to **Section 4.09**.

### **Section 9.02. Defeasance; Deposit of Funds for Payment of Bonds.**

If the Issuer deposits with the Trustee moneys or Defeasance Obligations which, together with the earnings thereon, are sufficient to pay the principal of and redemption premium on any particular Bond or Bonds becoming due, either at maturity, by means of mandatory sinking fund redemption or by call for optional redemption or otherwise, together with all interest accruing thereon to the due date or Redemption Date, and pays or makes provision for payment of all fees, costs and expenses of the Issuer and the Trustee due or to become due with respect to such Bonds, all liability of the Issuer with respect to such Bond or Bonds shall cease, such Bond or Bonds shall be deemed not to be Outstanding hereunder and the holder or holders of such Bond or Bonds shall be restricted exclusively to the moneys or Defeasance Obligations so deposited, together with any earnings thereon, for any claim of whatsoever nature with respect to such Bond or Bonds, and the Trustee shall hold such moneys, Defeasance Obligations and earnings in trust for such holder or holders. In determining the sufficiency of the moneys and Defeasance Obligations deposited pursuant to this Section, the Trustee shall receive, at the expense of the Issuer, and may rely upon (a) a verification report of a firm of nationally recognized independent certified public accountants or other qualified firm acceptable to the Issuer; and (b) an opinion of Bond Counsel to the effect that (1) all conditions set forth in this Article have been satisfied, and (2) that defeasance of the Bonds will not cause interest on the Bonds to be includable in gross income for federal income tax purposes. Upon such defeasance all rights of the Issuer, including its right to provide for optional redemption of Bonds on dates other than planned pursuant to such defeasance, shall cease unless specifically retained by filing a written notification thereof with the Trustee at the time the Defeasance Obligations are deposited with the Trustee.

At such times as a Bond shall be deemed to be paid hereunder, as aforesaid, it shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such money or Defeasance Obligations and except for the provisions of this Section, **Section 2.03, 2.04, 2.05, 2.07, 2.08, 2.10, 2.11, 2.12, 4.03, 11.08 and Article X**, and the Issuer shall continue to be subject to the provisions of **Section 8.05**.

### **Section 9.03. Notice of Defeasance.**

(a) In case any of the Bonds, for the payment of which moneys or Defeasance Obligations have been deposited with the Trustee pursuant to **Section 9.02**, are to be redeemed on any date prior to their maturity, the Issuer shall give to the Trustee in form satisfactory to it irrevocable instructions to give notice of redemption of such Bonds on the redemption date for such Bonds as provided in **Section 3.06**.

(b) In addition to the foregoing notice, in the event such Bonds to be redeemed are not by their terms subject to redemption within the next succeeding sixty

(60) days, the Trustee shall give further notice to the Bondholders that the deposit required by **Section 9.02** has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this Article and stating the maturity or redemption date or dates upon which moneys are to be available for the payment of the principal of and redemption premium, if any, on said Bonds; such further notice shall be given promptly following the making of the deposit required by **Section 9.02**; and such further notice also shall be given in the manner set forth **Section 3.06**; but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of the deposit.

(c) If the Issuer has retained any rights pursuant to the last sentence of **Section 9.02**, notice thereof shall be sent to Bondholders of such Bonds as soon as practicable and not later than any notice required by subsections (a) or (b) of this Section.

## ARTICLE X

### SUPPLEMENTAL INDENTURES AND AMENDMENTS

**Section 10.01. Supplemental Indentures Without Bondholders' Consent.** The Issuer and the Trustee may from time to time and at any time enter into trust indentures supplemental to this Indenture, without the consent of or notice to any Bondholder, to effect any one or more of the following:

(a) Cure any ambiguity or defect or omission or correct or supplement any provision herein or in any supplemental indenture;

(b) Grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Bondholders or the Trustee which are not contrary to or inconsistent with this Indenture as then in effect or to subject to the pledge and lien of this Indenture additional revenues, properties or collateral including Defeasance Obligations;

(c) Add to the covenants and agreements of the Issuer in this Indenture other covenants and agreements thereafter to be observed by the Issuer or to surrender any right or power herein reserved to or conferred upon the Issuer which are not contrary to or inconsistent with this Indenture as then in effect;

