



# City of Chicago



F2022-66

Office of the City Clerk

## Document Tracking Sheet

<b>Meeting Date:</b>	9/21/2022
<b>Sponsor(s):</b>	Dept./Agency
<b>Type:</b>	Communication
<b>Title:</b>	Notification of Sale authorizing issuance of Multi-Family Housing Revenue Bonds in amount of \$40,453,000 for Barbara Jean Wright Court Apartments Project, Series 2022
<b>Committee(s) Assignment:</b>	



CITY OF CHICAGO

DEPARTMENT OF FINANCE

Office of the Chicago City Clerk  
2022 SEP 16 AM9:45

September 15, 2022

Anna M. Valencia  
City Clerk  
121 North LaSalle Street  
Room 107  
Chicago, Illinois 60602

RE: Multi-Family Housing Revenue Bonds (Barbara Jean Wright Court Apartments Project),  
Series 2022, in an aggregate principal amount of \$40,453,000 (the "Bonds").

Dear Ms. Valencia:

Attached is the Notification of Sale which is required to be filed with your office pursuant to Section 6 of the ordinance authorizing the issuance of Multi-Family Housing Revenue Bond in an aggregate principal amount of \$40,453,000 for Barbara Jean Wright Court Apartments Project Multi-Family Housing Revenue Bonds, Series 2022 which was passed by the City Council on July 20, 2022.

Please direct this filing to the City Council.

Very Truly Yours,

Jennie Huang Bennett  
Chief Financial Officer

**CITY OF CHICAGO**

**\$40,453,000**

**MULTIFAMILY HOUSING REVENUE BONDS  
(BARBARA JEAN WRIGHT COURT APARTMENTS PROJECT)  
SERIES 2022**

Office of the Chicago City Clerk  
**2022 SEP 16 AM 9:45**

**NOTIFICATION OF SALE**

To: The City Council of the City of Chicago

Please be advised that responsive to authority contained in the Ordinance adopted by the City Council (the "City Council") of the City of Chicago (the "City") on July 20, 2022 (the "Bond Ordinance"), providing for the issuance of the City's Multifamily Housing Revenue Bonds (Barbara Jean Wright Court Apartments Project), Series 2022, in the aggregate principal amount of \$40,453,000 (the "Bonds"), (i) the Bonds; (ii) the Loan Agreement dated as of September 1, 2022 (the "Loan Agreement"), by and among the City, The Huntington National Bank, a national banking association (the "Trustee"), and BJ Wright Preservation LP, an Illinois limited partnership (the "Borrower"), (iii) the Bond Indenture dated as of September 1, 2022, by and between the City and the Trustee (the "Indenture"), (iv) the Bond Purchase Agreement dated September 8, 2022, by and among the City, the Borrower and Stifel, Nicolaus & Company, Incorporated, as representative of the underwriters named therein (the "Representative"), (v) the Tax Compliance Agreement dated as of September 1, 2022, by and between the City and the Borrower (the "Tax Compliance Agreement"), and (vi) the Land Use Restriction Agreement dated as of September 1, 2022, by and between the City and the Borrower (the "LURA"), were executed and delivered by me, as the Chief Financial Officer of the City, in order to provide for the making of a loan to the Borrower. Capitalized terms defined in the Bond Ordinance are used with the same meanings herein.

The Bond Ordinance provided that:

- (i) the Bonds may be issued in such aggregate principal amount not to exceed \$42,000,000;
- (ii) the maximum term of the Bonds shall not exceed five (5) years from the date of execution and delivery of said Bonds;
- (iii) the Bonds shall bear interest at a rate or rates as provided in the Indenture (which shall not exceed the lesser of 6.0% or the maximum rate of interest allowable under state law) and shall be as determined by the Authorized Officer and shall be payable on the payment dates as set forth in the Indenture; and
- (iv) the provisions for execution, signatures, payment and prepayment, with respect to the Bonds shall be as set forth in the Indenture.

Attached hereto as Appendix A are the Terms of the Bonds. Attached hereto as Exhibit A is a copy of the final form of the Indenture.

[Signature Page Follows]

Respectfully submitted this 15<sup>th</sup> day of September, 2022.

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

  
Jennie Huang Bennett  
Chief Financial Officer

**ACKNOWLEDGEMENT OF FILING**

The Notification of Sale of Multifamily Housing Revenue Bonds (Barbara Jean Wright Court Apartments Project), Series 2022, in the aggregate principal amount of \$40,453,000 was filed in the office of the City Clerk of the City of Chicago, this 15<sup>th</sup> day of September, 2022.

[Signature Page Follows]

**ACKNOWLEDGEMENT OF FILING  
BARBARA JEAN WRIGHT COURT APARTMENTS PROJECT, SERIES 2022**

Respectfully submitted this 15<sup>th</sup> day of September, 2022.

By: Andrea M. Valencia  
Andrea M. Valencia  
City Clerk

[SEAL]

## **APPENDIX A**

### **TERMS OF BONDS**

Re: Multifamily Housing Revenue Bonds (Barbara Jean Wright Court Apartments Project), Series 2022 (the “Bonds”)

The Bonds are dated September 15, 2022, mature on October 1, 2025, are in the principal amount of \$40,453,000, and are payable on and in such places and in such manner, are subject to prepayment, and bear interest as described in the Indenture.

**EXHIBIT A**  
**BOND INDENTURE**



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**BOND INDENTURE**

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**Between**

**CITY OF CHICAGO, COOK COUNTY, ILLINOIS**

**and**

**THE HUNTINGTON NATIONAL BANK,**

**as Bond Trustee**

**With Respect to**

**\$40,453,000 Multi-Family Housing Revenue Bonds  
(Barbara Jean Wright Court Apartments Project)  
Series 2022**

**Dated as of September 1, 2022**

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## BOND INDENTURE

THIS BOND INDENTURE ("**Bond Indenture**" or "**Indenture**"), dated as of September 1, 2022, between the **CITY OF CHICAGO**, a municipality and home rule unit of government duly organized and validly existing under the Constitution and the laws of the State of Illinois (the "**Issuer**"), and **THE HUNTINGTON NATIONAL BANK**, as Trustee (such trustee or any of its successors in trust being the "**Trustee**" or "**Bond Trustee**").

### RECITALS

**WHEREAS**, pursuant to Article VII, Section 6 of the 1970 Constitution of the State of Illinois and pursuant to the hereinafter defined Ordinance of the Issuer, the Issuer is authorized to exercise any power and perform any function pertaining to its government and affairs, including the power to issue its revenue bonds in order to aid in providing an adequate supply of residential housing for low and moderate income persons or families within the Issuer, which constitutes a valid public purpose for the issuance of revenue bonds by the Issuer;

**WHEREAS**, the Issuer has determined to issue, sell and deliver not to exceed \$40,453,000 aggregate principal amount of its Multi-Family Housing Revenue Bonds (Barbara Jean Wright Court Apartments Project), Series 2022 (the "**Bonds**"), as provided herein for the purpose of making a loan to BJ Wright Preservation, LP, a limited partnership organized under the laws of the State of Illinois, and its successors and assigns (the "**Borrower**") to finance all or a portion of the costs of the acquisition, construction and equipping of an approximately 272-unit scattered site multifamily housing rental apartment complex to be known as Barbara Jean Wright Court Apartments with a common address of 1354 South Morgan Street, Chicago, Illinois (the "**Project**"), as more fully described in Exhibit B attached hereto; and

**WHEREAS**, the Issuer will loan the proceeds of the Bonds to the Borrower by entering into a Loan Agreement dated as of September 1, 2022 (the "**Loan Agreement**" or "**Agreement**"), between the Issuer and the Borrower, and the Bonds shall be payable solely from the revenues received by the Issuer from the repayment of the loan of the proceeds of the Bonds to the Borrower (the "**Loan**") and from other revenues derived from the Loan and the Bonds; and

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

**WHEREAS**, all things necessary to make the Bonds, when authenticated by the Bond Trustee and issued as in this Indenture provided, the valid, binding and legal limited obligations of the Issuer according to the import thereof, and to constitute this Bond Indenture a valid assignment and pledge of the amounts assigned and pledged to the payment of the principal of, premium, if any, and interest on the Bonds and the creation, execution and delivery of this Bond Indenture, and the creation, execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

**NOW, THEREFORE**, that to secure the payment of Bond Service Charges on the Bonds according to their true intent and meaning, to secure the performance and observance of all of the covenants, agreements, obligations and conditions contained therein and herein, 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 Holders, and for other good and valuable consideration, the receipt of which is acknowledged, the Issuer has executed and delivered this Indenture and absolutely assigns hereby to the Trustee (except Reserved Rights), and to its successors in trust, and its and their assigns, all right, title and interest of the Issuer in and to:

### **GRANTING CLAUSES**

For the equal and proportionate benefit, security and protection of the Bonds issued under and secured by this Bond Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the others of the Bonds:

(i) the Revenues, including, without limitation, all Loan Payments, and other amounts receivable by or on behalf of the Issuer under the Loan Agreement in respect of repayment of the Loan,

(ii) the Special Funds, including all accounts in those Funds and all money deposited therein and the investment earnings on such money,

(iii) subject to the provisions of the Ordinance, all right, title and interest of the Issuer in the proceeds derived from the sale of the Bonds, and any securities in which money in the Special Funds are invested, and (except for money required to be rebated to the United States of America under the Code) the proceeds derived therefrom, and any and all other real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind pledged, assigned or transferred, as and for additional security hereunder by the Issuer or by anyone on its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms of this Indenture,

(iv) the Note, and

(v) the Loan Agreement, except for the Reserved Rights (the foregoing collectively referred to as the "**Trust Estate**").

**PROVIDED, HOWEVER, AND NOTWITHSTANDING THE FOREGOING, THE TRUST ESTATE SHALL NOT INCLUDE THE REBATE FUND OR ANY MONEYS OR INVESTMENTS REQUIRED TO BE DEPOSITED IN THE REBATE FUND;**

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

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

(a) except as provided otherwise herein, for the equal and proportionate benefit, security and protection of all present and future Holders of the Bonds issued or to be issued under and secured by this Indenture,

(b) for the enforcement of the payment of the principal of and interest on the Bonds, 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,

in each case, without preference, priority or distinction, as to lien or otherwise, 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 ratably hereby, 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

- (i) if the principal of the Bonds and the interest due or to become due thereon shall be well and truly paid, 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 Article IX hereof,
- (ii) if 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 all sums of money due or to become due to it in accordance with the terms and provisions hereof, and
- (iii) this Indenture and the rights assigned hereby shall cease, determine and be void, except as provided in Section 9.03 hereof with respect to the survival of certain provisions hereof; otherwise, this Indenture shall be and remain in full force and effect.

It is declared that all Bonds issued hereunder and secured hereby are to be issued, authenticated and delivered, and that the Trust Estate assigned hereby is 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. The Issuer has agreed and covenanted, and agrees and covenants with the Trustee and with each and all Holders, as follows:

## **ARTICLE 1 DEFINITIONS**

**Section 1.01 Definitions.** The terms defined in this Section 1.01 or in the Recitals hereto (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Bond Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01 or in the Recitals hereto. "*Act of Bankruptcy*" means the filing of a petition in bankruptcy (or other commencement of a bankruptcy, insolvency or similar proceeding) by or against the Borrower under any applicable bankruptcy, insolvency, reorganization or similar law, as now or hereafter in effect.

*“Additional Payments”* means the amounts required to be paid by the Borrower pursuant to the provisions of Section 4.04 of the Loan Agreement.

*“Administrative Expenses”* means the Issuer Fee, the City Administrative Fee, the Ordinary Trustee Fees and Expenses and the Dissemination Agent Fee.

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

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

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

*“Authorized Issuer Representative”* means any person or persons specifically authorized by the Ordinance to take the action intended.

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

*“Beneficial Owner”* means with respect to the Bonds, the Person owning the Beneficial Ownership Interest therein.

*“Beneficial Ownership Interest”* means the right to receive payments and notices with respect to the Bonds held in a Book-Entry System.

*“Bond Counsel”* means ArentFox Schiff, or any attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America or the District of Columbia.

*“Bond Fund”* means the Bond Fund created in Section 4.01 hereof.



*“Bond Indenture”* or *“Indenture”* means this Bond Indenture and all indentures supplemental hereto.

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

*“Bond Purchase Agreement”* means the Bond Purchase Agreement, with respect to the Bonds among the Underwriter, the Issuer and the Borrower.

*“Bond Trustee”* means The Huntington National Bank, until a successor Bond Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter, *“Bond Trustee”* shall mean the successor Bond Trustee.

*“Bond Service Charges”* means, for any period or payable at any time, the principal of and interest on the Bonds for that period or payable at that time whether due at maturity or upon redemption, Mandatory Tender or acceleration.

*“Bond Year”* means each annual period of twelve months ending on June 30 as applicable; provided, however, that the first annual period commences on the date of the original issuance and delivery of the Bonds and ends on June 30, 2019 and the last of which ends on the maturity of the Bonds.

*“Bonds”* means the Issuer’s Multi-Family Housing Revenue Bonds (Barbara Jean Wright Court Apartments Project), Series 2022 in the aggregate principal amount of not to exceed \$40,453,000 issued under and secured by this Bond Indenture.

*“Book-Entry Form”* or *“Book-Entry System”* means, with respect to the Bonds, a form or system, as applicable, under which (a) physical Bond certificates in fully registered form are issued only to a Securities Depository or its nominee, with the physical Bond certificates “immobilized” in the custody of the Securities Depository and (b) the ownership of book-entry interests in Bonds and Bond Service Charges thereon may be transferred only through a book-entry made by others than the Issuer or the Trustee. The records maintained by others than the Issuer or the Trustee constitute the written record that identifies the owners, and records the transfer, of book-entry interests in those Bonds and Bond Service Charges thereon.

*“Borrower”* means BJ Wright Preservation, LP, a limited partnership organized under the laws of the State of Illinois, and its successors and assigns.

*“Borrower Documents”* when used with respect to the Borrower, means all documents and agreements executed and delivered by the Borrower as security for or in connection with the issuance of the Bonds, including but not limited to, the Financing Documents and the Mortgage Loan Documents. The Borrower Documents do not include any documents or agreements to which the Borrower is not a direct party, including the Bonds or this Indenture.

*“Borrower’s Tax Certificate”* means the Borrower’s Tax Certificate, dated the Closing Date, executed and delivered by the Borrower in connection with the issuance of the Bonds.

*“Bridge Lender”* means The Huntington National Bank, in its capacity as maker of the Bridge Loan.

*“Bridge Loan”* means that \$20,300,000 loan from Bridge Lender to Borrower.

*“Business Day”* means any day of the year on which (i) banks located in the City of Chicago and the city in which the Designated Office of the Trustee is located, are not required or authorized to remain closed and (ii) The New York Stock Exchange is not closed.

*“Cash Flow Projection”* means a written cash flow projection prepared by an Independent firm of certified public accountants, a financial advisory firm, a law firm or other Independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Rating Agency, establishing the sufficiency of (a) the amount on deposit in the Special Funds, (b) projected investment income to accrue on amounts on deposit in the Special Funds during the applicable period and (c) any additional Eligible Funds delivered to the Trustee by or on behalf of the Borrower to pay Bond Service Charges and the Administrative Expenses, in each instance, when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds, (ii) a proposed remarketing of the Bonds, as provided in Section 3.07 hereof, and (iii) the release of Eligible Funds from the Negative Arbitrage Account, as provided in Section 4.03 hereof.

*“Certificate of the Issuer,” “Statement of the Issuer,” “Request of the Issuer”* and *“Requisition of the Issuer”* mean, respectively, a written certificate, statement, request or requisition, with or without the seal of the Issuer, signed in the name of the Issuer by an Authorized Issuer Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and if so combined shall be read and construed as a single instrument.

*“City Administrative Fee”* means the City Administrative Fee to be paid by the Trustee on behalf of the Borrower to the Issuer, described in Section 4.15 of this Bond Indenture.

*“Closing Date”* means the initial date of delivery of the Bonds in exchange for the purchase price of the Bonds sized as set forth in Section 2.13(j).

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

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

*“Completion Certificate”* means the certificate attached as Exhibit C to the Loan Agreement.

*“Completion Date”* means the date of the completion of the rehabilitation of the Project, as that date shall be certified as provided in Section 3.09 of the Loan Agreement.

*“Continuing Disclosure Agreement”* means the Continuing Disclosure Agreement, dated the date of issuance of the Bonds, between the Borrower and the Digital Assurance Certification

LLC, as dissemination agent, as the same may amended, restated or supplemented from time to time.

*“Controlling Holders”* means, in the case of consent or direction to be given hereunder, the Holders of the majority in aggregate principal amount of the Outstanding Bonds.

*“Controlling HUD and GNMA Requirements”* means the National Housing Act and any applicable HUD or GNMA regulations, and related HUD or GNMA administrative requirements and prohibitions.

*“Costs of Issuance”* means the “issuance costs” with respect to the Bonds within the meaning of Section 147(g) of the Code.

*“Costs of Issuance Fund”* means the Costs of Issuance Fund created in Section 4.01 hereof.

*“Designated Office of the Trustee”* means the office of the Bond Trustee at the Notice Address set forth in this Section 1.01 or, solely for purposes of presentation for transfer, payment or exchange of the Bonds, the designated corporate trust operations or agency office of the Trustee in Grand Rapids, Michigan, or at such other address as may be specified in writing by the Trustee.

*“Disbursement Agreement”* means the agreement with respect to the Project entered into by and among HUD, the Lender, the Issuer, the Community Opportunity Fund, the Bridge Lender, the Trustee and the Borrower, relating to the funding of the Project Costs.

*“Dissemination Agent”* means Digital Assurance Certification, LLC, or any successor, as Dissemination Agent under the Continuing Disclosure Agreement.

*“Dissemination Agent Fee”* means the fee payable to the Dissemination Agent as compensation for its services and expenses in performing its obligations under the Continuing Disclosure Agreement; provided, however, the amount of the Dissemination Agent Fee payable under this Indenture is limited to money withdrawn from the Expense Fund and the Borrower will be responsible to pay the remaining amount of the Dissemination Agent Fee pursuant to Section 4.04 of the Loan Agreement.

*“DTC”* means The Depository Trust Company (a limited purpose trust company), New York, New York, and its successors or assigns.

*“DTC Participant”* means any participant contracting with DTC under its book-entry system and includes securities brokers and dealers, banks and trust companies and clearing corporations.

*“Electronic Means”* means e-mail, facsimile, or any other electronic means of communication approved in writing by the Issuer, Trustee and Underwriter.

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

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

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

*"Eligible Investments"* means, subject to the provisions of Section 4.10 hereof and to the extent authorized under State law any of the following obligations which mature (or are redeemable at the option of the Trustee) at such time or times as to enable disbursements to be made from the fund in which such investment is held or allocated in accordance with the terms of this Indenture:

- (a) Government Obligations; and
- (b) Shares or units in any money market mutual fund rated "Aaa-mf" by Moody's (or the equivalent Highest Rating Category given by the Rating Agency for that general category of security) including mutual funds of the Trustee or its affiliates or for which the Trustee or an affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor that are "registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of direct obligations of the government of the United States of America.

*“Event of Default”* means (a) with respect to this Indenture, any of the events described as an Event of Default in Section 6.01 hereof and (b) with respect to the Loan Agreement, any of the events described as a Default in Section 8.01 of the Loan Agreement.

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

*“Extension Payment”* means the amount due, if any, to provide adequate additional funds for the payment of Bond Service Charges and Administrative Expenses during a Remarketing Period in connection with the change or extension of the Mandatory Tender Date pursuant to Section 3.07 hereof, and (a) which shall be determined by a Cash Flow Projection approved in writing by the Rating Agency and (b) must consist of Eligible Funds other than the proceeds of the Bonds.

*“Federal Tax Status”* means, as to the Bonds, the status of the interest on the Bonds as excludable from gross income for federal income tax purposes of the Holders of the Bonds (except on Bonds while held by a substantial user or related person, each as defined in the Code).

*“FHA”* means the Federal Housing Administration, an organizational unit within HUD, and may refer to the Commissioner thereof, any authorized representative thereof or the successor thereof.

*“FHA Commitment”* means the Commitment for Insurance of Advances issued by FHA with respect to FHA Insurance on the Mortgage Loan, as the same may be amended.

*“FHA Insurance”* means the mortgage insurance for the Mortgage Loan by FHA under the provisions of Section 220 of the National Housing Act and the regulations promulgated thereunder.

*“Financing Documents”* means this Indenture, the Bonds, the Loan Agreement, the Note, the Disbursement Agreement, the Borrower’s Tax Certificate, the Issuer’s Tax Certificate, the Tax Regulatory Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement and any other instrument or document executed in connection with the Bonds, together with all modifications, extensions, renewals and replacements thereof, but excluding the GNMA Documents and the Mortgage Loan Documents.

*“Force Majeure”* means any of the causes, circumstances or events described as constituting Force Majeure in Section 8.01 of the Loan Agreement.

*“GNMA”* means the Government National Mortgage Association, and its successors and assigns.

*“GNMA Certificate”* means a mortgage backed security issued by the Lender, guaranteed as to timely payment of principal and interest by GNMA pursuant to the National Housing Act and the regulations thereunder, and issued with respect to and backed by the Mortgage Loan.

*“GNMA Documents”* means any GNMA Certificate, the commitment issued by GNMA to the Lender to guarantee the GNMA Certificate or GNMA Certificates and all other documents,

certifications and assurances executed and delivered by the Lender, GNMA or the Borrower in connection with the GNMA Certificate or GNMA Certificates.

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

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

*“Holder”* or *“Bondholder”* when used with respect to any Bond, means the Person in whose name such Bond is registered.

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

*“HUD Regulatory Agreement”* means the Regulatory Agreement for Insured Multifamily Housing Projects between the Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

*“Indenture”* means this Bond Indenture, dated as of September 1, 2022, between the Issuer and the Bond Trustee, as amended or supplemented from time to time.

*“Independent”* when used with respect to a specified Person means such Person has no specific financial interest direct or indirect in the Borrower or any Affiliate of the Borrower and in the case of an individual is not a director, trustee, officer, partner, member or employee of the Borrower or any Affiliate of the Borrower and in the case of an entity, does not have a partner, director, trustee, officer, member or employee who is a director, trustee, partner, member, officer or employee of any partner or member of the Borrower or any Affiliate of the Borrower.

*“Inducement Ordinance”* means the Ordinance adopted on January 26, 2022 evidencing the official intent of the Issuer to issue the Bonds.

*“Initial Borrower Deposit”* means funds in the amount of \$0 provided by or on behalf of the Borrower, which is to be deposited as provided in Section 4.02(b) hereof.

*“Initial Interest Rate”* means 4.00% per annum.

*“Initial Mandatory Tender Date”* means October 1, 2024.

*“Initial Remarketing Date”* means the Initial Mandatory Tender Date, but only if the conditions for remarketing the Bonds on such date as provided in Section 3.07 hereof are satisfied.

*“Interest Payment Date”* means (a) April 1 and October 1 of each year beginning April 1, 2023, (b) each Redemption Date and (c) each Mandatory Tender Date. In the case of insufficient funds to pay the purchase price on the Bonds following Mandatory Tender on the Initial Mandatory Tender Date, “Interest Payment Date” also means the first Business Day of each month as provided in the second paragraph of Section 2.02 hereof. In the case of a payment of defaulted interest, “Interest Payment Date” also means the date of such payment established pursuant to Section 2.03 hereof.

*“Interest Period”* means, initially, the period from the Closing Date to and including day before first interest payment date, and thereafter, the period commencing on each succeeding Interest Payment Date and ending on the last day of the month preceding the next Interest Payment Date.

*“Interest Rate”* means the Initial Interest Rate to but not including the Initial Mandatory Tender Date, and thereafter the applicable Remarketing Rate.

*“Interest Rate for Advances”* means the rate per annum which is two percent plus that interest rate announced by the Trustee in its lending capacity as a bank as its “Prime Rate” or its “Base Rate.”

*“Investor Limited Partner”* means Wincopin Circle LLLP, a Maryland limited liability limited partnership, and its permitted successors and assigns.

*“Issuer Documents”* means the Financing Documents to which the Issuer is a party.

*“Issuer Fee”* means an amount equal to 1.5% of the par amount of the Bonds, paid by the Trustee on behalf of the Borrower to the Issuer on the Closing Date in connection with, and as consideration for, the issuance of the Bonds.

*“Issuer’s Tax Certificate”* means the Issuer’s Tax Certificate, dated the Closing Date, from the Issuer.

*“Land Use Restriction Agreement”* means the Land Use Restriction Agreement dated as of September 1, 2022, between the Issuer and the Borrower with respect to the Project and the Bonds.

*“Lender”* means PGIM Real Estate Agency Financing, LLC.

*“Lender Funds”* means warehouse funds or other funds of the Lender to be advanced by the Lender to the Trustee and/or proceeds, if any, received from the sale by the Lender of GNMA Securities, which, in the aggregate, do not exceed \$40,453,000, and which do not represent an advance of Mortgage Loan funds.

*“Loan”* means the loan by the Issuer to the Borrower of the proceeds received from the sale of the Bonds.

*“Loan Agreement”* means the Loan Agreement dated as of the date hereof among the Issuer, the Borrower and the Bond Trustee, as the same may be amended, restated or supplemented from time to time.

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

*“Local Time”* means Eastern time (daylight or standard, as applicable) in Indianapolis, Indiana.

*“Mandatory Tender”* means a tender of Bonds required by Section 3.05 hereof.

*“Mandatory Tender Date”* means (a) the Initial Mandatory Tender Date and (b) if the Bonds Outstanding on the Initial Mandatory Tender Date or on any subsequent Mandatory Tender Date are remarketed pursuant to Section 3.07 hereof for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

*“Maturity Date”* means October 1, 2025.

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

*“Mortgage Loan”* means the mortgage loan to be made from the Lender to the Borrower in the principal amount of \$46,900,000 with respect to the Project, as described and provided for in the FHA Commitment.

*“Mortgage Loan Documents”* means the mortgage, the mortgage note, the HUD Regulatory Agreement and all other documents required by the Lender and/or FHA in connection with the Mortgage Loan.

*“National Housing Act”* means the National Housing Act of 1934, as amended.

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

*“Note”* means the promissory note of the Borrower, dated as of even date with the Bonds initially issued, in the form attached as Exhibit A to the Loan Agreement and in the principal amount of \$40,453,000, evidencing the obligation of the Borrower to make Loan Payments.

*“Notice Address”* means with respect to each of the Persons listed below the address set forth below until such time as such Person shall have notified each of the other Persons listed below of a new Notice Address.



If to the Issuer:

City of Chicago  
Department of Housing and Economic Development  
City Hall  
121 N. LaSalle Street, Room 1006  
Chicago, Illinois 60602

With copies to:

City of Chicago  
Office of the Corporation Counsel  
City Hall - Room 600  
121 North LaSalle Street  
Chicago, Illinois 60602  
Attention: Finance and Economic Development  
Division

and to:

City of Chicago  
Department of Finance - Financial Policy 33 North  
LaSalle Street, Suite 600  
Chicago, Illinois 60602  
Attention: Deputy Comptroller

If to the Borrower:

BJ Wright Preservation, LP  
551 Fifth Avenue, 23<sup>rd</sup> Floor  
New York, New York 10176  
Attention: Nathan D. Taft, Authorized Signatory

with a copy to:

Applegate & Thorne-Thomsen  
425 South Financial Place, Suite 1900  
Chicago, Illinois 60605  
Attention: Nicholas Brunick

If to the Lender:

PGIM Real Estate Agency Financing, LLC  
2100 Ross Avenue, Suite 2500  
Dallas, Texas 75201  
Attention: FHA Loan Servicing Department

with a copy to:

Vorys, Sater, Seymour and Pease LLP  
301 East Fourth Street, Suite 3500  
Great American Tower  
Cincinnati, Ohio 45202  
Attention: William D.G. Baldwin

If to the Bond Trustee: The Huntington National Bank, as Bond Trustee  
Corporate Trust MI-231  
150 Ottawa, 9<sup>th</sup> Floor  
Grand Rapids, Michigan 49505  
Attention: Patrick O'Donnell, Vice President  
Email: Patrick.j.odonnell@huntington.com

If to the Remarketing Agent: Stifel, Nicolaus & Company, Incorporated  
10500 NE 8<sup>th</sup> Street  
Suite 1410  
Bellevue, WA 98004  
Attention: David Dill

If to the Investor Limited Partner: Wincopin Circle LLLP  
c/o Enterprise Community Asset Management, Inc.  
11000 Broken Land Parkway, Suite 700  
Columbia, Maryland 21044  
Attn: Asset Management

With a copy to:

Email: sshack@enterprisecommunity.com  
Attention: General Counsel

If to the Rating Agency: Moody's Investors Service, Inc.  
7 World Trade Center  
250 Greenwich Street, 16th Floor  
New York, New York 10007  
Attention: Public Finance Group – Housing Team  
Electronic notices shall be delivered to:  
Housing@moody.com

*"Notice by Mail"* or *"notice"* of any action or condition *"by Mail"* shall mean a written notice meeting the requirements of this Bond Indenture mailed by first-class mail to the Holders of specified registered Bonds at the addresses shown in the Bond Register.

*"Optional Redemption Date"* means October 1, 2024.

*“Ordinance”* means the ordinance adopted by the City Council of the Issuer on July 20, 2022, authorizing the issuance, sale and delivery of the Bonds.

*“Ordinary Trustee Fees and Expenses”* means an upfront fee in the amount of \$20,000 payable on the Closing Date, payable from funds of the Borrower.

*“Organizational Documents”* means the Borrower’s First Amended and Restated Agreement of Limited Partnership dated September 15, 2022.

*“Outstanding”* when used with respect to the Bonds, means all Bonds theretofore authenticated and delivered under this Bond Indenture, except:

(a) Bonds theretofore cancelled by the Bond Trustee or theretofore delivered to the Bond Trustee for cancellation;

(b) Bonds for the payment or redemption of which money or obligations shall have been theretofore deposited with the Bond Trustee in accordance with Article IX hereof;

(c) Bonds paid pursuant to Section 2.03 hereof; and

(d) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under this Bond Indenture.

*“Participant”* when used with respect to any Securities Depository means any participant of such Securities Depository.

*“Paying Agent”* or *“paying agent”* means the Bond Trustee and its successors designated pursuant to this Bond Indenture.

*“Person”* or *“Persons”* means one or more natural persons, firms, associations, partnerships, corporations, limited liability companies or public bodies.

*“Plans and Specifications”* means the plans and specifications describing the Project as now prepared and as they may be changed, revised and updated from time to time as provided in the Loan Agreement.

*“Predecessor Bond”* of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by the particular Bond. For the purposes of this definition, any Bond authenticated and delivered under Section 2.09 hereof in lieu of a lost, stolen or destroyed Bond shall, except as otherwise provided in Section 2.09, be deemed to evidence the same debt as the lost, stolen or destroyed Bond.

*“Project”* means the acquisition, construction, rehabilitation and equipping of an approximately 272-unit multifamily housing rental apartment complex to be known as Barbara Jean Wright Court Apartments located at 1000-1038 West 14th Street, Chicago, Illinois.

*“Project Costs”* means, to the extent authorized by the Code, any and all costs incurred by the Borrower with respect to the acquisition, rehabilitation, construction and equipping of the Project, including, without limitation, costs for site preparation, the planning of housing and related facilities and improvements, the acquisition of property, the removal, demolition or rehabilitation of existing structures, the construction of housing and related facilities and improvements, and all other work in connection therewith, and all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractors’ and Borrower’s overhead and supervisors’ fees and costs directly allocable to the Project, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, county or entity for expenditures made for the Project), and interest accrued during construction and prior to the Completion Date.

*“Project Fund”* means the Project Fund created in Section 4.01 hereof

*“Qualified Project Costs”* means Project Costs (excluding Costs of Issuance) paid (i) after the date which is 60 days prior to the adoption of the Inducement Ordinance or (ii) prior to such date which are nevertheless eligible for reimbursement under the Code, which either constitute land or property of a character subject to the allowance for depreciation under Section 167 of the Code or are chargeable to a capital account with respect to the Project for federal income tax and financial accounting purposes, or would be so chargeable either with a proper election by the Borrower or but for the proper election by the Borrower to deduct those amounts within the meaning of Code Regulation 1.103-8(a)(1)(i); provided, however, that only such portion of interest accrued during construction of the Project shall constitute a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all Project Costs; and provided, further, that interest accruing after the Completion Date shall not be a Qualified Project Cost; and provided still further that, if any portion of the Project is being constructed by an Affiliated Party (whether as a general contractor or a subcontractor), “Qualified Project Costs” shall include only (a) the actual out-of-pocket costs incurred by such Affiliated Party in constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Affiliated Party and (c) any overhead expenses incurred by the Affiliated Party which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the construction of the Project or payments received by such Affiliated Party due to early completion of the Project (or any portion thereof).

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

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

*“Rebate Amount”* means the amount required to be rebated to the United States pursuant to Section 148 of the Code.

*“Rebate Analyst”* means a certified public accountant, financial analyst or attorney, or any firm of the foregoing, or a financial institution (which may include the Bond Trustee) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code and selected by the Issuer at the expense of the Borrower to calculate the Rebate Amount or, in the event that the Issuer fails to so select a Rebate Analyst and the Borrower fails to pay such fee one month prior to any date on which calculations are required to be made, any qualified person retained by the Bond Trustee to calculate the Rebate Amount, at the Borrower’s expense. The initial Rebate Analyst shall be Tiber Hudson LLC.

*“Rebate Analyst Fee”* means the fee of the Rebate Analyst in an amount to be paid from moneys in the Rebate Fund and other funds provided by the Borrower for such purpose.

*“Rebate Fund”* means the Rebate Fund created in Section 4.01 hereof

*“Redemption Date”* means any date on which Bonds are redeemed in accordance with this Bond Indenture, including (a) the Maturity Date, (b) the date of acceleration of the Bonds and (c) pursuant to Sections 3.01 and 3.05 hereof.

*“Register”* means the books kept and maintained by the Trustee for registration and transfer of Bonds pursuant to Section 2.10 hereof.

*“Regular Record Date”* means, with respect to any Bond, the fifteenth day of the calendar month next preceding an Interest Payment Date.

*“Rehabilitation Expenditures”* shall mean, unless otherwise provided in Section 147(d)(3) of the Code and the Regulations, any amount, whether or not financed with the net proceeds of the Bonds, that is:

- (a) properly chargeable to the capital account of the Project;
- (b) incurred by the Borrower, or by the seller of such building pursuant to applicable contract of sale, after the inducement date and prior to the date that is 2 years after the later of the issue date or the acquisition of such building by the Borrower;
- (c) incurred for property (or additions or improvements to property) in connection with the rehabilitation of a building comprising a part of the Project and, in the case of an integrated operation contained in such a building before its acquisition by the Borrower, the rehabilitation of existing equipment in such building or the replacement of such equipment with equipment having substantially the same function; and
- (d) not an expenditure described in Section 47(c)(2)(B) of the Code.

*“Remarketing Agent”* means Stifel, Nicolaus & Company, Incorporated or any successor as Remarketing Agent designated in accordance with Section 7.17 hereof.

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

*“Remarketing Agreement”* means the Remarketing Agreement, dated as of September 1, 2022, by and between the Borrower and the Remarketing Agent, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

*“Remarketing Date”* means the Initial Remarketing Date and, if the Bonds Outstanding on such date or on any subsequent Remarketing Date are remarketed pursuant to Section 3.07 for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

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

*“Remarketing Notice Parties”* means the Borrower, the Issuer, the Trustee, the Remarketing Agent and the Lender.

*“Remarketing Period”* means the period beginning on a Remarketing Date and ending on the last day of the term for which Bonds are remarketed pursuant to Section 3.07 or the final Maturity Date of the Bonds, as applicable.

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

*“Remarketing Rate”* means the interest rate or rates established pursuant to the third paragraph of Section 2.02 and borne by the Bonds then Outstanding from and including each Remarketing Date to, but not including, the next succeeding Remarketing Date or the final Maturity Date of the Bonds, as applicable.

*“Reserved Rights”* of the Issuer means (a) the right of the Issuer to amounts payable to it pursuant to Section 4.04 of the Loan Agreement, (b) all rights which the Issuer or its members, directors, officers, officials, agents or employees may have under this Indenture and the Financing Documents to indemnification by the Borrower and by any other persons and to payments for expenses incurred by the Issuer itself, or its members, directors, officers, officials, agents or employees, (c) the right of the Issuer to receive notices, reports or other information, make determinations and grant approvals hereunder and under the other Financing Documents, (d) all rights of the Issuer to enforce the representations, warranties, covenants and agreements of the Borrower pertaining in any manner or way, directly or indirectly, to the requirements of the Act or of the Issuer, and set forth in any of the Financing Documents or in any other certificate or agreement executed by the Borrower, (e) all inspection rights of the Issuer, (f) all rights of the Issuer in connection with any amendment to or modification of the Financing Documents, and (g) all enforcement remedies with respect to the foregoing.

*“Revenues”* means (a) the Loan Payments, (b) Eligible Funds, (c) all other money received or to be received by the Trustee in respect of repayment of the Loan, including without limitation,

all money and investments in the Bond Fund, (d) any money and investments in the Special Funds, and (e) all income and profit from the investment of the foregoing money. The term “*Revenues*” does not include any money or investments in the Rebate Fund.

“S&P” means S&P Global Ratings, a division of S&P Global, Inc., its successors and assigns.

“*Securities Depository*” means any securities depository registered as a clearing agency with the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934, as amended, and appointed as a securities depository for the Bonds.

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

“*Special Record Date*” means the date and time established by the Bond Trustee for the determination of which Holders shall be entitled to receive overdue interest or principal on the Bonds pursuant to Section 2.03 hereof.

“*State*” means the State of Illinois.

“*Supplemental Indenture*” means a supplement to this Bond Indenture being authorized and executed pursuant to Section 8.01 or Section 8.02 hereof

“*Surplus Cash*” has the meaning specified in the HUD Regulatory Agreement.

“*Tax Regulatory Agreement*” means the Tax Regulatory Agreement, dated the Closing Date, between the Borrower and the Issuer relating to the Bonds.

“*Tendered Bond*” means any Bond which has been tendered for purchase pursuant to a Mandatory Tender.

“*Trust Estate*” means the property rights, money, securities and other amounts pledged and assigned pursuant to the Granting Clauses of this Bond Indenture.

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

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

**Section 1.02 Interpretation.** Reference to Articles, Sections, and other subdivisions are to the designated Articles, Sections, and other subdivisions of this Bond Indenture. The headings of this Bond Indenture are for convenience only and do not define or limit the provisions hereof. Words of any gender shall be deemed and construed to include correlative words of the other genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate.

## ARTICLE 2 THE BONDS

**Section 2.01 Issuance of Bonds.** The Bonds shall be issued in the maximum aggregate principal amount of \$40,453,000; shall be designated “Multi-Family Housing Revenue Bonds (Barbara Jean Wright Court Apartments Project), Series 2022,” and shall be in the Authorized Denominations requested by the Holder (*provided, however*, that each Bond shall have only one principal maturity date, unless the Trustee shall be directed in writing to authenticate and deliver a Bond of more than one maturity). Unless the Issuer shall otherwise direct the Trustee in writing, the Bonds shall be numbered consecutively from R-1 upwards.

Each Bond shall be (i) substantially in the form attached as *Exhibit A* to this Bond Indenture, (ii) dated September 15, 2022, (iii) issued only as fully registered bonds, and, except as provided in Section 2.10 hereof, the Holder of a Bond shall be regarded as the absolute owner thereof for all purposes of this Indenture.

**Section 2.02 Maturity and Interest.** The Bonds shall bear interest on the principal amount Outstanding from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or provided for, from their date of initial delivery, payable on each Interest Payment Date. The Bonds shall bear interest for each Interest Period at the Interest Rate all as more specifically set forth hereinafter. Interest on the Bonds shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. The Bonds shall mature on the Maturity Date, subject to prior redemption as set forth in Section 3.01 hereof and subject to Mandatory Tender for purchase as set forth in Section 3.05 hereof.

From the date of their initial delivery to, but not including, the Initial Mandatory Tender Date, the interest rate on the Bonds shall be the Initial Interest Rate. On the Initial Mandatory Tender Date, the Bonds shall be subject to Mandatory Tender pursuant to Section 3.05 hereof. If insufficient funds are available to pay the purchase price on the Bonds following such Mandatory Tender on the Initial Mandatory Tender Date, the Bonds shall be redeemed in accordance with the provisions of Section 3.01(c) hereof.