(d) Permit the appointment of a co-trustee under this Indenture;

(e) Modify, alter, supplement or amend this Indenture in such manner as shall permit the qualification of this Indenture, if required, under the Trust Indenture Act of 1939 or, the Securities Act of 1933, as from time to time amended, or any similar federal statute hereafter in effect;

(f) Make any other change herein that is determined by the Trustee to be not materially adverse to the interests of the Bondholders; or

(g) If the Bonds are all Book Entry Bonds, amend, modify, alter or replace the Letter of Representations as provided in **Section 2.12** or other provisions relating to Book Entry Bonds.

The Trustee shall not be obligated to enter into any such supplemental indenture which adversely affects the Trustee's own rights, duties or immunities under this Indenture.

**Section 10.02. Supplemental Indentures Requiring Bondholders' Consent.** The Issuer and the Trustee, at any time and from time to time, may execute and deliver a supplemental indenture for the purpose of making any modification or amendment to this Indenture, but only with the written consent, given as provided in **Section 10.03**, of the holders of at least two-thirds in aggregate principal amount of the Bonds Outstanding at the time such consent is given, and in case less than all of the Bonds then Outstanding are affected by the modification or amendment, of the holders of at least two-thirds in aggregate principal amount of the Bonds so affected and Outstanding at the time such consent is given; provided, however, that if such modification or amendment will, by its terms, not take effect so long as any Bonds so affected remain Outstanding, the consent of the holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section. Notwithstanding the foregoing, no modification or amendment contained in any such supplemental indenture shall permit any of the following, without the consent of each Bondholder whose rights are affected thereby (a) a change in the terms of stated maturity or redemption of any Bond or of any installment of interest thereon; (b) a reduction in the principal amount of or redemption premium on any Bond or in the rate of interest thereon or a change in the coin or currency in which such Bond is payable; (c) the creation of a lien on or a pledge of any part of the Trust Estate, or the money or assets pledged under this Indenture or any part thereof; (d) the granting of a preference or priority of any Bond or Bonds over any other Bond or Bonds; (e) a reduction in the aggregate principal amount of Bonds of which the consent of the Bondholders is required to effect any such modification or amendment; or (f) a change in the provisions of **Section 7.15**. Notwithstanding the foregoing, the holder of any Bond may extend the time for payment of the principal of or interest on such Bond; provided, however, that upon the occurrence of an Event of Default, funds available hereunder for the payment of the principal of and interest on the Bonds shall not be applied to any payment so extended until all principal and interest payments which have not been extended have first been paid in full. Notice of any supplemental indenture executed pursuant to this Section shall be given to the Bondholders promptly following the execution thereof by the Issuer.

**Section 10.03. Consents of Bondholders and Opinions.** Each supplemental indenture executed and delivered pursuant to the provisions of **Section 10.02** shall take effect only when and as provided in this **Section 10.03**. A copy of such supplemental indenture (or brief summary thereof or reference thereto in form approved by the Trustee), together with a request to Bondholders for their consent thereto in form satisfactory to the Trustee, shall be sent by the Trustee to Bondholders, at the expense of the Issuer, by first-class mail, postage prepaid, provided that a failure to mail such request shall not affect the validity of the supplemental indenture when consented to as provided hereinafter. Such supplemental indenture shall not be effective unless and until there shall have been filed with the Trustee (a) the written consents of Bondholders of the percentage of Bonds specified in **Section 10.02** given as provided in

**Section 11.11;** and (b) the opinion of Counsel described in **Section 10.05**. Any such consent shall be binding upon the Bondholder giving such consent and upon any subsequent holder of such Bonds and of any Bonds issued in exchange therefore or in lieu thereof (whether or not such subsequent Bondholder has notice thereof), unless such consent is revoked in writing by the Bondholder giving such consent or a subsequent holder of such Bonds by filing such revocation with the Trustee prior to the date the Trustee receives the material required in subsections (a) and (b) of this Section.