The Remarketing Agent shall establish the interest rate on the Bonds Outstanding for each Remarketing Period at the Remarketing Rate in accordance with this Section 2.02. Not less than ten (10) Business Days preceding each Remarketing Date, the Remarketing Agent, taking into consideration prevailing market conditions, shall, using its best professional judgment, determine the minimum rate(s) of interest which, if borne by the Bonds then Outstanding for the Remarketing Period specified by the Remarketing Agent at the direction of the Borrower as provided in Section 3.05 hereof, would enable such Bonds to be remarketed at a price equal to 100% of the principal amount of such Bonds that would not exceed the Maximum Interest Rate. The rate of interest determined in accordance with the previous sentence shall be the Remarketing Rate for the specified Remarketing Period; provided that if the rate of interest so determined for such period would exceed the Maximum Interest Rate, the Bonds Outstanding shall be remarketed for the longest Remarketing Period for which the minimum rate of interest that would enable such Bonds to be remarketed at a price equal to 100% of the principal amount of such Bonds would not exceed the Maximum Interest Rate. Notwithstanding the foregoing, if the rate of interest so determined for any Remarketing Period would exceed the Maximum Interest Rate, the Bonds Outstanding



shall not be remarketed and shall be redeemed from funds available to pay the tender price thereof in accordance with Section 3.05(e) hereof.

The Remarketing Agent shall, upon determination of the Remarketing Rate and Remarketing Period, immediately (and in no event later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate and the Remarketing Period) give notice of its determination by telephone or electronic mail, promptly confirmed in writing, to the Trustee, the Issuer and the Borrower. The Remarketing Rate and the Remarketing Period shall be conclusive and binding upon actual receipt thereof by the Trustee, the Issuer, the Borrower and the Holders for the purposes of this Indenture.

**Section 2.03 Payment and Ownership of Bonds.** To the extent provided in and except as otherwise permitted by this Indenture, the Bonds shall be special limited obligations of the Issuer and the Bond Service Charges thereon shall be payable equally and ratably solely from and secured solely by (a) the Revenues, including but not limited to money and investments in the Special Funds, (b) the assignment of Revenues hereunder and by this Indenture, and (c) the Trust Estate. Notwithstanding anything herein contained to the contrary, any obligation which the Issuer may incur under this Indenture or under any instrument executed in connection herewith which shall entail the expenditure of money shall not be a general obligation of the Issuer but shall be a limited obligation payable solely from amounts assigned to the Trustee pursuant to this Indenture.

Bond Service Charges shall be payable in lawful money of the United States of America without deduction for the services of the Trustee. Subject to the provisions of Section 2.12 hereof, (a) the principal of any Bond shall be payable when due to a Holder by the Trustee, and (b) interest on any Bond shall be paid on each Interest Payment Date by check which the Trustee shall cause to be mailed on that date to the Person in whose name the Bond (or one or more Predecessor Bonds) is registered at the close of business on the Regular Record Date applicable to that Interest Payment Date on the Register at the address appearing therein.

If and to the extent, however, that the Issuer shall fail to make payment or provision for payment of interest on any Bond on any Interest Payment Date, that interest shall cease to be payable to the Person who was the Holder of that Bond (or of one or more Predecessor Bonds) as of the applicable Regular Record Date. In that event, except as provided below in this Section, when money becomes available for payment of the interest, (a) the Trustee shall, pursuant to Section 6.06(d) hereof, establish a Special Record Date for the payment of that interest which shall be not more than 15 nor fewer than 10 days prior to the date of the proposed payment, and (b) the Trustee shall cause notice of the proposed payment and of the Special Record Date to be mailed by first-class mail, postage prepaid, to each Holder at its address as it appears on the Register not fewer than 10 days prior to the Special Record Date and, thereafter, the interest shall be payable to the Persons who are the Holders of the Bonds (or their respective Predecessor Bonds) at the close of business on the Special Record Date.

Subject to the foregoing, each Bond delivered under this Indenture upon transfer thereof, or in exchange for or in replacement of any other Bond, shall carry the rights to interest accrued and unpaid, and to accrue on that Bond, or which were carried by that Bond.

Except as provided in this Section and Section 2.09 hereof, (a) the Holder of any Bond shall be deemed and regarded as the absolute owner thereof for all purposes of this Indenture, (b) payment of or on account of the Bond Service Charges on any Bond shall be made only to or upon the order of that Holder or its duly authorized attorney in the manner permitted by this Indenture, and (c) neither the Issuer nor the Trustee shall, to the extent permitted by law, be affected by notice to the contrary. All of those payments shall be valid and effective to satisfy and discharge the liability upon that Bond, including without limitation, the interest thereon, to the extent of the amount or amounts so paid. Notwithstanding anything to the contrary herein or in any of the Bond Documents, the Trustee is authorized to use funds on deposit in the Special Funds, as and when provided, to pay principal and interest on the Bonds when due.

**Section 2.04 Restriction on Issuance of Bonds.** No Bonds may be issued under the provisions of this Bond Indenture except in accordance with this Article. The total principal amount of Bonds that may be issued hereunder, other than Bonds issued pursuant to the provisions of Section 2.09 hereof or in substitution for other Bonds, is expressly limited to the amount set forth in Section 2.01.

**Section 2.05 Limited Obligations.** The Bonds and the interest thereon are limited obligations of the Issuer, payable solely from the revenues, receipts and security pledged therefor in the Granting Clauses hereof. The Bonds, together with premium, if any, and interest thereon, do not constitute an indebtedness, liability, general or moral obligation or a pledge of the full faith or loan of credit of the Issuer, the State, or any political subdivision of the State within the meaning of any constitutional or statutory provisions. None of the Issuer, the State or any political subdivision thereof shall be obligated to pay the principal of, premium, if any, or interest on the Bonds or other costs incident thereto except from the payments pledged with respect thereto and certain reserve funds established in connection therewith. Neither the faith and credit nor the taxing power of the United States of America, the Issuer, the State or any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or interest on the Bonds or other costs incident thereto. The Bonds are not a debt of the United States of America or any agency thereof, and are not guaranteed by the United States of America or any agency thereof.

**Section 2.06 Bond Indenture Constitutes Contract.** In consideration of the purchase and acceptance of the Bonds issued hereunder by those who shall hold them from time to time, the provisions of this Indenture shall be deemed to be a part of, and continue to be, a contract between the Issuer and the Holders of the Bonds from time to time.

**Section 2.07 Execution.** The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of its Mayor, attested by the manual or facsimile signature of its City Clerk or Deputy City Clerk, under the official seal, or a facsimile thereof, of the Issuer. Any facsimile signatures shall have the same force and effect as if said officers had manually signed said Bonds. Any reproduction of the official seal of the Issuer on the Bonds shall have the same force and effect as if the official seal of the Issuer had been impressed on the Bonds.

In case any officer whose manual or facsimile signature shall appear on any Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery, and also any Bond may bear the facsimile signatures of, or may be signed by, such

persons as at the actual time of the execution of such Bond shall be the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

**Section 2.08 Authentication.** Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form on the attached *Exhibit A* duly executed by the Bond Trustee shall be entitled to any right or benefit under this Bond Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed manually by the Bond Trustee; and such executed certificate upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Bond Indenture. The Bond Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Bond Trustee, but it shall not be necessary that the same person sign the certificate of authentication of all of the Bonds.

**Section 2.09 Mutilated, Lost, Stolen or Destroyed Bonds.** In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer shall execute and the Bond Trustee shall authenticate a new Bond, of like date, interest rate, maturity and denomination as that mutilated, lost, stolen or destroyed. Any mutilated Bond shall first be surrendered to the Bond Trustee; and in the case of any lost, stolen or destroyed Bond, there shall first be furnished to the Issuer and the Bond Trustee evidence of such loss, theft or destruction reasonably satisfactory to them together with indemnity reasonably satisfactory to them. In the event any such Bond shall have matured, instead of issuing a duplicate Bond or Bonds the Bond Trustee shall, upon the written direction of the Issuer, pay the same without surrender thereof. The Issuer and the Bond Trustee may charge the holder or owner of such Bond with their reasonable fees and expenses, including the cost of printing replacement Bonds.

Every new Bond issued pursuant to this Section shall, with respect to such Bond, constitute an additional contractual obligation of the Issuer, whether or not the mutilated, lost, stolen or destroyed Bond shall be found at any time, and shall be entitled to all the benefits of this Bond Indenture equally and proportionately with any and all other Bonds duly issued hereunder. All Bonds shall be held and owned on the express condition that the foregoing provisions of this Section are exclusive with respect to the replacement or payment of mutilated, lost, stolen or destroyed Bonds and shall preclude any and all rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

**Section 2.10 Transfer and Exchange of Bonds; Persons Treated as Holders.** The Bond Trustee as Registrar shall cause a bond register (herein sometimes referred to as the "Bond Register") to be kept for the registration of transfers of Bonds. Any Bond may be transferred only upon an assignment duly executed by the registered Holder or his or her duly authorized representative in such form as shall be satisfactory to the Registrar, and upon surrender of such Bond to the Bond Trustee for cancellation. Whenever any Bond or Bonds shall be surrendered for transfer, the Issuer shall execute and the Bond Trustee shall authenticate and deliver to the transferee a replacement fully registered Bond or Bonds of Authorized Denomination in an aggregate principal amount equal to the unmatured and unredeemed principal amount of, and bearing interest at the same rate and maturing on the same date or dates as, the Bonds being presented and surrendered for transfer.

Any Bond may, in accordance with its terms, be exchanged, at the office of the Bond Trustee, for a new fully registered Bond or Bonds, of the same maturity, of any Authorized Denomination or Denominations in an aggregate principal amount equal to the unmatured and unredeemed principal amount of, and bearing interest at the same rate as, the Bonds being exchanged. In the event of a partial redemption of a Bond, the Bond Trustee shall authenticate and deliver to the Owner thereof a new Bond of like date, interest rate, maturity and denomination as the partially redeemed Bond in the amount of the unredeemed principal thereof.

In all cases in which Bonds shall be transferred or exchanged hereunder, the Bond Trustee may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

All Bonds issued upon any transfer or exchange of Bonds shall be the valid limited obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Bond Indenture, as the Bonds surrendered upon transfer or exchange. Neither the Issuer nor the Bond Trustee shall be required to make any exchange or transfer of a Bond during a period beginning at the opening of business 15 days before (i) any Interest Payment Date (including any special interest payment date described in Section 2.02 hereof), or (ii) the day of the mailing of a notice of redemption of Bonds and ending at the close of business on the day of such mailing or such Interest Payment Date, or to transfer or exchange any Bonds selected for redemption, in whole or in part.

The Person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of and premium and interest on any such Bond shall be made only to or upon the order of the registered Holder thereof or his legal representative, and neither the Issuer nor the Bond Trustee shall be affected by any notice to the contrary. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums to be paid.

**Section 2.11 Cancellation and Disposition of Bonds.** Any Bond surrendered for the purpose of payment or retirement, or for exchange, or for replacement or payment pursuant to Section 2.09, shall be cancelled upon surrender thereof to the Bond Trustee. Evidence of such surrender and cancellation shall be provided to the Issuer by the Bond Trustee, if requested in writing. Cancelled Bonds, or unissued Bond inventory held in blank by the Bond Trustee upon the maturity or total redemption of the Bonds, shall be disposed of by the Trustee in accordance with its retention policy then in effect and evidence of such disposition shall be provided by the Bond Trustee to the Issuer, if requested in writing.

**Section 2.12 Book-Entry Provisions.** The provisions of this Section shall apply so long as the Bonds are maintained in book-entry form with The Depository Trust Company or another Securities Depository, any provisions of this Bond Indenture to the contrary notwithstanding.

(a) *Payments.* The Bonds shall be payable to the Securities Depository, or its nominee, as the registered owner of the Bonds, on each date on which the principal of, interest on, and premium, if any, on the Bonds is due as set forth in this Indenture and in the Bonds. Such payments shall be made to the offices of the Securities Depository specified by the Securities Depository to the Issuer and the Bond Trustee in writing.

Without notice to or the consent of the beneficial owners of the Bonds, the Issuer and the Securities Depository may agree in writing to make payments of principal, premium, if any, and interest in a manner different from that set forth herein. If such different manner of payment is agreed upon, the Issuer shall give the Bond Trustee written notice thereof, and the Bond Trustee shall make payments with respect to the Bonds in the manner specified in such notice as set forth herein. Neither the Issuer nor the Bond Trustee shall have any obligation with respect to the transfer or crediting of the principal of, interest on, and premium, if any, on the Bonds to Participants or the beneficial owners of the Bonds or their nominees.

(b) *Replacement of the Securities Depository.* The Issuer may, and in the case of subparagraph (ii) or (iii) below shall, discontinue use of a Securities Depository as the depository of the Bonds if (i) the Issuer, in its sole discretion, determines that (A) such Securities Depository is incapable of discharging its duties with respect to the Bonds, or (B) the interest of the beneficial owners of the Bonds might be adversely affected by the continuation of the book-entry system with such Securities Depository as the depository for the Bonds, (ii) the beneficial owners of 100% of the Bonds Outstanding direct the Issuer to do so, or (iii) such Securities Depository determines not to continue to act as a depository for the Bonds or is no longer permitted to act as such depository. Notice of any determination pursuant to clauses (i), (ii) or (iii) shall be given to such Securities Depository at least 30 days prior to any such determination (or such fewer number of days as shall be acceptable to such Securities Depository). The Issuer shall have no obligation to make any investigation to determine the occurrence of any events that would permit the Issuer to make any determination described in this paragraph.

(c) *Discontinuance of Book-Entry or Change of Securities Depository.* If, following a determination or event specified in paragraph (b) above, the Issuer discontinues the maintenance of the Bonds in book-entry form with the then current Securities Depository, the Issuer will issue replacement Bonds to the successor Securities Depository, if any, or, if no replacement Securities Depository is selected for the Bonds, directly to the Participants as shown on the records of the former Securities Depository or, to the extent requested by any Participant or if directed to do so by the beneficial owners of 100% of the Bonds Outstanding pursuant to subparagraph (b)(ii) above, to the beneficial owners of the Bonds shown on the records of such Participant. Replacement Bonds shall be in fully registered form and in authorized denominations, be payable as to interest on the Interest Payment Dates of the Bonds by check mailed to each registered owner at the address of such owner as it appears on the bond registration books maintained by the Bond Registrar for such purpose at the principal corporate trust operations office of the Bond Trustee or at the option of any registered owner of not less than \$1,000,000 principal amount of Bonds, by wire transfer to any address in the continental United States of America on such Interest Payment Date to such registered owner as of the Regular Record Date relating to such Interest Payment Date, if such registered owner provides the Bond Trustee with written notice of such wire transfer address not later than such Regular Record Date (which notice may provide that it will remain in effect with respect to subsequent Interest Payment Dates unless and until changed or revoked by subsequent written notice provided 10 business days prior to the next applicable Regular Record Date). Principal and redemption premium, if any, on the replacement Bonds are payable

only upon presentation and surrender of such replacement Bond or Bonds at the principal corporate trust operations office of the Bond Trustee.

(d) *Effect of Book-Entry System.* The Securities Depository and its Participants and the beneficial owners of the Bonds, by their acceptance of the Bonds, agree that the Issuer and the Bond Trustee shall not have liability for the failure of such Securities Depository to perform its obligations to the Participants and the beneficial owners of the Bonds, nor shall the Issuer or the Bond Trustee be liable for the failure of any Participant or other nominee of the beneficial owners to perform any obligation of the Participant to a beneficial owner of the Bonds.

**Section 2.13 Delivery of the Bonds.** Upon execution and delivery of this Bond Indenture, and satisfaction of the conditions established by the Issuer in the Bond Resolution and in the Bond Purchase Agreement for delivery of the Bonds, the Issuer shall execute the Bonds and deliver them to the Trustee with written directions to authenticate them. The Bond Trustee shall authenticate and deliver the Bonds as provided in this Bond Indenture, but only upon the receipt of the following:

(i) An order of the Issuer directing the Bond Trustee to authenticate and deliver the Bonds (a form of which is attached hereto as **Exhibit A**) against receipt of the initial purchase price therefor;

(ii) A certified copy of the Ordinance;

(iii) Executed counterparts of this Indenture and the other Financing Documents specifically listed in the definition of Financing Documents;

(iv) An opinion of Counsel to the Issuer addressed to the Trustee to the effect that the Bonds have been duly authorized, executed and delivered and that the Bond Documents have been duly executed and delivered by the Issuer and constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, subject to bankruptcy, insolvency or other laws affecting creditors' rights generally and, with respect to certain remedies which require, or may require, enforcement by a court of equity, such principles of equity as the court having jurisdiction may impose;

(v) An opinion of Bond Counsel addressed to the Trustee, substantially to the effect that this Indenture and the Bonds constitute legal, valid and binding obligations of the Issuer, subject to customary exceptions relating to bankruptcy and insolvency, and to the further effect that the interest on the Bonds is excludable from the gross income of the holders thereof for federal income tax purposes under existing law, subject to customary exceptions and this Indenture creates a lien on the Trust Estate;

(vi) An opinion of counsel for the Borrower addressed to the Trustee to the effect that the Borrower Documents have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the

Borrower in accordance with their respective terms subject to customary qualifications and exceptions;

(vii) Funds the Trustee is required to receive for deposit pursuant to Section 4.02 hereof;

(viii) Reimbursement of all fees and expenses due to Trustee hereunder;

(ix) A request and authorization signed by an Authorized Issuer Representative authorizing the Trustee to authenticate and to deliver the Bonds to the Underwriter upon payment to the Trustee for the account of the Issuer of the amount specified in such request and authorization plus accrued interest, if any, thereon to the date of delivery;

(x) Evidence in writing of recordation of the Land Use Restriction Agreement (which may be in the form of a title company certified copy); and

(xi) Any other documents or opinions which the Trustee, the Issuer or Bond Counsel may reasonably require, which requirement shall be deemed to be satisfied upon the delivery of the Opinion of Bond Counsel.

**Section 2.14 Special Agreement with Holders.** Notwithstanding any provision of this Indenture or of any Bond to the contrary, with the written approval of the Borrower, the Trustee may but shall not be obligated to, enter into an agreement with any Holder providing for making all payments to that Holder of principal of and interest on that Bond or any part thereof (other than any payment of the entire unpaid principal amount thereof) at a place and in a manner other than as provided in this Indenture and in the Bond, without presentation or surrender of the Bond except upon final payment in full, upon any conditions which shall be satisfactory to the Trustee and the Borrower; provided, that payment in any event shall be made to the Person in whose name a Bond shall be registered on the Register, with respect to payment of principal, on the date such principal is due, and, with respect to the payment of interest, as of the applicable Regular Record Date or Special Record Date, as the case may be.

The Trustee will furnish a copy of each of those agreements, certified to be an accurate copy by an officer of the Trustee, to the Issuer and the Borrower. Any payment of principal or interest pursuant to such an agreement shall constitute payment thereof pursuant to, and for all purposes of, this Indenture.

**Section 2.15 CUSIP Numbers.** The Issuer in issuing the Bonds may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; *provided* that the Trustee shall have no liability for any defect in the "CUSIP" numbers as they appear on any Bond, notice or elsewhere, and, *provided further* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Bonds or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Bonds, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer will promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

### ARTICLE 3 REDEMPTION OF BONDS

**Section 3.01 Redemption of Bonds.** The Bonds are subject to redemption prior to their stated maturity as follows:

(a) Optional Redemption. The Bonds are subject to optional redemption in whole or in part by the Issuer at the written direction of the Borrower on the Initial Remarketing Date at a redemption price of 100% of the principal amount of such Bonds to be redeemed plus accrued interest to the applicable Redemption Date given to the Bond Trustee at least five (5) Business Days prior to the Initial Remarketing Date or the optional redemption date, as applicable. After the Initial Remarketing Date, the Borrower, in consultation with the Remarketing Agent, may establish an optional redemption date with respect to any subsequent Remarketing Period and, thereafter, the Bonds are subject to optional redemption in whole or in part by the Issuer at the written direction of the Borrower on or after the applicable redemption date at a redemption price of 100% of the principal amount of such Bonds to be redeemed plus accrued interest to the applicable redemption date.

(b) Reserved.

(c) Mandatory Redemption. The Bonds shall be redeemed in whole at a redemption price of 100% of the principal amount of such Bonds, plus accrued interest to the Redemption Date, on any Mandatory Tender Date upon the occurrence of any of the following events: (i) the Borrower has previously elected not to cause the remarketing of the Bonds, (ii) the conditions to remarketing set forth in this Indenture have not been met by the dates and times set forth in Section 3.07(b) or Section 3.07(d) hereof, or (iii) the proceeds of a remarketing on deposit in the Remarketing Proceeds Account at 11:00 a.m. Local Time on the Mandatory Tender Date are insufficient to pay the purchase price of the Outstanding Bonds on such Mandatory Tender Date. Bonds subject to redemption in accordance with this paragraph shall be redeemed from (i) amounts on deposit in the Collateral Fund, (ii) amounts on deposit in the Negative Arbitrage Account of the Bond Fund, (iii) amounts on deposit in the Project Fund, and (iv) any other Eligible Funds available or made available for such purpose at the written direction of the Borrower.

(d) Purchase in Lieu of Redemption. At the election of the Borrower upon a redemption in whole of the Bonds, by written notice to the Trustee and the Remarketing Agent given not less than five (5) Business Days in advance of such redemption date, the Bonds will be deemed tendered for purchase in lieu of the redemption on such date and the call for redemption shall be cancelled. The purchase price of Bonds so purchased in lieu of redemption shall be the principal amount thereof together with all accrued and unpaid interest to the date of redemption and any prepayment fee, if due, and shall be payable on the date of redemption thereof. Bonds so purchased in lieu of redemption shall remain Outstanding and shall be registered to or upon the direction of the Borrower.

**Section 3.02 Partial Redemption.** In the case of a partial redemption of Bonds when Bonds of denominations greater than \$5,000 are then Outstanding, each \$5,000 unit of face value



of principal thereof shall be treated as though it were a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all of the \$5,000 units of face value represented by a Bond are to be called for redemption, then upon notice of redemption of a \$5,000 unit or units, the Holder of that Bond shall surrender the Bond to the Bond Trustee (a) for payment of the redemption price of the \$5,000 unit or units of face value called for redemption (including without limitation, the interest accrued to the date fixed for redemption and any premium), and (b) for issuance, without charge to the Holder thereof, of a new Bond or Bonds of the same series, of any Authorized Denomination or Denominations in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

If less than all of an Outstanding Bond of one maturity in a Book-Entry System is to be called for redemption, the Trustee shall give notice to the Depository or the nominee of the Depository that is the Holder of such Bond, and the selection of the Beneficial Ownership Interests in that Bond to be redeemed shall be at the sole discretion of the Depository and its participants.

**Section 3.03 Notice of Redemption.** Unless waived by any Holder of Bonds to be redeemed, official written notice of redemption shall be given by the Trustee on behalf of the Issuer by mailing a copy of an official redemption notice by first-class mail, postage prepaid, to the Holder of each Bond to be redeemed, at the address of such Holder shown on the Register at the opening of business on the fifth day prior to such mailing, not less than 20 days nor more than 30 days prior to the date fixed for redemption. With respect to a mandatory redemption pursuant to Section 3.01(c), the Notice of Mandatory Tender provided to Holders pursuant to Section 3.06 shall serve as the notice of redemption required by this Section 3.03 and no further notice of redemption will be required to the Holders. A second written notice of redemption shall be given by the Trustee on behalf of the Issuer, as soon as practicable, by first-class mail to the Holder of each Bond which has been so called for redemption (in whole or in part) but has not been presented and surrendered to the Trustee within 30 days following the date fixed for redemption of that Bond.

All notices of redemption shall state:

- (a) the Redemption Date;
- (b) the redemption price;
- (c) if less than all Outstanding Bonds are to be redeemed, the identification by designation, letters, numbers or other distinguishing marks (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed;
- (d) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date;
- (e) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the Designated Office of the Trustee, and;
- (f) that the notice of redemption is conditioned upon there being deposited with the Bond Trustee on or prior to the date of redemption money sufficient to pay the redemption price of the

Bonds to be redeemed and, in the case of any redemption premium on Bonds, that there be on deposit Eligible Funds sufficient to pay such redemption premium; and

(g) such other information as the Bond Trustee deems advisable.

Notices of redemption shall be revocable in the event that there is not on deposit with the Bond Trustee by 10:00 a.m. Central time on the date of redemption money sufficient to pay the redemption price of the Bonds to be redeemed or, in the case of any redemption premium on Bonds, there is not on deposit Eligible Funds sufficient to pay such redemption premium.

If the Bonds are not then held in a Book-Entry System, in addition to the foregoing notice, further written notice shall be given by the Trustee on behalf of the Issuer as set out below, 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 a call for redemption if notice thereof is given as above prescribed.

(a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (i) the CUSIP numbers of all Bonds being redeemed; (ii) the date of issue of the Bonds as originally issued; (iii) the rate of interest borne by each Bond being redeemed; (iv) the maturity date of each Bond being redeemed; and (v) any other descriptive information deemed necessary in the sole discretion of the Trustee to identify accurately the Bonds being redeemed.

(b) Each further notice of redemption shall be sent at least 15 days before the redemption date by electronic mail, registered or certified mail or overnight delivery service to the Electronic Municipal Market Access ("EMMA") or if EMMA is not in existence, to one or more national information services that disseminate notices of redemption of obligations such as the Bonds.

(c) Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number (if any) identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

Failure to receive notice by mailing or any defect in that notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any other Bond.

Notice of any redemption hereunder with respect to Bonds held under a Book-Entry System shall be given by the Trustee on behalf of the Issuer only to the Depository, or its nominee, as the Holder of such Bonds. Selection of Beneficial Ownership Interests in the Bonds called for redemption is the responsibility of the Depository and any failure of such Depository to notify the Beneficial Owners of any such notice and its contents or effect will not affect the validity of such notice of any proceedings for the redemption of such Bonds.

**Section 3.04 Payment of Redeemed Bonds.** Notice of Redemption having been given in the manner provided in this Article III, the Bonds and portions thereof called for redemption shall become due and payable on the Redemption Date, and upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, including interest accrued to the Redemption Date.

Upon the payment of the price of Bonds being redeemed or prepaid, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed or prepaid with the proceeds of such check or other transfer.

If money for the redemption of all of the Bonds and portions thereof to be redeemed, together with interest accrued thereon to the Redemption Date, is held by the Trustee on the Redemption Date, so as to be available therefor on that date and if notice of redemption has been deposited in the mail as aforesaid, then from and after the Redemption Date those Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be Outstanding hereunder. If such money shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Bonds and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption.

All money deposited in the Bond Fund and held by the Trustee for the redemption, purchase or prepayment of particular Bonds shall be held in trust for the account of the Holders thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds

### **Section 3.05 Mandatory Tender.**

(a) Mandatory Tender for Purchase. All Outstanding Bonds shall be subject to Mandatory Tender by the Holders for purchase in whole and not in part on each Mandatory Tender Date. The purchase price for each such Bond shall be payable in lawful money of the United States of America by check, shall equal 100% of the principal amount to be purchased and accrued interest, if any, to the Mandatory Tender Date, and shall be paid in full on the applicable Mandatory Tender Date.

(b) Mandatory Tender Dates. The Mandatory Tender Dates shall consist of (i) the Initial Mandatory Tender Date and (ii) any subsequent dates for mandatory tender of the Bonds established in writing by the Borrower with the written consent of the Remarketing Agent in connection with a remarketing of the Bonds pursuant to Section 3.07 hereof.

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

(d) Effect of Prior Redemption. Notwithstanding anything herein to the contrary, any Bond tendered under this Section 3.05 will not be purchased if such Bond matures or is redeemed on or prior to the applicable Mandatory Tender Date.

(e) Purchase of Tendered Bonds. The Trustee shall utilize the following sources of payments to pay the tender price of the Bonds not later than 2:30 p.m. Local Time on the Mandatory Tender Date in the following priority: (i) amounts deposited in the Remarketing Proceeds Account, to pay the principal amount, plus accrued interest, of Bonds tendered for purchase; (ii) amounts on deposit in the Collateral Fund, to pay the

principal amount of Bonds tendered for purchase; (iii) amounts on deposit in the Negative Arbitrage Account of the Bond Fund to pay the accrued interest, if any, on Bonds tendered for purchase; (iv) amounts on deposit in the Project Fund; and (v) any other Eligible Funds available or made available for such purpose at the written direction of the Borrower.

(f) Undelivered Bonds. Bonds shall be deemed to have been tendered for purposes of this Section 3.05 whether or not the Holders shall have delivered such Undelivered Bonds to the Trustee, and subject to the right of the Holders of such Undelivered Bonds to receive the purchase price of such Bonds on the Mandatory Tender Date, such Undelivered Bonds shall be null and void. If such Undelivered Bonds are to be remarketed, the Trustee shall authenticate and deliver new Bonds in replacement thereof pursuant to the remarketing of such Undelivered Bonds.

### **Section 3.06 Mandatory Tender Notice.**

(a) Notice to Holders. Not less than 30 days preceding a Mandatory Tender Date, the Trustee shall, on behalf of the Issuer, give written notice of mandatory tender to the Holders of the Bonds then Outstanding (with a copy to the Borrower, the Managing Member, and the Remarketing Agent) by Electronic Means or by first class mail, postage prepaid, at their respective addresses appearing on the Register stating:

(i) the Mandatory Tender Date and that (A) all Outstanding Bonds are subject to Mandatory Tender for purchase on the Mandatory Tender Date, (B) all Outstanding Bonds must be tendered for purchase no later than 12:00 Noon, Local Time, on the Mandatory Tender Date and (C) Holders will not have the right to elect to retain their Bonds;

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

(iii) that all Outstanding Bonds will be purchased on the Mandatory Tender Date at a price equal to the principal amount of the Outstanding Bonds plus interest accrued to, but not including, the Mandatory Tender Date; and

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

(b) Second Notice. In the event that any Bond required to be delivered to the Trustee for payment of the purchase price of such Bond shall not have been delivered to the Trustee on or before the 30<sup>th</sup> day following a Mandatory Tender Date, the Trustee shall, on behalf of the Issuer, mail a second notice to the Holder of the Bond at its address as shown on the Register setting forth the requirements set forth in this Indenture for delivery of the Bond to the Trustee and stating that delivery of the Bond to the Trustee (or compliance with the provisions of this Indenture concerning payment of lost, stolen or destroyed Bonds) must be accomplished as a condition to payment of the purchase price or redemption price applicable to the Bond.

(c) Failure to Give Notice. Neither failure to give or receive any notice described in this Section 3.06, nor the lack of timeliness of such notice or any defect in any notice (or in its content) shall affect the validity or sufficiency of any action required or provided for in this Section 3.06.

### **Section 3.07 Remarketing of Bonds.**

(a) Notice of Mandatory Tender. No later than 11:00 a.m. Local Time on the 30<sup>th</sup> day prior to each Mandatory Tender Date, the Trustee shall give notice to the Borrower, the Managing Member and the Remarketing Agent by telephone or electronic mail, confirmed on the same day in writing, which states the aggregate principal amount of Bonds which are to be tendered or deemed to be tendered pursuant to Section 3.05 hereof, which shall be all Outstanding Bonds.

(b) Preliminary Conditions to Remarketing. No later than 11:00 a.m. Local Time on the 15<sup>th</sup> day prior to the Mandatory Tender Date then in effect, the Borrower may give notice to the Remarketing Notice Parties by telephone or electronic mail, confirmed on the same day in writing, that it elects to cause the Bonds to be remarketed. A remarketing of the Bonds shall be permitted only if the following conditions are satisfied no later than the time the foregoing election notice is given:

(i) Written notice by the Borrower to the Remarketing Notice Parties of the Remarketing Period pursuant to Section 3.10 of the Loan Agreement, which period shall be approved in writing by the Remarketing Agent;

(ii) Delivery to the Trustee, the Rating Agency, and the Remarketing Agent of a written preliminary Cash Flow Projection with respect to the proposed Remarketing Period;

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

(iv) Reserved.

(c) Remarketing. Not less than 10 days before each Remarketing Date, the Remarketing Agent shall offer for sale and use its best efforts to sell the Bonds Outstanding on the Remarketing Date at a price equal to 100% of the principal amount of such Bonds plus, if such Remarketing Date is a date other than an Interest Payment Date, accrued interest on such Bonds from the preceding Interest Payment Date to which interest has been paid. No later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate, the Remarketing Agent shall give notice, by telephone or electronic mail, promptly confirmed in writing, to the Remarketing Notice Parties specifying the principal amount of Bonds, if any, it has remarketed (including Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account), the Remarketing Rate(s) and the Remarketing Period applicable to the Bonds.

The Remarketing Agent shall have the right to remarket the Bonds tendered pursuant to Section 3.05 hereof; provided, however, that no Bonds shall be remarketed at a price less than 100% of the principal amount thereof plus accrued interest (if any) without the prior written consent of the Borrower and Investor Limited Partner; and provided, further, that the purchase price of any Bond paid to the tendering Holder allocable to such discount shall be paid with Eligible Funds made available therefor and on deposit with the Trustee prior to the remarketing of such Bonds. The Remarketing Agent shall have the right to purchase any Bond tendered or deemed tendered pursuant to Section 3.05 hereof at 100% of the principal amount thereof, and to thereafter sell such Bond. Any such purchase shall constitute a remarketing hereunder.

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

(d) Final Conditions to Remarketing.

(i) If, not less than four (4) Business Days preceding the Remarketing Date:

(1) the Remarketing Agent shall have notified the Trustee in writing of the remarketing of the Outstanding Bonds and that the proceeds from the remarketing (including proceeds of remarketing of Outstanding Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account) or other funds equal to the amount needed to purchase the remarketed Bonds on the Remarketing Date are expected to be available to the Trustee on the Remarketing Date for deposit into the Remarketing Proceeds Account; and

(2) the Trustee and the Issuer shall have received written notice from the Remarketing Agent that the Rating Agency shall have received and approved a Cash Flow Projection based on the interest rate(s) to be in effect with respect to the Outstanding Bonds on and after the applicable Remarketing Date;

(3) there shall be on deposit with the Trustee, from Eligible Funds provided by the Borrower an amount sufficient to pay the Extension Payment set forth in the Cash Flow Projection for deposit (A) to the Negative Arbitrage Account of the Bond Fund with respect to the payment of Bond Service Charges during the new Remarketing Period and (B) to the Expense Fund with respect to the payment of Administrative Expenses during the new Remarketing Period;

(4) there shall be on deposit with the Trustee, from Eligible Funds provided by the Borrower an amount sufficient to pay

the estimated Remarketing Expenses for deposit in the Expense Fund, or provision for the payment of the estimated Remarketing Expenses shall have been made to the satisfaction of the Trustee and the Remarketing Agent;

(5) the Trustee shall have received written notice from the Remarketing Agent that the Remarketing Agent has received written confirmation from the Rating Agency that the then current rating assigned to the Outstanding Bonds will continue to be effective on the Remarketing Date; and

(6) the Trustee shall have received an Opinion of Bond Counsel to the effect that the remarketing of the Bonds will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes;

then the Trustee shall promptly give notice, by telephone or electronic mail, which notice shall be immediately confirmed in writing, to the Remarketing Agent, the Borrower and the [Investor Limited Partner] that (a) all conditions precedent to the remarketing of the Outstanding Bonds have been satisfied and (b) the sale and settlement of the Outstanding Bonds is expected to occur on the Mandatory Tender Date. Following the Trustee's notice, the Outstanding Bonds shall be sold to the purchasers identified by the Remarketing Agent for delivery and settlement on the Mandatory Tender Date, and the Trustee shall apply (i) the funds in the Remarketing Proceeds Account of the Bond Fund on the Remarketing Date to payment of the purchase price of the Outstanding Bonds and (ii) the funds in the Expense Fund to payment of the Remarketing Expenses.

(e) Failure to Satisfy Final Conditions. If not less than four (4) Business Days preceding a Mandatory Tender Date, any condition set forth in paragraph (d) of this Section 3.07 has not been satisfied then the Remarketing Agent shall not sell any of the Outstanding Bonds on the Remarketing Date and the Trustee shall cancel all Outstanding Bonds pursuant to Section 3.08 hereof.

(f) Remarketing Proceeds. No later than 11:00 a.m. Local Time on each Mandatory Tender Date, the Remarketing Agent shall either (i) pay to the Trustee, in immediately available funds, the proceeds theretofore received by the Remarketing Agent from the remarketing of Bonds tendered for purchase on such Mandatory Tender Date or (ii) cause to be paid to the Trustee by the purchasers of the remarketed Bonds the purchase price plus accrued interest (if any) in immediately available funds. The proceeds from the remarketing of the Bonds shall be deposited in the Remarketing Proceeds Account, segregated from any funds of the Borrower and the Issuer and shall in no case be considered to be or be assets of the Borrower or the Issuer. Funds representing remarketing proceeds received by the Remarketing Agent after 11:00 a.m. Local Time on each Mandatory Tender Date shall be paid to the Trustee as soon as practicable upon such receipt.

(g) Delivery of Purchased Bonds. On or before the Business Day next preceding each Mandatory Tender Date, the Remarketing Agent, by telephonic advice or

electronic mail, shall notify the Trustee of (i) the principal amount of Bonds to be sold by the Remarketing Agent pursuant to Section 3.07 hereof and the purchase price, and, unless the Bonds are then in the Book-Entry System, the names, addresses and social security numbers or other tax identification numbers of the proposed purchasers thereof and (ii) the principal amount of Bonds tendered for purchase on such Mandatory Tender Date which will not be sold by the Remarketing Agent pursuant to Section 3.07 hereof. Such telephonic advice shall be confirmed by written notice delivered or electronically communicated at the same time as the telephonic advice.

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

**Section 3.08 Cancellation of Bonds.** The Trustee shall immediately cancel Bonds if the tender price of the Bonds is paid from amounts other than proceeds derived from the remarketing of the Bond.

#### **ARTICLE 4 FUNDS; INVESTMENTS**

**Section 4.01 Establishment of Funds.** The following funds are hereby established and shall be maintained by the Bond Trustee under this Bond Indenture and held in trust by the Bond Trustee for the benefit of the Bonds:

- (a) the Bond Fund, and therein the Negative Arbitrage Account and the Remarketing Proceeds Account (but only at such times as money is to be deposited or held in such Accounts as provided in this Indenture);
- (b) Project Fund;
- (c) Costs of Issuance Fund;
- (d) Collateral Fund;
- (e) Rebate Fund; and
- (f) Expense Fund.

Each fund and account therein shall be maintained by the Trustee as a separate and distinct trust fund or account to be held, managed, invested, disbursed and administered as provided in this Indenture. All money deposited in the funds and accounts created hereunder shall be used solely for the purposes set forth in this Indenture. The Trustee shall keep and maintain adequate records pertaining to each fund and account, and all disbursements therefrom, in accordance with its general practices and procedures in effect from time to time. The Trustee may also terminate funds and accounts that are no longer needed.



The Trustee shall, at the written direction of an Authorized Borrower Representative and may, in its discretion, establish such additional accounts within any fund, and subaccounts within any of the accounts, as the Issuer (as requested in writing) or the Trustee may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that fund and its accounts, or for the purpose of complying with the requirements of the Code, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Indenture with respect to a deposit or use of money in the Special Funds or the Rebate Fund, or result in commingling of funds not permitted hereunder.

#### **Section 4.02 Application of Bond Proceeds.**

(a) The proceeds of the Bonds in the amount of \$40,453,000 shall be allocated, deposited or delivered by the Trustee to the Project Fund.

(b) On the Closing Date, the Trustee shall receive the Initial Borrower Deposit from or on behalf of the Borrower, which the Trustee shall deposit to the Costs of Issuance Fund.

(c) On the Closing Date, the Trustee shall deposit Eligible Funds in the amount of \$1,250 for deposit to the Negative Arbitrage Account of the Bond Fund.