**Section 10.04. Notation on Bonds.** Bonds authenticated and delivered after the effective date of any action taken as provided in this Article may, and, if the Issuer so determines, shall bear a notation by endorsement or otherwise in form approved by the Trustee as to such action, and in that case upon demand of the holder of any Outstanding Bond at such effective date and presentation of such Bond for the purpose at the Office of the Trustee, or upon any transfer of any Bond Outstanding at such effective date, suitable notation shall be made on such Bond or upon any Bond issued upon any such transfer by the Trustee as to any such action. If the Issuer shall so determine, new Bonds so modified as in the opinion of the Trustee and the Issuer to conform to such action shall be prepared, authenticated and delivered, and upon demand of the holder of any Bond then Outstanding shall be exchanged, without cost to such Bondholder for Bonds then Outstanding, upon surrender of such Bonds for Bonds of an equal aggregate principal amount and of the same maturity and interest rate, in any Authorized Denomination.

**Section 10.05. Delivery of Counsel's Opinion with Respect to Supplemental Indentures.** Subject to the provisions of Section 8.01, the Trustee in executing or accepting the additional trusts permitted by this Article or the modifications thereby of the trusts created by this Indenture may rely, and shall be fully protected in relying, on an opinion of Counsel acceptable to it stating that (a) the execution of such supplemental indenture is authorized or permitted by this Indenture; and (b) all conditions precedent to the execution and delivery of such supplemental indenture have been complied with, and an opinion of Bond Counsel that the execution and performance of such supplemental indenture shall not, in and of itself, adversely affect the federal income tax status of the Bonds. The Trustee may accept and rely upon such opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to the provisions of this Article complies with the requirements of this Article.

**Section 10.06. Effect of Supplemental Indentures.** Upon the execution and delivery of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every holder of any Bond theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

**Section 11.01. Security Agreement; Financing Statements.** In addition to the assignment by the Issuer of its rights in the Trust Estate to the Trustee, the Issuer hereby acknowledges that, in order to more fully protect, perfect and preserve the rights of the Trustee

and the Bondholders in the Trust Estate, the Issuer grants to the Trustee a security interest in the Trust Estate and the proceeds thereof. The Issuer agrees to cooperate with the Trustee in filing financing statements, and continuations thereof, in such manner and in such places as may be required by law to perfect such security interest. At the time of the issuance of the Bonds and at the required intervals under applicable State law, the Trustee, at the expense of the Issuer, may obtain an opinion of Counsel setting forth what, if any, actions by the Issuer or Trustee should be taken in order to protect, perfect and preserve such security interest. The Trustee shall cooperate with the Issuer as necessary.

The following information is supplied to facilitate filings under the Uniform Commercial Code of the State:

The secured party is Manufacturers and Traders Trust Company. Its address from which information concerning the security interest may be obtained and its mailing address is: 25 South Church Street, Baltimore, Maryland 21201 Attention: Corporate Trust Department. The debtor is the City of Overland Park, Kansas. Its mailing address is: 8500 Santa Fe, Overland Park, Kansas 66212.

**Section 11.02. Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, and the Bondholders any legal or equitable right, remedy or claim under or in respect to this Indenture. This Indenture and all of the covenants, conditions and provisions hereof are intended to be and are for the sole and exclusive benefit of the parties hereto and the Bondholders as herein provided.

**Section 11.03. Severability.** If any term or provision of this Indenture or the Bonds shall be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever, and such term and provision shall be valid and enforced to the fullest extent permitted by law.

**Section 11.04. Notices.** Except as otherwise provided herein, all notices, certificates or other communications hereunder shall be in writing and shall be deemed given upon receipt, by hand delivery, mail, overnight delivery, telecopy or other electronic means addressed as follows:

Issuer: City of Overland Park, Kansas  
8500 Santa Fe  
Overland Park, KS 66212  
Attention: Deputy City Manager

Trustee: Manufacturers and Traders Trust Company  
25 South Church Street  
Baltimore, Maryland 21201  
Attention: Corporate Trust Department

In case by reason of the suspension of regular mail service, it shall be impracticable to give notice by first-class mail of any event to any Bondholder or the Issuer when such notice is required to be given pursuant to any provisions of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be sufficient giving of such notice. The Issuer and the Trustee may, by notice pursuant to this Section, designate any different addresses to which subsequent notices, certificates or other communications shall be sent. A duplicate copy of each notice, approval, consent, request, complaint, demand or other communication given hereunder by the Issuer or the Trustee to any one of the others shall also be given to the others. For purposes of this Section and the definition of Immediate Notice, "electronic means" shall mean telecopy or facsimile transmission or other similar electronic means of communication which produces evidence of transmission.