#### **Section 4.03 Bond Fund.**

On the Closing Date, there shall be deposited in the Bond Fund, from the proceeds of the sale of the Bonds, any accrued interest paid with respect to the Bonds, and in the Negative Arbitrage Account of the Bond Fund the amount set forth in Section 4.02(c) hereof, which is an amount equal to the amount of interest payments on the Bonds from the closing date to the initial Mandatory Tender Date. The portion of any Extension Payment received by the Trustee in connection with a remarketing in accordance with Section 3.07 hereof designated for the payment of Bond Service Charges shall also be deposited in the Negative Arbitrage Account.

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

The Bond Fund (and accounts therein for which provision is made in this Indenture) and the money and Eligible Investments therein shall be used solely and exclusively for the payment of Bond Service Charges as they become due.

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

Upon receipt by the Trustee of a Cash Flow Projection provided on behalf of the Borrower, the Trustee is hereby authorized to release from the Negative Arbitrage Account the amount set forth in the Cash Flow Projection to be released to or at the written direction of the Borrower from such account.

#### **Section 4.04 Project Fund.**

Money in the Project Fund shall be disbursed in accordance with the provisions of Section 3.06 of the Loan Agreement and this Section 4.04. Upon the deposit of Eligible Funds in the Collateral Fund as provided in Section 4.06 hereof, and subject to the provisions of this Section 4.04, the Trustee shall disburse the Bond proceeds on deposit in the Project Fund to or at the written direction of the Lender, which Bond proceeds shall be used by the Borrower to pay Costs of the Project in accordance with Section 3.06 of the Loan Agreement. Promptly upon receipt of such Eligible Funds, the Trustee shall be unconditionally and irrevocably obligated to disburse an equal amount from the Project Fund, or if the Trustee is unable for any reason to make such disbursement, to return such Collateral Payment to the party that provided it. The Trustee shall cause to be kept and maintained adequate records pertaining to the Project Fund and all disbursements therefrom. If requested in writing by the Issuer, the Managing Member or the Borrower, after the Project has been completed and a Completion Certificate is filed as provided in Section 4.07 hereof, the Trustee shall provide copies of the records pertaining to the Project Fund and disbursements therefrom to the Issuer and the Borrower and the Managing Member. The Trustee shall satisfy this obligation by providing statements for all periods in which there are funds in the Project Fund.

Notwithstanding any provision of the Loan Agreement or any other provision of this Indenture to the contrary, the Trustee shall not disburse money from the Project Fund, other than to pay Bond Service Charges on the Bonds, unless and until Eligible Funds in an amount equal to or greater than the requested disbursement amount have been deposited in the Collateral Fund. Prior to making any disbursement (except to the extent necessary to pay Bond Service Charges), the Trustee shall determine that the aggregate principal amount that will be held in (a) the Collateral Fund and (b) the Project Fund, after the anticipated disbursement, is at least equal to the then-Outstanding principal amount of the Bonds; provided, however, to the extent money on deposit in the Project Fund is invested in Eligible Investments, the Trustee is hereby authorized to make the following allocations and exchanges, which allocations and exchanges shall occur prior to the disbursement of amounts on deposit in the Project Fund to pay Project Costs: (i) allocate all or a portion of the Eligible Investments in the Project Fund, in the amount specified in the request for disbursement, to the Collateral Fund and (ii) transfer a like amount from the Collateral Fund to the Project Fund. To the extent money is not otherwise available to the Trustee, including money on deposit in the Bond Fund or the Collateral Fund, the Trustee shall transfer from the Project Fund to the Bond Fund sufficient money to pay Bond Service Charges on each Interest Payment Date without further written direction.

On any Redemption Date, the Trustee shall transfer any amounts then on deposit in the Project Fund into the Bond Fund to pay Bond Service Charges on the Bonds.

Upon obtaining actual knowledge of the occurrence and continuance of an Event of Default hereunder because of which the principal amount of the Bonds has been declared to be due and

immediately payable pursuant to Section 6.02 hereof, any money remaining in the Project Fund shall be promptly transferred by the Trustee to the Bond Fund.

#### **Section 4.05 Costs of Issuance Fund.**

Amounts on deposit in the Costs of Issuance Fund shall be used by the Trustee to pay costs of issuance as directed in writing by the Borrower. Any amounts remaining on deposit in the Costs of Issuance Fund 30 days after the Closing Date shall be promptly returned to the Borrower or disbursed at the written direction of the Borrower.

#### **Section 4.06 Collateral Fund.**

The Trustee shall deposit into the Collateral Fund all Eligible Funds received pursuant to Section 4.02 of the Loan Agreement and any other Eligible Funds received by the Trustee for deposit into the Collateral Fund. Section 4.02 of the Loan Agreement requires the Borrower to cause the Lender to deposit Eligible Funds with the Trustee for deposit into the Collateral Fund in an amount equal to, and as a prerequisite to the disbursement of, the amount of Bond proceeds on deposit in the Project Fund to be disbursed by the Trustee to pay Costs of the Project.

The Trustee shall transfer money in the Collateral Fund as follows: (a) on each Bond Payment Date, to the Bond Fund the amount necessary to pay Bond Service Charges on the Bonds on such Bond Payment Date (to the extent money is not otherwise available to the Trustee, including money on deposit in the Bond Fund); (b) on the Mandatory Tender Date, to the Bond Fund, the amount necessary to pay the purchase price of the Bonds, to the extent the Bonds are not remarketed on any Mandatory Tender Date or amounts on deposit in the Remarketing Proceeds Account of the Bond Fund are insufficient therefor; and (c) on the Maturity Date of the Bonds, to the Bond Fund the amount necessary to pay all amounts due on the Bonds on such date.

On any Redemption Date, the Trustee shall transfer all amounts then on deposit in the Collateral Fund into the Bond Fund to pay Bond Service Charges on the Bonds.

Amounts on deposit in the Collateral Fund in excess of the amount required to pay Bond Service Charges after payment in full of the Bonds shall be transferred to the Borrower.

The Bonds shall not be, and shall not be deemed to be, paid or prepaid by reason of any deposit into the Collateral Fund unless and until the amount on deposit in the Collateral Fund is transferred to the Bond Fund and applied to the payment of the principal of any of the Bonds, the principal component of the redemption price of any of the Bonds or the principal component of the tender price of any of the Bonds, all as provided in this Indenture.

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

#### **Section 4.07 Completion of the Project.**

The completion of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the Completion Certificate required by Section 3.09 of the Loan Agreement. As soon as practicable after the filing with the Trustee of the Completion

Certificate, any balance remaining in the Project Fund (other than the amounts retained by the Trustee as described in the Completion Certificate) shall be deposited or applied in accordance with the written direction of the Authorized Borrower Representative pursuant to Section 3.06 of the Loan Agreement, subject to Section 10.12. Provided however that if the Mortgage Loan has been assigned to FHA (with notice of such assignment to be delivered to the Trustee by an Authorized Borrower Representative), any such balance shall be paid to the Lender.

#### **Section 4.08 Expense Fund.**

The portion of any Extension Payment received by the Trustee in connection with an extension of the Mandatory Tender Date pursuant to Section 3.07 hereof designated for the payment of Administrative Expenses shall be deposited in the Expense Fund. The Trustee shall apply money on deposit in the Expense Fund solely for the following purposes, on the dates specified below, in the following order of priority:

- (a) to transfer money to the Rebate Fund to the extent necessary to pay the Rebate Amount (if any) pursuant to Section 4.09 hereof;
- (b) to pay the Ordinary Trustee's Fees and Expenses when due;
- (c) to pay the Issuer Fee and the City Administrative Fee when due;
- (d) to pay the Dissemination Agent Fee when due; and
- (e) to pay the costs associated with the remarketing of the Bonds on the Initial Mandatory Tender Date.

To the extent money in the Expense Fund is not sufficient to pay the foregoing fees and expenses, such deficiency shall be paid by the Borrower pursuant to Section 4.04 of the Loan Agreement immediately upon written demand by the Trustee.

#### **Section 4.09 Rebate Fund.**

Any provision hereof to the contrary notwithstanding, amounts credited to the Rebate Fund shall be free and clear of any lien hereunder.

The Trustee shall, at the cost and expense of the Borrower, furnish to the Issuer, the Borrower and the Managing Member all information reasonably requested in writing by the Issuer, the Borrower or the Managing Member with respect to the Bonds and investments of the Funds and accounts maintained by the Trustee hereunder. The purpose of the Rebate Fund is to facilitate compliance with Section 148(f) of the Code. Any Rebate Amount (as defined in the Tax Regulatory Agreement) deposited in such Fund shall be for the sole benefit of the United States of America and shall not be subject to the lien of the Bond Indenture or to the claim of any other Person, including, without limitation, the Bondholders and the Issuer. The requirements of this Section 4.09 are subject to, and shall be interpreted in accordance with, Section 148(f) of the Code and the Treasury Regulations applicable thereto (the "**Regulations**") and shall apply except to the extent the Bond Trustee and the Issuer are furnished with an opinion of Bond Counsel or other

evidence satisfactory to the Trustee and the Issuer that the Regulations contain an applicable exception. The Bond Trustee shall make all payments under the written direction of the Borrower.

Promptly at the end of each five-year period after the dated date of the Bonds and also upon the retirement of the Bonds, the Bond Trustee shall provide the Borrower with a statement of earnings on funds and accounts held under this Bond Indenture during any period not covered by a prior statement. Each statement shall include the purchase and sale prices of each investment, if any (including any commission paid thereon which shall be separately stated if such information is available), the dates of each investment transaction, information as to whether such transactions were made at a discount or premium and such other information known or reasonably available to the Bond Trustee as the Borrower or rebate analyst shall reasonably request in writing. If so requested in writing by the Borrower at any time, the Bond Trustee shall create within the Bond Fund separate accounts for purposes of accounting for earnings on amounts attributable to the Bonds.

The Bond Trustee shall promptly transfer to the Rebate Fund each amount required to be deposited therein pursuant to the written direction of the Borrower, or the Rebate Analyst on their behalf, pursuant to the Tax Regulatory Agreement, first from earnings in the Project Fund, and, second, to the extent amounts in the Project Fund are insufficient, from revenues which have been deposited into the Bond Fund and earnings thereon. To the extent that the amount to be deposited into the Rebate Fund exceeds the amount which can be transferred from such Funds, the Bond Trustee shall promptly notify the Borrower and an amount equal to such deficiency shall be paid promptly by the Borrower to the Bond Trustee for deposit into the Rebate Fund.

The Borrower and the Bond Trustee, on behalf of the Issuer, shall keep such records as will enable them to fulfill their respective responsibilities under this Section 4.09 and Section 148(f) of the Code, and the Borrower shall engage a rebate analyst as may be necessary in connection with such responsibilities. The Bond Trustee, to the extent records of all calculations performed by the rebate analyst are furnished to it in writing, will retain such records until six years after the retirement of the last obligation of the Bonds. The fees and expenses of the rebate analyst shall be paid by the Borrower pursuant to the Loan Agreement to the extent amounts provided hereunder and available in the Rebate Fund are insufficient for such purpose. For purposes of the computation of the Rebate Amount required under the Tax Regulatory Agreement, the Bond Trustee shall, at the cost and expense of the Borrower, make available to the Borrower and the Issuer during normal business hours all written information in the Bond Trustee's control which is requested in writing by the Borrower in connection with such computations. The Bond Trustee shall not be responsible for making the rebate calculations required to be made pursuant to this Section, nor shall it have any responsibility to review the correctness or accuracy of the calculations.

#### **Section 4.10 Investment of Special Funds and Rebate Fund.**

Except as otherwise set forth in this Section, money in the Special Funds and the Rebate Fund shall be invested and reinvested by the Trustee in Eligible Investments as designated in and at the written direction of the Authorized Borrower Representative. At no time shall the Borrower direct that any funds constituting gross proceeds of the Bonds (including, without limitation, moneys deposited in or credited to the Collateral Fund and the Negative Arbitrage Account) be used in any manner as would constitute failure of compliance with Section 148 of the Code.

Except as provided in the following paragraph, investments of money in the Special Funds shall be invested in Eligible Investments at the written directions of the Authorized Borrower Representative.

Money in the Special Funds may be invested in an investment described in clause (b) of the definition of Eligible Investments at the written directions of the Authorized Borrower Representative to the extent that (a) it is impractical to invest such money in Government Obligations because the amount to be invested is too small or Government Obligations are not available at that time for purchase, (b) such money is being held in the Remarketing Proceeds Account, (c) such money has been received less than 30 days prior to date on which Bonds are to mature or be paid upon redemption or mandatory tender, or (d) the Borrower has directed the Trustee in writing that such money will be needed to make a disbursement from the Project Fund prior to the date on which available Government Obligations would mature.

To the extent that the Bond Trustee has not received written direction from the Authorized Borrower Representative regarding investment of moneys, the Bond Trustee shall, until such directions are received, invest such moneys pursuant to standing written instructions delivered to the Bond Trustee by the Authorized Borrower Representative upon the original issuance of the Bonds, as such instructions may be amended from time to time.

Investments of money in the Special Funds shall mature or be redeemable at the direction of the Borrower at the times and in the amounts necessary to provide money to pay Bond Service Charges on the Bonds as they become due on each Interest Payment Date, and at the times required for the purposes of paying, Bond Service Charges when due as aforesaid, and shall do so without necessity for any order on behalf of the Issuer and without restriction by reason of any order. Each investment of money in the Project Fund shall mature or be redeemable at the written direction of the Borrower to the Trustee at the times and in the amounts as may be necessary to make anticipated payments from the Project Fund. Any of those investments may be purchased from or sold to the Trustee, or any bank, trust company, securities firm or savings and loan association which is an Affiliated Party of the Trustee. If the Trustee is required to sell or otherwise dispose of any Eligible Investments prior to maturity at a price below par, the Borrower shall, at the Borrower's expense, deliver to the Trustee (i) a Cash Flow Projection and (ii) Eligible Funds in the amount set forth in such Cash Flow Projection, if any. Anything herein to the contrary notwithstanding, amounts on deposit in the Collateral Fund shall not be invested at a yield in excess of the yield of the Bonds.

An investment made from money credited to the Special Funds shall constitute part of that respective Fund. All investment earnings from amounts on deposit in the Project Fund and the Collateral Fund shall be allocated to the Bond Fund. All gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Special Funds shall be credited to and become part of the Bond Fund. All investment earnings, gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Rebate Fund shall be retained therein. Any investment losses from moneys credited to a Fund shall be charged against the respective Fund. The Trustee shall not be liable for losses on investments made in compliance with the provisions of this Indenture.

Ratings of Eligible Investments shall be determined at the time of purchase of such Eligible Investments and without regard to ratings subcategories. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including cash sweep account fees. Although each of the Issuer and the Borrower recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, each of the Issuer and the Borrower hereby agrees that confirmations of Eligible Investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statements need be rendered for any fund or account if no activity occurred in such fund or account during such month. The Trustee may conclusively rely upon the Authorized Borrower Representative's written instructions as to both the suitability and legality of the directed investments.

Following the Closing Date, at the written direction of the Borrower, the Trustee is permitted to purchase, sell or exchange Eligible Investments with a Cash Flow Projection. Notwithstanding anything herein to the contrary, (i) earnings received by the Trustee with respect to Eligible Investments purchased for the purpose of paying Bond Service Charges shall be held uninvested and (ii) Bond proceeds and the Negative Arbitrage Deposit shall be held uninvested until the Trustee has purchased, sold or exchanged Eligible Investments.

The Bond Trustee may make any and all investments permitted by this Section through its own bond or investment department, unless otherwise directed in writing by the Authorized Borrower Representative.

#### **Section 4.11 Money to be Held in Trust.**

The funds created under this Bond Indenture shall be in the custody of the Bond Trustee in its trust capacity hereunder; and the Issuer authorizes and directs the Bond Trustee to withdraw moneys from said funds for the purposes specified herein, which authorization and direction the Bond Trustee hereby accepts. All moneys required to be deposited with or paid to the Bond Trustee under any provision of this Article IV shall be held by the Bond Trustee in trust, and except for moneys held in the Rebate Fund or deposited with or paid to the Bond Trustee for the redemption of Bonds, notice of redemption of which has been duly given, shall while held by the Bond Trustee constitute part of the security for the Holders and be subject to the lien hereof.

#### **Section 4.12 Nonpresentment of Bonds.**

In the event any Bond shall not be presented for payment when the principal thereof becomes due in whole or in part, whether at maturity, at the Redemption Date or otherwise, or a check for interest is uncashed, if funds sufficient to pay such Bonds shall have been made available to the Bond Trustee for the benefit of the Holder or Holders thereof, all liabilities of the Issuer to the Holder thereof for the payment of such Bond, as the case may be, shall thereupon cease and be completely discharged, and it shall be the duty of the Bond Trustee to hold such funds for a period of six years after maturity of all Bonds, without liability for interest thereon, in a separate account in the Bond Fund for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Bond Indenture or on, or with respect to, said Bond. After the expiration of such six-year period, the Bond Trustee shall return said funds to the Issuer upon its written request and the Holder or Holders of any such

unpresented Bond shall be entitled to payment of said Bond only from said funds held by the Issuer. The obligation of the Bond Trustee under this Section to pay any such funds to the Issuer shall be subject to any provisions of law applicable to the Bond Trustee or to such funds providing other requirements for disposition of unclaimed property. In the absence of any such written request, the Bond Trustee shall from time to time deliver such unclaimed funds to or as directed by pertinent escheat authority, as identified by the Bond Trustee in its sole discretion, pursuant to and in accordance with applicable unclaimed property laws, rules or regulations. Any such delivery shall be in accordance with the customary practices and procedures of the Bond Trustee and the escheat authority.

#### **Section 4.13 Repayment to the Borrower from the Bond Fund.**

On any Mandatory Tender Date, any amounts in the Bond Fund in excess of the amount necessary to cover any negative arbitrage (assuming 0.00% interest earnings on all deposits) and after all of the Outstanding Bonds shall be deemed paid and discharged under the provisions of this Indenture shall, upon written instruction to the Trustee from the Borrower, be paid to or at the direction of the Borrower. Except as provided in Section 4.09 and Section 4.13 hereof, any amounts remaining in the Special Funds (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 and the Issuer and of all other amounts required to be paid under this Indenture, the Loan Agreement, the Borrower's Tax Certificate, the Land Use Restriction Agreement and the Note, shall be paid to the Borrower to the extent that those amounts are in excess of those necessary to effect the payment and discharge of the Outstanding Bonds. Provided however that if the FHA Loan is in default, such excess shall be paid to the Lender.

#### **Section 4.14 Payment of Fees.**

In connection with the issuance of the Bonds and with the Project, the Borrower will pay the following fees in the following manner:

The Bond Trustee will pay the following fees on behalf of the Borrower:

- (i) To the Issuer, an Issuer Fee in an amount equal to 1.5% of the par amount of the Bonds, payable on the Closing Date from Borrower equity;
- (ii) To the Issuer, a Bond Legal Reserve Fee in an amount equal to 0.10% of the par amount of the Bonds, payable on the Closing Date from Borrower equity; and
- (iii) To the Bond Trustee, the Ordinary Trustee Fees and Expenses; and
- (iv) To the Issuer, a City Administrative Fee in an amount equal to 0.15% of the outstanding principal amount of the Bonds, accruing monthly and payable to the Issuer semi-annually.



## **ARTICLE 5**

### **GENERAL COVENANTS AND REPRESENTATIONS**

#### **Section 5.01 Payment of Principal or Redemption Price of and Interest on Bonds.**

The Issuer shall promptly pay or cause to be paid the principal or redemption price of, and the interest on, every Bond issued hereunder according to the terms thereof, but shall be required to make such payment or cause such payment to be made only out of revenues available therefor under this Bond Indenture. The Issuer hereby designates the principal corporate trust office of the Bond Trustee as the place of payment for the Bonds.

**Section 5.02 Instruments of Further Assurance.** The Issuer and the Bond Trustee shall do, execute, acknowledge and deliver, such indentures supplemental hereto, and such further acts, instruments and transfers as the Bond Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Bond Trustee all its interest in the property herein described and the revenues, receipts and other amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds paid solely from the Trust Estate. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Issuer or the Bond Trustee, become and be subject to the lien of this Bond Indenture as fully and completely as though specifically described herein, but nothing contained in this sentence shall be deemed to modify or change the obligations of the Issuer under this Section.

**Section 5.03 Recordation and Filing.** Pursuant to the Loan Agreement, the Borrower shall cause financing statements with respect to the Trust Estate described in this Bond Indenture to be at all times filed in such manner and in such places if required by law in order to fully preserve and protect the rights of the Issuer and the Bond Trustee hereunder and to perfect the security interest created by this Indenture in the Trust Estate described herein. To the extent possible under applicable law, as in effect in the jurisdiction(s) in which the Trust Estate is located, the Borrower will maintain the priority of the security interest herein created in the Trust Estate as a first lien thereon, and warrant, protect, preserve and defend its interest in the Trust Estate and the security interest of the Bond Trustee herein and all rights of the Bond Trustee under this Bond Indenture against all actions, proceedings, claims and demands of all Persons, all paid for by the Borrower.

**Section 5.04 No Modification of Security.** The Issuer shall not, without the written consent of the Bond Trustee, alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement which relates to or affects the security for the Bonds. The Bond Trustee shall not consent to any change in the maturity of the GNMA Security or the Mortgage Note, except as provided in Article VIII hereof.

**Section 5.05 Reports.** The Bond Trustee shall furnish annually, to the Borrower (which shall furnish copies thereof to HUD), the GNMA Issuer and any Bondholder who requests copies thereof and furnishes an address to which such reports and statements are to be sent copies of (a) any written reports furnished to the Bond Trustee with regard to the Project and (b) annual statements of the Bond Trustee with regard to fund balances. The Bond Trustee shall be reimbursed by the Borrower for its reasonable costs and expenses in preparing any such statements.

#### **Section 5.06 Tax Covenants.**

(a) The Issuer, to the extent that it has control over any of the following proceeds or payments covenants and agrees that it will not take any action or fail to take any action with respect to the investment of the proceeds of any Bonds issued under this Bond Indenture or with respect to the payments derived from the security pledged hereunder or from the Loan Agreement which would result in constituting the Bonds “arbitrage bonds” within the meaning of such term as used in Section 148 of the Code. The Issuer and the Bond Trustee further covenant and agree that they will comply with and take all actions required by the Tax Regulatory Agreement.

(b) The Issuer covenants that it shall not use or cause the use of any proceeds of Bonds or any other funds of the Issuer, directly or indirectly, in any manner, and shall not take or cause to be taken any other action or actions, or fail to take any action or actions, which would result in interest on any of the Bonds becoming includable in gross income of any Holder thereof. The Issuer further covenants that it shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Issuer on the Bonds shall be excluded from the gross income of the recipients thereof for federal income tax purposes.

### **ARTICLE 6 DEFAULT PROVISIONS AND REMEDIES OF BOND TRUSTEE AND HOLDERS**

**Section 6.01 Events of Default.** Each of the following shall be an “Event of Default”:

(a) default in the due and punctual payment of any interest on any Bond, subject to a five (5) day notice and cure period; or

(b) default in the due and punctual payment of the principal of or premium, if any, on any Bond whether at the stated maturity thereof, or on proceedings for redemption thereof, or on the maturity thereof by declaration, subject to a five (5) day notice and cure period; or

(c) failure by the Issuer to observe or perform any other covenant, agreement or obligation on its part to be observed or performed contained in this Indenture or in the Bonds, which failure shall have continued for a period of 30 days after written notice, by registered or certified mail, to the Issuer and the Borrower specifying the failure and requiring that it be remedied, which notice may be given by the Trustee in its discretion and shall be given by the Trustee at the written request of the Holders of a majority in aggregate principal amount of Bonds then Outstanding (unless, notwithstanding any attempt to cure such failure, it cannot be cured within 30 days and, notwithstanding, is cured within 180 days); or

(d) the occurrence and continuation of an event of default under the Loan Agreement of which the Bond Trustee has actual notice or of which the Bond Trustee is deemed to have notice pursuant to Section 7.04(i) hereof.

The Bond Trustee and the Issuer agree that notwithstanding the provisions hereof, no default under the terms of this Bond Indenture shall be construed as resulting in a default under the Mortgage Loan Documents unless such event also constitutes a default thereunder.

**Section 6.02 Acceleration.** Upon the occurrence of an Event of Default described in Section 6.01(a) or (b) hereof, the Trustee may, and upon the written request of the Holders of not less than a majority in aggregate principal amount of Bonds then Outstanding shall, by written notice delivered to the Borrower and the Issuer, declare the principal of all Bonds then Outstanding (if not then due and payable), and the interest accrued thereon, to be due and payable immediately. Upon the occurrence of any Event of Default other than those described in Sections 6.01(a) and 6.01(b) hereof of which the Bond Trustee has been notified, the Trustee may, and upon written consent of all Holders of Bonds then Outstanding shall, declare by a notice in writing delivered to the Borrower, the principal of all Bonds then Outstanding (if not then due and payable), and the interest thereon, to be due and payable immediately. Upon such declaration, that principal and interest shall become and be due and payable immediately. Interest on the Bonds shall accrue to the date determined by the Trustee for the tender of payment to the Holders pursuant to that declaration; provided, that interest on any unpaid principal of Bonds Outstanding shall continue to accrue from the date determined by the Trustee for the tender of payment to the Holders of those Bonds.

The provisions of the preceding paragraph are subject, however, to the condition that if, at any time after declaration of acceleration and prior to the entry of a judgment in a court for enforcement hereunder (after an opportunity for hearing by the Issuer and the Borrower),

(a) all sums payable hereunder (except the principal of and interest on Bonds which have not reached their stated maturity dates but which are due and payable solely by reason of that declaration of acceleration), plus interest to the extent permitted by law on any overdue installments of interest at the rate borne by the Bonds shall have been duly paid or provision shall have been duly made therefor by deposit with the Trustee, and

(b) all existing Events of Default shall have been cured,

then and in every case, the Trustee shall, upon being instructed in writing by the Investor Limited Partner, waive the Event of Default and its consequences and shall rescind and annul that declaration. No waiver or rescission and annulment shall extend to or affect any subsequent Event of Default or shall impair any rights consequent thereon.

The Investor Limited Partner shall be entitled (but not obligated) to cure any Event of Default hereunder within the time frame provided to the Borrower hereunder. The Issuer and the Trustee agree that cure of any default or Event of Default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

**Section 6.03 Rights of Holders.** If any Event of Default shall have occurred and be continuing (of which the Bond Trustee has been notified or is deemed to have notice), then the Trustee may and, if requested so to do by the Holders of not less than 25% in aggregate principal

amount of Bonds affected by such default, and if indemnified as provided herein, the Bond Trustee shall:

- (a) by mandamus or other suit, action or proceeding at law or in equity require the Issuer to perform its covenants and duties under this Bond Indenture;
- (b) bring suit upon the Bonds;
- (c) by action or suit in equity require the Issuer to account for its actions as if it were the trustee of an express trust for the Holders of the Bonds;
- (d) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Holders of the Bonds;
- (e) take any action to enforce its remedies under the Loan Agreement; or
- (f) take such other steps to protect and enforce its rights and the rights of the Holders of the Bonds, whether by action, suit or proceeding in aid of the execution of any power herein granted or for the enforcement of any other appropriate legal or equitable remedy.

**Section 6.04 Rights of Holders to Direct Proceedings.** Subject to the provisions of Section 6.08 hereof, the Holders of a majority in principal amount of the Bonds shall have the right at any time, by an instrument in writing executed and delivered to the Bond Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Bond Indenture for the benefit of the Bonds, or for the appointment of a receiver or any other proceedings hereunder for the benefit of the Bonds, in accordance with the provisions of law and of this Bond Indenture.

**Section 6.05 Waiver by Issuer.** Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Issuer nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Bond Indenture; and the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisal and redemption to which it may be entitled under the laws of the State.

**Section 6.06 Application of Moneys.** If at any time after the occurrence of an Event of Default the money 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 money, 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, be applied by the Trustee as set forth in this Section 6.06.

After payment of any costs, expenses, liabilities and advances paid, incurred or made by the Trustee in the collection of money and all fees and expenses of the Trustee pursuant to any right given or action taken under the provisions of this Article or the provisions of the Loan Agreement, the Land Use Restriction Agreement or the Note (including without limitation,

reasonable attorneys' fees and expenses, except as limited by law or judicial order or decision entered in any action taken under this Article VI), all money received by the Trustee, shall be applied as follows, subject to Section 2.03 hereof and any provision made pursuant to Section 4.10 or Section 4.11 hereof:

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

First: To the payment to the Holders entitled thereto of all installments of interest then due on the Bonds, in the order of the dates of maturity of the installments of that interest, beginning with the earliest date of maturity and, if the amount available is not sufficient to pay in full any particular installment, then to the payment thereof ratably, according to the amounts due on that installment, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds; and

Second: To the payment to the Holders entitled thereto of the unpaid principal of any of the Bonds which shall have become due, in the order of their due dates, beginning with the earliest due date, with interest on those Bonds from the respective dates upon which they became due at the rates specified in those Bonds, and if the amount available is not sufficient to pay in full all Bonds due on any particular date, together with that interest, then to the payment thereof ratably, according to the amounts of principal due on that date, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds.

(b) If the principal of all of the Bonds shall have become due or shall have been declared to be due and payable pursuant to this Article, all of such money shall be deposited into the Bond Fund and shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest, of interest over principal, of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds.

(c) If the principal of all of the Bonds shall have been declared to be due and payable pursuant to this Article, and if that declaration thereafter shall have been rescinded and annulled under the provisions of Section 6.02 or Section 6.10 hereof, subject to the provisions of paragraph (b) of this Section in the event that the principal of all of the Bonds shall become due and payable later, the money shall be deposited in the Bond Fund and shall be applied in accordance with the provisions of Article II.

(d) Whenever money is to be applied pursuant to the provisions of this Section, such money shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of money available for application and the likelihood of additional money becoming available for application in the future. Whenever the Trustee shall direct the application of such money, it shall fix the date upon which the application is to be made, and upon that date, interest shall cease to accrue on the amounts of principal, if any, to be paid on that date, provided

the money is available therefor. The Trustee shall give notice of the deposit with it of any money and of the fixing of that date, all consistent with the requirements of Section 2.03 hereof for the establishment of, and for giving notice with respect to, a Special Record Date for the payment of overdue interest. The Trustee shall not be required to make payment of principal of a Bond to the Holder thereof, until the Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if it is paid fully.

**Section 6.07 Remedies Vested in Trustee.** All rights of action, including the right to file proof of claims, under this Bond Indenture or under any of the Bonds may be enforced by the Bond Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Bond Trustee shall be brought in its name as Bond Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Bonds, and any recovery of judgment shall be for the benefit as provided herein of Holders of the Outstanding Bonds.

**Section 6.08 Remedies of Holders.** No Holder of any Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of any provision of this Bond Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless: (a) a default shall have occurred of which the Bond Trustee shall have been notified as provided herein; (b) such default shall have become an Event of Default; (c) the Holders of at least 25% in aggregate principal amount of the Outstanding Bonds shall have made written request to the Bond Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (d) such Holders shall have offered to the Bond Trustee indemnity as provided herein; and (e) the Bond Trustee shall within 60 days thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding, and such notification, request and offer of indemnity are hereby declared in every case at the option of the Bond Trustee to be conditions precedent to the execution of the powers and trusts under this Article VI, and to any action or cause of action for the enforcement of this Bond Indenture, or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture or the rights of any other Holders of the Bonds or to obtain priority or preference over any other Holders (other than as provided herein) or to enforce any right under this Bond Indenture, except in the manner herein provided and for the equal and ratable benefit of all Holders of Bonds. Nothing contained in this Bond Indenture shall, however, affect or impair the right of any Holder to enforce the payment of the principal of, the premium, if any, and interest on any Bond at the maturity thereof or the obligation of the Issuer to pay the principal of, premium, if any, and interest on the Bonds issued hereunder to the respective Holders thereof, at the time, in the place, from the sources and in the manner expressed herein and in said Bonds.

**Section 6.09 Termination of Proceedings.** In case the Bond Trustee shall have proceeded to enforce any right under this Bond Indenture by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and the Bond Trustee shall be restored to their former positions and rights hereunder with respect to the Trust Estate herein conveyed, and all rights, remedies and powers of the Bond Trustee shall continue as if no such proceedings had been taken.

**Section 6.10 Waivers of Events of Default.** The Bond Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds upon the written request of the Holders of a majority of the Outstanding Bonds; provided, however, that there shall not be waived (a) any default in the payment of the principal of any Bonds at the date of maturity specified therein, or upon proceedings for mandatory redemption, or (b) any default in the payment when due of the interest or premium on any such Bonds, unless prior to such waiver or rescission all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds on overdue installments of interest or all arrears of payments of principal or premium, if any, when due (whether at the stated maturity thereof or upon proceedings for mandatory redemption) as the case may be, and all fees, costs, and expenses (including reasonable fees and expenses of counsel) of the Bond Trustee, in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Bond Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Bond Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

**Section 6.11 Notice of Defaults; Opportunity to Cure Defaults.** If an Event of Default shall occur, the Trustee shall give written notice of the Event of Default, by Electronic Means or by registered or certified mail, to the Issuer, the Borrower, the Investor Limited Partner and the Remarketing Agent, within five Business Days after the Trustee has actual notice of the Event of Default pursuant to Section 7.04(i) hereof. If an Event of Default occurs of which the Trustee has actual notice pursuant to this Indenture, the Trustee shall give written notice thereof, within 30 days after the Trustee's receipt of notice of its occurrence, to the Holders of all Bonds then Outstanding as shown by the Register at the close of business 15 days prior to the mailing of that notice; provided, that except in the case of a default in the payment of the principal of or interest on any Bond, the Trustee shall be protected in withholding such notice if the Trustee in good faith determines that the withholding of notice to the Holders is in the interests of the Holders.

## **ARTICLE 7 THE BOND TRUSTEE AND REMARKETING AGENT**

**Section 7.01 Certain Duties and Responsibilities.** Except during the continuance of an Event of Default of which the Bond Trustee has received written notice or is deemed to have notice:

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

(ii) in the absence of bad faith on its part, the Bond Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Bond Trustee and conforming to the requirements of this Bond Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Bond Trustee, the Bond Trustee shall be under a duty to examine the same to determine whether they conform to the requirements of this Bond Indenture.

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

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

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

(ii) The Bond Trustee shall not be liable for any error of judgment made in good faith by a responsible officer, unless it shall be proved that the Bond Trustee was negligent in ascertaining the pertinent facts; and

(iii) The Bond Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with directions received pursuant to Section 6.04 or the direction of the Holders of a majority in principal amount of Outstanding Bonds relating to the time, method and place of conducting any proceeding for any remedy available to the Bond Trustee, or exercising any trust or power conferred upon the Bond Trustee, under this Bond Indenture.

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

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

**Section 7.02 Notice of Default.** Within 30 days after the occurrence of any default hereunder of which the Bond Trustee is deemed to have notice hereunder, the Bond Trustee shall transmit by first class mail, to the Holders of all Bonds then Outstanding notice of such default hereunder known to the Bond Trustee, unless such default shall have been cured or waived prior thereto; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Bond when due, the Bond Trustee shall be protected in withholding such notice if and so long as the Bond Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Bonds. For the purpose of this Section the term “default” means any event which is, or after notice or lapse of time or both would become, an Event of Default.

**Section 7.03 Reserved.**

**Section 7.04 Certain Rights of Bond Trustee.** Except as otherwise provided in Section 7.01 hereof:



(a) the Bond Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document conforming to the requirements, if any, of this Bond Indenture, and believed by it to be genuine, and to have been signed or presented by the proper party or parties;

(b) any Request or Statement of the Issuer mentioned herein shall be sufficiently evidenced by an order or Request of the Issuer signed by an Authorized Issuer Representative and any resolution or ordinance of the governing body of the Issuer may be sufficiently evidenced by a Certificate of the Issuer;

(c) any notice, request, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by an Authorized Borrower Representative (unless other evidence in respect thereof be herein specifically prescribed);

(d) whenever in the administration of this Bond Indenture the Bond Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Bond Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a Certificate of the Issuer;

(e) the Bond Trustee may consult with counsel, architects and engineers and other experts, and the written advice of such counsel, architects or engineers and other experts shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(f) the Bond Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Bond Indenture at the request or direction of any of the Holders of the Bonds pursuant to this Indenture, unless such Holders shall have offered to the Bond Trustee reasonable security or indemnity for its extraordinary compensation and against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(g) the Bond Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document, but the Bond Trustee, in its discretion, may make such further inquiry or investigation into such fact or matters as it may see fit, and, if the Bond Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer and the Borrower, including the Project, personally or by agent or attorney;

(h) the Bond Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder whether directly or by or through agents or attorneys, but the Bond Trustee shall be responsible for any willful misconduct or negligence on the part of any agent or attorney so appointed;

(i) the Bond Trustee shall not be required to take notice or be deemed to have notice of any default hereunder (except for any default due to the Bond Trustee's failure to make any of the payments required to be made by Article IV hereof) unless the Bond Trustee shall be specifically notified in writing of such default by the Issuer or the Holders of at least 25% in principal amount of Bonds affected thereby at the Designated Office of the Trustee;

(j) all notices or other instruments required by this Bond Indenture to be delivered to the Bond Trustee must, in order to be effective, be delivered at the Designated Office of the Trustee at the Notice Address referred to in Section 1.01 hereof;

(k) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder (including, without limitation, as Dissemination Agent); and

(l) the Trustee may request that the Issuer deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

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

(n) The Bond Trustee shall not be accountable for the application by any Person of the proceeds of any Bonds authenticated or delivered hereunder.

(o) The Bond Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds.

(p) The permissive rights of the Bond Trustee to do things enumerated in this Indenture, including those required to be done with reasonable care, shall not be construed as duties.

(q) The Bond Trustee shall have the right to accept and act upon directions given pursuant to this Indenture, other Financing Documents or any other document reasonably relating to the Bonds and delivered using Electronic Means; provided, however, that the Issuer and the Borrower shall provide to the Bond Trustee an incumbency certificate listing officers or representatives with the authority to provide such directions and containing specimen signatures of such authorized officers and representatives ("Authorized Officers"), which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Issuer or the Borrower elects to give the Bond Trustee directions using Electronic Means and the Bond Trustee in its direction elects to act upon such directions, the Bond Trustee's understanding of such directions shall be deemed controlling. The Issuer and the Borrower each understand and agree that the Bond Trustee cannot determine the identity of the actual sender of such directions and that the Bond Trustee shall conclusively presume that they have been sent

by an Authorized Officer. The Issuer and the borrower shall each be responsible for ensuring that only Authorized Officers transmit such directions to the Bond Trustee and that all Authorized Officers treat applicable user and authorization codes, passwords and/or authentication keys with extreme care. The Bond Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bond Trustee's reliance upon and compliance with such directions notwithstanding such directions conflict or are inconsistent with a subsequent written direction. The Issuer and the Borrower each agrees, (i) to assume all risks arising out of the use of Electronic Means to submit directions to the Bond Trustee, including without limitation the risk of the Bond Trustee acting on unauthorized directions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting directions to the bond Trustee and that there may be more secure methods of transmitting directions than the method(s) selected by it; (iii) that the security procedures (if any) to be followed in connection with its transmission of directions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances and (iv) to notify the Bond Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

(r) The bond Trustee shall be entitled to payment by the Borrower for the Ordinary Trustee Fees and Expenses. In the event that it should become necessary for the Bond Trustee to perform extraordinary services, it shall be entitled to payment or reimbursement by the Borrower of its reasonable extra compensation therefor and for its reasonable and necessary extraordinary expenses incurred in connection therewith.

**Section 7.05 Not Responsible for Recitals or Issuance of Bonds.** The recitals contained herein and in the Bonds, except the certificates of authentication, shall be taken as the statements of the Issuer, and the Bond Trustee assumes no responsibility for their correctness. The Bond Trustee makes no representations as to the validity or sufficiency of this Bond Indenture or of the Bonds of the security therefor. The Bond Trustee shall have no responsibility for filing financing statements, amendments thereto or continuation statements.

**Section 7.06 Bond Trustee May Hold Bonds.** The Bond Trustee in its individual or any other capacity may become the owner or pledgee of Bonds and may otherwise deal with the Issuer with the same rights it would have if it were not Bond Trustee.