Notwithstanding the foregoing, notices to the Trustee shall be effective only upon receipt.

**Section 11.05. Holidays.** If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Indenture and no interest shall accrue on the payment so deferred during the intervening period.

**Section 11.06. Counterparts.** This Indenture may be executed in any number of counterparts, each of which when so executed and delivered shall constitute an original, but all of which, when taken together, shall constitute but one and the same instrument, and shall become effective when copies hereof shall be delivered to each of the parties hereto, which copies, when taken together, bear the signatures of each of the parties hereto.

**Section 11.07. Applicable Law.** This Indenture shall be governed in all respects including validity, interpretation and effect by, and shall be enforceable in accordance with, the laws of the United States of America and of the State.

**Section 11.08. Limitation of Liability of Officials of the Issuer.** Notwithstanding anything to the contrary contained herein, for payment of the obligations of the Issuer under this Indenture and the Bonds, the Trustee, the Bondholders and any other party entitled to seek payment from the Issuer under or to enforce this Indenture and the Bonds will be entitled to look solely to amounts on deposit with and held by the Trustee for the benefit of the Bondholders, subject to the terms of this Indenture, and no other property or assets of the Issuer or any officer or director of the Issuer shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies hereunder, or for any payment required to be made under this Indenture and the Bonds, or for the performance of any of the covenants or warranties contained herein.

**Section 11.09. Successors and Assigns.** All the covenants, promises and agreements in this Indenture contained by or on behalf of the Issuer, or by or on behalf of the Trustee, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

**Section 11.10. Form of Documents Delivered to Trustee.** In any case where several matters are required to be certified by, or covered by an opinion of any specified person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such person, or that they be so certified or covered by only one document, but one such person may certify or give an opinion with respect to some matters and one or more other such persons as to other matters, and any such person may certify or give an opinion as to such matters in one or several documents.

Any Officer's Certificate of the Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, Counsel. Any opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an official or officials of the Issuer or an officer or officers of the Issuer stating that the information with respect to such factual matters is in the possession of the Issuer.

Where any person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

**Section 11.11. Consent of Holders.** Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Bondholders may be in any number of concurrent writings of similar tenor and must be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument, namely:

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

(b) The Trustee may establish a Record Date for the purpose of identifying Bondholders entitled to issue any such consent, request, direction, approval or instrument.

**Section 11.12. Acknowledgment of Construction Lender.** Upon delivery by the Owner to the Trustee of the Certificate evidencing the closing of the Construction Loan (which Certificate is required pursuant to **Section 4.02** of this Indenture), the Trustee hereby agrees that it shall execute a written acknowledgement (the "Acknowledgement") to the Construction Lender that is named as the "Lender" or "Administrative and Collateral Agent for the Lenders" under the Construction Loan Agreement, which Acknowledgement shall identify such lender as

the “Construction Lender” for purposes of this Indenture, [and shall acknowledge that such lender is and shall continue to be entitled to all of the benefits to which the Construction Lender is entitled under any and all documents executed in connection with the issuance of the Bonds. Such benefits include, but are not limited to: certain rights to receive notice and to cure a default (**Section 7.07** of this Indenture), and certain redemption provisions (**Section 3.08** of this Indenture).]



IN WITNESS WHEREOF, the Issuer has caused this Indenture to be signed in its name by its Mayor and attested by its Attesting Officer, and the Trustee, in acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunder duly authorized all as of the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

By: \_\_\_\_\_  
Carl Gerlach  
Mayor

[SEAL]

ATTEST:

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

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be signed in its name by its Mayor and attested by its Attesting Officer, and the Trustee, in acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunder duly authorized all as of the day and year first above written.

MANUFACTURERS AND TRADERS TRUST  
COMPANY, as Trustee

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