**Section 7.07 Reserved.**

**Section 7.08 Successor Bond Trustee.** Any corporation or association into which the Bond Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, *ipso facto*, be and become successor Bond Trustee hereunder and vested with all title to the whole property or Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**Section 7.09 Resignation by the Bond Trustee.** The Bond Trustee and any successor Bond Trustee may at any time resign from the trusts hereby created by giving 60 days' written notice by registered or certified mail to the Issuer and to each Holder of the Bonds then Outstanding; provided that no such resignation shall take effect until a successor Bond Trustee shall have been appointed and shall have accepted such appointment as provided in Section 7.11. If no successor Bond Trustee shall have been appointed and have accepted appointment within 60 days following the giving of all required notices of resignation, the resigning Bond Trustee may petition any court of competent jurisdiction for the appointment of a successor Bond Trustee, at the Issuer's expense.

**Section 7.10 Removal of the Bond Trustee.** The Trustee may be removed at any time by an instrument or document or concurrent instruments or documents in writing delivered to the Trustee, with copies thereof mailed to the Issuer, the Remarketing Agent and the Borrower and Managing Member, and signed by or on behalf of the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding.

The Trustee also may be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Indenture with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of the Issuer or the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding under this Indenture.

The removal of the Trustee under this Section 7.10 shall take effect upon the appointment of a successor Trustee as provided for in Section 7.11 of this Indenture.

**Section 7.11 Appointment of Successor Bond Trustee by the Holders; Temporary Bond Trustee.** If (a) the Trustee shall resign, shall be removed, shall be dissolved, or shall become otherwise incapable of acting hereunder, (b) the Trustee shall be taken under the control of any public officer or officers, or (c) a receiver shall be appointed for the Trustee by a court, then a successor Trustee shall be appointed by the Issuer, with the written consent of the Borrower and Managing Member; provided, that if a successor Trustee is not so appointed within 10 days after (i) a notice of resignation or an instrument or document of removal is received by the Issuer, as provided in Sections 7.09 and 7.10 hereof, respectively, or (ii) the Trustee is dissolved, taken under control, becomes otherwise incapable of acting or a receiver is appointed, in each case, as provided above, then, so long as the Issuer shall not have appointed a successor Trustee, the Holders of a majority in aggregate principal amount of Bonds then Outstanding may designate a successor Trustee by an instrument or document or concurrent instruments or documents in writing signed by or on behalf of those Holders. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section, the Holder of any Bond Outstanding hereunder or any retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee, at the Issuer's expense. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

**Section 7.12 Concerning Any Successor Bond Trustee.** Every successor Trustee appointed pursuant to this Section (a) shall be a trust company or a bank having the powers of a trust company, (b) shall be in good standing within the State, (c) shall be duly authorized to exercise trust powers within the State, (d) shall have a reported capital, surplus and retained

earnings of not less than \$50,000,000, and (e) shall be willing to accept the trusteeship under the terms and conditions of this Indenture.

Every successor Trustee appointed hereunder shall execute and acknowledge, and shall deliver to its predecessor, the Issuer and the Borrower and Managing Member an instrument or document in writing accepting the appointment. Thereupon, without any further act, the successor shall become vested with all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of its predecessor. Upon the written request of its successor, the Issuer or the Borrower or Managing Member, and payment of all fees and expenses owed to it, the predecessor Trustee (a) shall execute and deliver an instrument or document transferring to its successor all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of the predecessor Trustee hereunder, and (b) shall take any other action necessary to duly assign, transfer and deliver to its successor all property (including without limitation, all securities and moneys) held by it as Trustee. Should any instrument or document in writing from the Issuer be requested by any successor Trustee for vesting and conveying more fully and certainly in and to that successor the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens vested or conveyed or intended to be vested or conveyed hereby in or to the predecessor Trustee, the Issuer shall execute, acknowledge and deliver that instrument or document.

**Section 7.13 Bond Trustee as Paying Agent and Bond Registrar; Additional Paying Agents.** The Bond Trustee is hereby designated and agrees to act as Paying Agent and Registrar for and in respect to the Bonds.

The Issuer from time to time may appoint one or more additional Paying Agents and, in the event of the resignation or removal of any Paying Agent, successor Paying Agents. Any such additional Paying Agent or successor Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by this Bond Indenture by executing and delivering to the Issuer and the Bond Trustee a written acceptance thereof

**Section 7.14 Successor Bond Trustee as Trustee, Paying Agent and Bond Registrar.** In the event of a change in the office of Bond Trustee, the predecessor Bond Trustee which shall have resigned or shall have been removed shall cease to be Bond Trustee and Paying Agent on the Bonds and Bond Registrar, and the successor Bond Trustee shall become such Bond Trustee, Paying Agent and Bond Registrar.

**Section 7.15 Representations by Bond Trustee.** The Bond Trustee hereby represents and warrants that as of the date of execution of this Bond Indenture:

- (a) It is duly organized and validly existing in good standing under the laws of the jurisdiction of its organization and has the power and authority to enter into and perform its obligations under this Bond Indenture;
  - (b) this Bond Indenture has been duly authorized, executed and delivered by it;
- and

(c) to the best of the Bond Trustee's knowledge, the execution of this Bond Indenture by the Bond Trustee does not violate laws, statutes, ordinances, regulations or material agreements which are binding on the Bond Trustee.

**Section 7.16 Concerning the Remarketing Agent.** The Remarketing Agent identified in Section 1.01 hereof shall serve as the Remarketing Agent for the Bonds. The Remarketing Agent shall designate to the Trustee its Designated Office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Borrower, the Managing Member and the Trustee. In addition, the Remarketing Agent will agree particularly to:

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

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

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

The Remarketing Agent shall be entitled to appoint additional co-Remarketing Agents to assist in the performance of the Remarketing Agent's obligations under this Indenture, and any such appointment shall be effective without any action by the Issuer or the Borrower being necessary; provided that any such co-Remarketing Agent, shall have a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, shall be in conformity with all standards and requirements of the Municipal Securities Rulemaking Board and the Securities and Exchange Commission, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. The Remarketing Agent shall take responsibility for any co-Remarketing Agent it appoints.

**Section 7.17 Qualification of Remarketing Agent.** The Remarketing Agent shall be a member in good standing of the Financial Industry Regulatory Authority having a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. Subject to the terms of the Remarketing Agreement, the Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 30 days' notice of such resignation to the Issuer, the Borrower, Managing Member and the Trustee. The Remarketing Agent may be removed, with prior notice to the Issuer, at any time by the Borrower, with at least 30 days' notice of such removal to the Remarketing Agent.

Upon any resignation or removal of the Remarketing Agent, the departing Remarketing Agent shall pay over, assign and deliver any money and Bonds held by it in such capacity to its successor.

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

**Section 7.18 Information for Rating Agency and Notice of Certain Events.** The Trustee shall provide the Rating Agency upon its written request such information within the Trustee's possession as the Rating Agency shall reasonably require from time to time in order to maintain the rating on the Bonds;

The Trustee shall notify the Rating Agency and the Remarketing Notice Parties of (a) the occurrence of an Event of Default of which the Trustee has actual notice, (b) any change in the identity of the Trustee, (c) any amendments, modifications, supplements or changes to this Indenture, the Loan Agreement, the Note or the Bonds, including any extension of principal or modification of interest or redemption premium due on any of the Bonds, in each case only in the event the Trustee has actual notice, (d) any change or notification of proposed change of the Mandatory Tender Date pursuant to the remarketing of the Bonds, (e) any partial prepayment of the Loan or the giving of notice of the call for redemption of any Bonds in connection with the prepayment of the Loan, (f) any defeasance or acceleration of the Bonds hereunder, (g) any change in the Remarketing Agent or the Lender of which the Trustee has actual knowledge, (h) the occurrence of any monetary or other material default under the Loan of which the Trustee has actual notice, (i) any change or proposed change in the structure or identity of the Borrower of which the Trustee has actual knowledge, (j) any change in the investment of funds subject to the lien of this Indenture, (k) any sale of Eligible Investments below par, as shown in a Cash Flow Projection delivered to the Rating Agency prior to the sale date.

## **ARTICLE 8 SUPPLEMENTAL BOND INDENTURE**

**Section 8.01 Supplemental Bond Indentures Not Requiring Consent of Bondholders.** The Issuer and the Trustee, without the consent of or notice to any of the Bondholders, may enter into a bond indenture or bond indentures supplemental to this Bond Indenture as shall not be inconsistent with the terms and provisions hereof or materially adverse to the interest of the Holders of the Bonds for any one or more of the following reasons:

- (a) to cure any ambiguity or formal defect or omission in this Bond Indenture;
- (b) to subject to the lien and pledge of this Bond Indenture additional revenues, properties or collateral;
- (c) to grant to or confer upon the Bond Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Bond Trustee or any of them;
- (d) to modify, amend or supplement this Bond Indenture or any bond indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or under any state securities laws;

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

(f) to achieve compliance of this Bond Indenture with any applicable federal securities or tax laws or state securities laws;

(g) to maintain the exclusion from gross income for federal income taxation of interest on the Bonds;

(h) to obtain, improve or maintain the rating on the Bonds from any nationally recognized securities rating agency so long as such change does not affect the interest rates, maturities or redemption provisions of the Bonds and does not, in the opinion of Bond Counsel, adversely affect the exclusion from gross income for federal income taxation of interest on the Bonds; or

(i) in connection with any other change in this Bond Indenture which is not to the prejudice of the Bond Trustee or the Bondholders.

The Bond Trustee may rely upon an opinion of counsel as conclusive evidence that execution and delivery of a supplemental bond indenture have been effected in compliance with the provisions of this Article.

**Section 8.02 Supplemental Bond Indentures Requiring Consent of Bondholders.**

Exclusive of Supplemental Indentures to which reference is made in Section 8.01 hereof and subject to the terms, provisions and limitations contained in this Section, and not otherwise, with the consent of the Holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, evidenced as provided in this Indenture, and with the written consent of the Borrower if required by Section 8.05 hereof, the Issuer and the Trustee may execute and deliver Supplemental Indentures adding any provisions to, changing in any manner or eliminating any of the provisions of this Indenture or any Supplemental Indenture or restricting in any manner the rights of the Holders. Nothing in this Section shall permit, however, or be construed as permitting:

(a) without the consent of the Holder of each Bond so affected, (i) an extension of the maturity of the principal of or the interest on any Bond or (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, or

(b) without the consent of the Holders of all Bonds then Outstanding, (i) the creation of a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (ii) a reduction in the aggregate principal amount of the Bonds required for consent to a Supplemental Indenture.

If the Issuer shall request that the Trustee execute and deliver any Supplemental Indenture for any of the purposes of this Section, upon (i) being satisfactorily indemnified with respect to its expenses in connection therewith, and (ii) if required by Section 8.05 hereof, receipt of the Borrower's written consent to the proposed execution and delivery of the Supplemental Indenture, the Trustee shall, at the written direction of the Issuer, cause notice of the proposed execution and delivery of the Supplemental Indenture (which notice shall be prepared by the Borrower) to be mailed by first-class mail, postage prepaid, to all Holders of Bonds then Outstanding at their



addresses as they appear on the Register at the close of business on the fifteenth day preceding that mailing.

The Trustee shall not be subject to any liability to any Holder by reason of the Trustee's failure to mail, or the failure of any Holder to receive, the notice required by this Section. Any failure of that nature shall not affect the validity of the Supplemental Indenture when there has been consent thereto as provided in this Section. The notice shall be prepared by or on behalf of the Issuer and shall set forth briefly the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the Designated Office of the Trustee for inspection by all Holders.

If the Trustee shall receive, within a period prescribed by the Borrower, of not less than 60 days, but not exceeding one year, following the mailing of the notice, an instrument or document or instruments or documents, in form to which the Trustee does not reasonably object, purporting to be executed by the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding (which instrument or document or instruments or documents shall refer to the proposed Supplemental Indenture in the form described in the notice and specifically shall consent to the Supplemental Indenture in substantially that form), the Trustee shall, but shall not otherwise, execute and deliver the Supplemental Indenture in substantially the form to which reference is made in the notice as being on file with the Trustee, without liability or responsibility to any Holder, regardless of whether that Holder shall have consented thereto.

The Bond Trustee may rely upon an opinion of counsel as conclusive evidence that the execution and delivery of any Supplemental Indenture have been effected in compliance with the provisions of this Article.

Any consent shall be binding upon the Holder of the Bond giving the consent and, anything herein to the contrary notwithstanding, upon any subsequent Holder of that Bond and of any Bond issued in exchange therefor (regardless of whether the subsequent Holder has notice of the consent to the Supplemental Indenture). A consent may be revoked in writing, however, by the Holder who gave the consent or by a subsequent Holder of the Bond by a revocation of such consent received by the Trustee prior to the execution and delivery by the Trustee of the Supplemental Indenture. At any time after the Holders of the required percentage of Bonds shall have filed their consents to the Supplemental Indenture, the Trustee shall make and file with the Issuer a written statement that the Holders of the required percentage of Bonds have filed those consents. That written statement shall be conclusive evidence that the consents have been so filed.

If the Holders of the required percentage in aggregate principal amount of Bonds Outstanding shall have consented to the Supplemental Indenture, as provided in this Section, no Holder shall have any right (a) to object to (i) the execution or delivery of the Supplemental Indenture, (ii) any of the terms and provisions contained therein, or (iii) the operation thereof, (b) to question the propriety of the execution and delivery thereof, or (c) to enjoin or restrain the Trustee or the Issuer from that execution or delivery or from taking any action pursuant to the provisions thereof.

**Section 8.03 Amendments to Loan Agreement Not Requiring Consent of the Bondholders.** The Issuer and the Borrower, without the consent of the Bondholders, may enter

into any amendment, change or modification to the Loan Agreement as shall not be inconsistent with the terms of the Loan Agreement or materially adverse to the interests of the Holder of the Bonds or the Bond Trustee for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in the Loan Agreement;
- (b) to grant to or confer upon the Issuer or the Bond Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may be lawfully granted to or conferred upon the Issuer or the Bond Trustee or either of them;
- (c) to maintain the exclusion from gross income for federal income taxation of interest of the Bonds;
- (d) to obtain, improve or maintain the rating on the Bonds so long as such change does not affect the interest rates, maturities or redemption provisions of the Bonds and does not, in the opinion of Bond Counsel, adversely affect the exclusion from gross income for federal income taxation of interest on the Bonds; or
- (e) in connection with any other change which, in the judgment of the Bond Trustee, is not to the prejudice of the Bond Trustee or the Bondholders.

The Bond Trustee may rely upon an opinion of counsel as conclusive evidence that such amendment, change or modification has been effected in compliance with the provisions of this Article.

#### **Section 8.04 Amendments to Loan Agreement Requiring Consent of Bondholders.**

With the consent of the Holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, the Issuer, the Bond Trustee and the Borrower may from time to time enter into amendments, changes and modifications to the Loan Agreement for the purpose of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained therein; provided, however, that no such amendment, change or modification shall permit or be construed as permitting: (a) any adverse effect on the security for the Bonds, (b) a reduction in the amount of Bonds, the Holders of which are required to approve any such amendment, change or modification without the consent of Holders of all Bonds at the time Outstanding which would be affected by the action to be taken; or (c) any action which may result in the denial of the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

If at any time, the Borrower or the Issuer shall request the consent of the Bond Trustee to any such amendment, change or modification of the Loan Agreement, the Bond Trustee shall, upon being satisfactorily indemnified by the Borrower with respect to expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided above with respect to supplemental bond indentures. Such notice shall be prepared by or on behalf of the Issuer and shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the corporate trust office of the Bond Trustee for inspection by all Bondholders. If, within 60 days following the giving of such notice the Holders of not less than two-thirds in aggregate principal amount of Outstanding Bonds at the time of the execution of any such amendment, change or modification shall have consented to and approved the execution thereof as described above, no

Holder of any Bond shall have any right to object to the terms and provisions contained therein, or to the operation thereof, or in any manner to question the propriety of the execution thereof or to enjoin or to restrain the Issuer or the Bond Trustee from consenting to the execution thereof. The Bond Trustee may rely upon an opinion of counsel as conclusive evidence that such amendment, change or modification has been effected in compliance with the provisions of this Article.

**Section 8.05 Consent of Borrower and Investor Limited Partner.** Anything contained herein to the contrary notwithstanding, any Supplemental Indenture executed and delivered in accordance with this Article VIII which affects in any material respect any rights or obligations of the Borrower shall not become effective unless and until the Borrower and Investor Limited Partner shall have consented in writing to the execution and delivery of that Supplemental Indenture.

**Section 8.06 Responsibilities of Trustee.** Notwithstanding anything else contained herein, the Trustee shall not be required to enter into any Supplemental Indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

**Section 8.07 Authorization to Trustee; Effect of Supplement.**

The Trustee is authorized to join with the Issuer in the execution and delivery of any Supplemental Indenture in accordance with this Article and to make the further agreements and stipulations which may be contained therein. Thereafter,

- (a) That Supplemental Indenture shall form a part of this Indenture;
- (b) All terms and conditions contained in that Supplemental Indenture as to any provision authorized to be contained therein shall be deemed to be a part of the terms and conditions of this Indenture for any and all purposes;
- (c) This Indenture shall be deemed to be modified and amended in accordance with the Supplemental Indenture; and
- (d) The respective rights, duties and obligations under this Indenture of the Issuer, the Borrower, the Trustee, the Remarketing Agent and all Holders of Bonds then Outstanding shall be determined, exercised and enforced hereunder in a manner which is subject in all respects to those modifications and amendments made by the Supplemental Indenture.

Express reference to any executed and delivered Supplemental Indenture may be made in the text of any Bonds issued thereafter, if that reference is deemed necessary or desirable by the Trustee or the Issuer. A copy of any Supplemental Indenture for which provision is made in this Article, except a Supplemental Indenture described in Section 8.01(g) hereof, shall be mailed to the Holders by the Trustee. The Trustee shall not be required to execute any supplemental indenture containing provisions adverse to the Trustee.

**Section 8.08 Opinion of Counsel.** The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it as conclusive evidence that (a) any proposed Supplemental Indenture complies with the provisions of this Indenture, and

(b) it is proper for the Trustee to join in the execution of that Supplemental Indenture under the provisions of this Article. That counsel may be counsel for the Issuer or the Borrower.

Before the Issuer and the Trustee shall enter into any Supplemental Indenture, there shall have been delivered to the Trustee an opinion of Bond Counsel to the effect that such Supplemental Indenture will not adversely affect the Federal Tax Status of the Bonds.

**Section 8.09 Modification by Unanimous Consent.** Notwithstanding anything contained elsewhere in this Indenture, the rights and obligations of the Issuer and of the Holders, and the terms and provisions of the Bonds and this Indenture or any Supplemental Indenture, may be modified or altered in any respect with the consent of (a) the Issuer, (b) the Holders of all of the Bonds then Outstanding, (c) the Borrower and the Investor Limited Partner and (d) if such modification or alteration contains provisions adverse to the Trustee, the Trustee.

## **ARTICLE 9**

### **SATISFACTION AND DISCHARGE OF BOND INDENTURE**

**Section 9.01 Discharge of Lien.** If (a) the Issuer shall pay all of the Outstanding Bonds, or shall cause them to be paid and discharged, or if there otherwise shall be paid to the Holders of the Outstanding Bonds, all Bond Service Charges due or to become due thereon, and (b) provision also shall be made for the payment of all other sums payable hereunder or under the Loan Agreement, the Land Use Restriction Agreement and the Note, then this Indenture shall cease, terminate and become null and void (except for those provisions surviving by reason of Section 9.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 9.02 hereof), and the covenants, agreements and obligations of the Issuer hereunder shall be released, discharged and satisfied.

Thereupon, and subject to the provisions of Section 9.03 hereof if applicable,

(a) the Trustee shall release this Indenture (except for those provisions surviving by reason of Section 9.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 9.02 hereof), and shall execute and deliver to the Issuer any instruments or documents in writing, prepared by or on behalf of the Issuer, as shall be requisite to evidence that release and discharge or as reasonably may be requested by the Issuer;

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

(c) the Trustee shall assign and deliver to the Issuer any property subject at the time to the lien of this Indenture which then may be in its possession, except amounts in the Bond Fund required (i) to be paid to the Borrower under Section 4.14 hereof, or (ii) to be held by the Trustee under Section 4.13 hereof or otherwise for the payment of Bond Service Charges.

**Section 9.02 Payment and Discharge of Bonds.** All or any part of the Bonds shall be deemed to have been paid and discharged within the meaning of this Indenture, including without limitation, Section 9.01 hereof, if:

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

(b) the Trustee shall have received, in trust for and irrevocably committed thereto, noncallable Government Obligations which are certified by an Independent public accounting firm of national reputation to be of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient together with any money to which reference is made in subparagraph (a) above, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (which earnings are to be held likewise in trust and so committed, except as provided herein), for the payment of all Bond Service Charges on those Bonds at their maturity.

Any money held by the Trustee in accordance with the provisions of this Section may be invested at the written direction of an Authorized Borrower Representative by the Trustee only in noncallable Government Obligations having maturity dates, or having redemption dates which, at the option of the owner of those obligations, shall be not later than the date or dates at which money will be required for the purposes described above. To the extent that any income or interest earned by, or increment to, the investments held under this Section is determined from time to time by the Trustee to be in excess of the amount required to be held by the Trustee for the purposes of this Section, that income, interest or increment shall be transferred at the time of that determination in the manner provided in Section 4.14 hereof for transfers of amounts remaining in the Bond Fund.

If any Bonds shall be deemed paid and discharged pursuant to this Section 9.02, then within 15 days after such Bonds are so deemed paid and discharged the Trustee shall cause a written notice to be given to each Holder as shown on the Register on the date on which such Bonds are deemed paid and discharged. Such notice shall state the numbers of the Bonds deemed paid and discharged or state that all Bonds are deemed paid and discharged, and shall set forth a description of the obligations held pursuant to subparagraph (b) of the first paragraph of this Section 9.02.

**Section 9.03 Survival of Certain Provisions.** Notwithstanding the foregoing, any provisions of this Bond Indenture which relate to the maturity of Bonds, interest payments and dates thereof, optional and mandatory redemption provisions, credit against mandatory sinking fund requirements, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, non-presentment of Bonds, the holding of moneys in trust, and repayments of moneys in funds held hereunder, and the duties, rights, protections, immunities and indemnities of the Bond Trustee and the Bond Registrar in connection with all of the foregoing, shall remain in effect and be binding upon the Bond Trustee, the Bond Registrar, the Paying Agent and the Holders notwithstanding the release and discharge of this Bond Indenture. The provisions of this Article shall survive the release, discharge and satisfaction of this Bond Indenture.

## **ARTICLE 10 MISCELLANEOUS**

**Section 10.01 Consents and Other Instruments of Bondholders.** Any consent, request, direction, approval, waiver, objection, appointment or other instrument required by this Bond Indenture to be signed and executed by the Bondholders may be signed and executed in any

number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such instrument, if made in the following manner, shall be sufficient for any of the purposes of this Bond Indenture and shall be conclusive in favor of the Trustee with regard to any action taken under such instrument, namely:

(a) The fact and date of the execution by any Person of any such instrument may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the Person signing such instrument acknowledged to him the execution thereof. Where such execution is by an officer of a corporation or association or a member of a limited liability company or a partner of a partnership on behalf of such corporation, association, limited liability company or partnership, such affidavit or certificate shall also constitute sufficient proof of his authority.

(b) The ownership of Bonds shall be proven by the Bond Register.

(c) Any request, consent or vote of the Holder of any Bond shall bind every future Holder of any Bond issued in exchange therefor or in lieu thereof, in respect of anything done or permitted to be done by the Trustee or the Issuer pursuant to such request, consent or vote.

(d) In determining whether the Holders of the requisite amount of the principal amount of the Bonds then Outstanding have concurred in any demand, request, direction, consent or waiver under this Bond Indenture, Bonds which are owned by the Issuer or the Borrower or by any Person directly or indirectly controlling or controlled by, or under direct or indirect common control with the Issuer or the Borrower shall be disregarded and deemed not to be Outstanding for the purpose of determining whether the Bond Trustee shall be protected in relying on any such demand, request, direction, consent or waiver. Only Bonds which the Bond Trustee actually knows to be so owned shall be disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of Issuer and the Bond Trustee the pledgee's right to vote such Bonds. In case of a dispute as to such right, any decision by the Bond Trustee taken upon the advice of counsel shall be full protection to the Bond Trustee.

(e) To the extent that it is necessary for the Bond Trustee to determine whether any Person is a Beneficial Owner, the Bond Trustee shall make such determination based on a certification of such Person (on which the Bond Trustee may conclusively rely) setting forth in satisfactory detail the principal balance and bond certificate owned and any intermediaries through which such bond certificate is held. The Bond Trustee shall also be entitled to rely conclusively on information it receives from DTC or other applicable depository, its direct participants and the indirect participating brokerage firms for such participants with respect to the identity for a Beneficial Owner. The Bond Trustee shall not be deemed to have actual or constructive knowledge of the books and records of DTC or its participants.

**Section 10.02 Limitation of Rights.** With the exception of rights conferred expressly in this Indenture, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, the Remarketing Agent, the Borrower, the Managing Member and the Holders of the Bonds any legal or equitable right, remedy, power or claim under or with respect to this Indenture or any covenants, agreements, conditions and provisions contained herein. This Indenture and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the parties hereto, the Remarketing Agent, the Borrower, the Managing Member and the Holders of the Bonds, as provided herein.

**Section 10.03 Severability.** If any provision of this Bond Indenture shall be held or deemed to be or shall in fact be 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, statute, rule of law or 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 circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Bond Indenture contained shall not affect the remaining portions of this Bond Indenture or any part thereof

**Section 10.04 Notices.** All notices, certificates or other communications hereunder ("Notices") must be in writing (provided that any Notices sent to Bond Trustee hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign initiated by the Bond Trustee (or such other digital signature provider as specified in writing to Bond Trustee by the authorized representative as shall be acceptable to the bond Trustee)) and shall be sufficiently given and shall be deemed given three days after deposit by first-class mail, except any notice specifically required to be given by certified or registered mail shall be deemed given three days after being mailed by certified or registered mail, postage prepaid, and any notice dispatched by messenger, facsimile or telegram, addressed to the Notice Address of the person to whom such notices, certificates or other communications are given shall be deemed given when delivered; provided, however, that any notices to the bond Trustee shall not be deemed to be given until received by it.

**Section 10.05 Payments Due on Saturdays, Sundays and Holidays.** In any case where the date of maturity of interest on or principal of the Bonds, or the date fixed for redemption of any Bonds, shall be a Saturday, Sunday, legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

**Section 10.06 Priority of this Indenture.** This Indenture shall be superior to any liens which may be placed upon the Revenues or any other funds or accounts created pursuant to this Indenture.

**Section 10.07 Counterparts.** This Bond Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture and signature pages for all purposes.

**Section 10.08 Governing Law.** The laws of the State shall govern the construction of this Bond Indenture and of all Bonds issued hereunder, without reference to its conflict of laws principles.

**Section 10.09 No Recourse.** No recourse shall be had for the principal of, redemption premium, if any, and interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Bond Indenture or the Loan Agreement against any past, present or future official, officer or employee of the Issuer or the Trustee, as such, either directly or through the Issuer or the Trustee or any successor to either, under any rule of law, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability is hereby expressly waived and released as a condition of and consideration for the execution of the Bond Indenture and the Loan Agreement and the issuance of the Bonds.

**Section 10.10 Successors and Assigns.** All the covenants and representations contained in this Bond Indenture, by or on behalf of the Issuer and the Trustee, shall bind and inure to the benefit of their respective successors and assigns, whether expressed or not.

**Section 10.11 Books, Records and Accounts.** The Bond Trustee agrees to keep proper books, records and accounts in which complete and correct entries shall be made of all transactions relating to the receipt, disbursements, investment, allocation and application of the proceeds received from the sale of the Bonds, the revenues received from the Funds created pursuant to this Bond Indenture and all other money held by the Bond Trustee hereunder. The Bond Trustee shall make such books, records and accounts available for inspection by the Issuer or the Holder of any Bond during reasonable hours and under reasonable conditions.

**Section 10.12 Mortgage Loan Documents and Regulations Control.**

(a) In the event of any conflict and to the extent that there is any inconsistency or ambiguity between the provisions of this Indenture and the provisions of the Controlling HUD and GNMA Requirements or the Mortgage Loan Documents, the Controlling HUD and GNMA Requirements and Mortgage Loan Documents will be deemed to be controlling, and any such ambiguity or inconsistency will be resolved in favor of, and pursuant to the terms of the Controlling HUD and GNMA Requirements and Mortgage Loan Documents, as applicable. Notwithstanding any provision of this Indenture to the contrary, the parties hereto acknowledge and agree that all of their respective rights and powers to any assets or properties of the Borrower are subordinate and subject to the liens created by the Mortgage, together with any and all amounts from time to time secured thereby, and interest thereon, and to all of the terms and provisions of the Mortgage, and any and all other documents executed by the Borrower as required by HUD or GNMA in connection therewith.



(b) Enforcement of the covenants in this Indenture will not result in, and neither the Issuer, the Trustee nor any parties indemnified by the Borrower pursuant to this Indenture has or shall be entitled to assert, any claim against the Project, the Mortgage Loan proceeds, any reserves or deposits required by HUD in connection with the Mortgage Loan transaction, or the rents or deposits or other income of the Project other than available "Surplus Cash" as defined in the HUD Regulatory Agreement.

(c) Failure of the Issuer or the Borrower to comply with any of the covenants set forth in this Indenture will not serve as a basis for default on the Mortgage Loan, the underlying mortgage, or any of the other Mortgage Loan Documents.

(d) The Bonds are not a debt of the United States of America, HUD, FHA, GNMA or any other agency or instrumentality of the federal government, and are not guaranteed by the full faith and credit of the United States or any agency or instrumentality thereof.

(e) There is no pledge hereunder of the gross revenues or any of the assets of the Project.

(f) Nothing contained herein shall inhibit or impair the right of FHA to require or agree to any amendment, change or modification of any Mortgage Loan Documents.

(g) Proceeds from any condemnation award or from the payment of a claim under any hazard insurance policy relating to the Project will not be payable to the Trustee, but will be payable in accordance with the Mortgage Loan Documents.

(h) Notwithstanding anything to the contrary in the event of an assignment or conveyance of the Mortgage Loan to the Federal Housing Commissioner, subsequent to the issuance of the Bonds, all money remaining in all funds and accounts other than the Rebate Fund and any other funds remaining under the Indenture after payment or provision for payment of debt service on the Bonds and the fees and expenses of the Issuer, Trustee and other such parties unrelated to the Borrower (other than funds originally deposited by the Borrower or related parties on or before the date of issuance of the Bonds) shall be returned to the Lender.

(i) HUD shall not have any obligation under the Disbursement Agreement (or otherwise) to continue to provide Lender Funds if there is a Borrower default under and assignment of the Mortgage Loan to HUD.

**Section 10.13 Force Majeure.** In no event shall the Bond Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, epidemics, pandemics, quarantine restrictions, hacking or cyberattacks, or other use or infiltration of the Bond Trustee's technological infrastructure exceeding authorized access, equipment or transmission failures, or the unavailability of the Federal Reserve Bank wire services or any electronic communication

facility, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Bond Trustee shall use reasonable efforts which are consistent with accepted corporate trust industry practices to resume performance as soon as practicable under the circumstances.

**Section 10.14 U.S.A. Patriot Act.** The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Bond Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Bond Trustee. The parties to this Bond Indenture agree that they will provide the Bond Trustee with such information as it may reasonably request in order for the Bond Trustee to satisfy the requirements of the U.S.A. Patriot Act.

**Section 10.15 Waiver of Jury Trial.** EACH OF THE ISSUER, THE HOLDERS AND THE BOND TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE BONDS OR THE TRANSACTION CONTEMPLATED HEREBY.

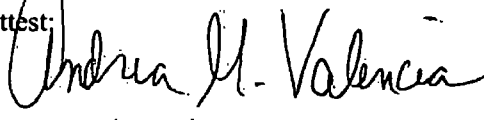
**IN WITNESS WHEREOF**, the parties hereto have caused this Bond Indenture to be duly executed and their respective corporate seals to be hereunto affixed and attested, all as of the date and year first above written.

**CITY OF CHICAGO**

By:   
Chief Financial Officer

(Seal)

Attest:

  
City Clerk

**THE HUNTINGTON NATIONAL BANK,**  
as Bond Trustee

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

Attest:

\_\_\_\_\_  
Authorized Officer

**IN WITNESS WHEREOF**, the parties hereto have caused this Bond Indenture to be duly executed and their respective corporate seals to be hereunto affixed and attested, all as of the date and year first above written.

**CITY OF CHICAGO**

By: \_\_\_\_\_  
Chief Financial Officer

(Seal)

Attest:

\_\_\_\_\_  
City Clerk

**THE HUNTINGTON NATIONAL BANK,**  
as Bond Trustee

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

Attest:

Ellen Campbell  
Authorized Officer

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

**UNITED STATES OF AMERICA**  
**STATE OF ILLINOIS**  
**CITY OF CHICAGO**

**Multi-Family Housing Revenue Bonds**  
**(Barbara Jean Wright Court Apartments Project), Series 2022**

No. R-1

MAXIMUM PRINCIPAL AMOUNT:  
\$40,453,000

<u>Maturity Date</u>	<u>Dated Date</u>	<u>Initial Interest Rate</u>	<u>CUSIP No.</u>
October 1, 2025	September 15, 2022	4%	167570 TS9

Registered Owner: CEDE & CO.

Maximum Principal Amount: Forty Million, Four Hundred Fifty-Three Thousand and 00/100 DOLLARS

INITIAL MANDATORY TENDER DATE: October 1, 2024

The City of Chicago, a municipality and home rule unit of government duly organized and validly existing under the Constitution and the laws of the State of Illinois (the "Issuer"), for value received, hereby promises to pay (but only from the revenues and other assets and in the manner hereinafter described) to the Registered Owner specified above or registered assigns, the Principal Amount specified above on the Maturity Date specified above (subject to the rights of redemption and tender set forth herein), and to pay from those sources interest on the unpaid principal balance of said Principal Amount calculated at the Interest Rate on (a) April 1 and October 1 of each year beginning April 1, 2023, (b) each Redemption Date, and (c) each Mandatory Tender Date (the "Interest Payment Dates") until the principal amount is paid or duly provided for. This Bond will bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from its date, or, if no interest has been paid or provided for, from the date of initial delivery (the "Closing Date").

This Bond shall bear interest from the Dated Date to but not including the Initial Mandatory Tender Date at the Initial Interest Rate set forth above and thereafter this Bond shall bear interest at the Remarketing Rate (as defined in the Indenture) for each subsequent Remarketing Period (as



defined in the Indenture). Interest on the Bonds shall be calculated on the basis of a 360-day year consisting of twelve 30-day months, for the actual number of days elapsed.

The principal of this Bond is payable at the designated corporate trust office of the trustee, presently THE HUNTINGTON NATIONAL BANK (the "Trustee"). Interest is payable on each Interest Payment Date by check mailed to the person in whose name this Bond (or one or more predecessor bonds) is registered (the "Holder") at the close of business on the 15th day of the calendar month next preceding that Interest Payment Date (the "Regular Record Date") on the registration books for this issue maintained by the Trustee, as registrar, at the address appearing therein. Any interest which is not timely paid or duly provided for shall cease to be payable to the Holder hereof (or of one or more predecessor bonds) as of the Regular Record Date, and shall be payable to the Holder hereof (or of one or more predecessor bonds) at the close of business on a Special Record Date to be fixed by the Trustee for the payment of that overdue interest. Notice of the Special Record Date shall be mailed to Holders not less than 10 days prior thereto. The principal of and interest on this Bond are payable in lawful money of the United States of America, without deduction for the services of the paying agent. While the Bonds are held in a book-entry system and in certain other circumstances, all as provided in the Indenture, principal of and interest on this Bond is required to be paid by wire transfer or other arrangement, other than any payment of the entire unpaid principal amount hereof.

This Bond is one of a duly authorized series of bonds of the City designated as its Multi-Family Housing Revenue Bonds (Barbara Jean Wright Court Apartments Project), Series 2022 (the "Bonds"), in the aggregate principal amount of \$40,453,000 (the "Bonds"), pursuant to Article VII, Section 6 of the 1970 Constitution of the State of Illinois, and pursuant to the Ordinance adopted by the Issuer on July 20, 2022. The Bonds are issued under and are equally and ratably secured as to principal, premium, if any, and interest by a Bond Indenture dated as of September 1, 2022, from the Issuer to the Bond Trustee (the "Bond Indenture"), to which Bond Indenture and all indentures supplemental thereto (copies of which are on file at the office of the Bond Trustee) reference is hereby made. By the acceptance of this Bond, the Holder hereof assents to all of the provisions of the Bond Indenture.

The Bonds, together with premium, if any, and interest thereon, do not constitute an indebtedness, liability, general or moral obligation or a pledge of the full faith or loan of credit of the Issuer, the State of Illinois, or any political subdivision of the State of Illinois within the meaning of any constitutional or statutory provisions. None of the Issuer, the State of Illinois or any political subdivision thereof shall be obligated to pay the principal of, premium, if any, or interest on the Bonds or other costs incident thereto except from the revenues and assets pledged with respect thereto. Neither the full faith and credit nor the taxing power of the United States of America, the Issuer, the State of Illinois or any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or interest on the Bonds or other costs incident thereto. The Bonds are not a debt of the United States of America or any agency thereof, and are not guaranteed by the United States of America or any agency thereof.

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

The Bonds are being issued by the Issuer for the purpose of financing a loan (the "Loan") to be made to BJ Wright Preservation, LP, an Illinois limited partnership (the "Borrower"). The Loan will be used by the Borrower to pay a portion of the costs of acquiring, constructing and equipping the Project, as defined in the Indenture and as further described in the Loan Agreement dated as of even date with the Indenture (the "Loan Agreement"), between the Issuer and the Borrower. The Bonds are special limited obligations of the Issuer, issued or to be issued under and are secured and entitled equally and ratably to the protection given by the Indenture, including payments under the Loan made to the Trustee by the Borrower.

The Bonds are subject to redemption and tender prior to their stated maturity as follows:

(a) Optional Redemption. The Bonds are subject to optional redemption in whole or in part by the Issuer at the written direction of the Borrower on any date on or after the later to occur of (a) the date that the Project is placed in service, as certified in writing by the Borrower to the Trustee, and (b) the Optional Redemption Date (as defined in the Indenture) at a redemption price equal to 100% of the principal amount of the Bonds plus accrued interest to the Redemption Date.

(b) Reserved.

(c) Mandatory Redemption. The Bonds shall be redeemed in whole at a redemption price of 100% of the principal amount of such Bonds, plus accrued interest to the Redemption Date, on any Mandatory Tender Date upon the occurrence of any of the following events: (i) the Borrower has previously elected not to cause the remarketing of the Bonds, (ii) the conditions to remarketing set forth in the Indenture have not been met by the dates and times set forth therein, or (iii) the proceeds of a remarketing on deposit in the Remarketing Proceeds Account at 11:00 a.m. Local Time on the Mandatory Tender Date are insufficient to pay the purchase price of the Outstanding Bonds on such Mandatory Tender Date. Bonds subject to redemption in accordance with this paragraph shall be redeemed from (i) amounts on deposit in the Collateral Fund, (ii) amounts on deposit in the Negative Arbitrage Account of the Bond Fund, (iii) amounts on deposit in the Project Fund, and (iv) any other Eligible Funds available or made available for such purpose at the direction of the Borrower.

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

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

The Borrower is required by the Loan Agreement to cause the Lender (as defined in the Indenture) to deposit on its behalf Eligible Funds (as defined in the Indenture) to the Trustee in the



amounts and at the times necessary to pay the principal of and interest (the “Bond Service Charges”) on the Bonds. In the Indenture, the Issuer has assigned to the Trustee, to provide for the payment of the Bond Service Charges on the Bonds, the Issuer’s right, title and interest in and to the Loan Agreement, except for Reserved Rights as defined in the Indenture. To secure its compliance with certain covenants in the Loan Agreement, the Borrower has executed and delivered a Regulatory and Land Use Restriction Agreement, dated as of September 1, 2022 (the “Land Use Restriction Agreement”) among the Issuer, the Borrower and the Trustee.

Copies of the Indenture, the Loan Agreement and the Land Use Restriction Agreement are on file in the designated corporate trust office of the Trustee.

The Bond Service Charges on the Bonds are payable solely from the Revenues, as defined and as provided in the Indenture (being, generally, the amounts payable under the Loan Agreement and any unexpended proceeds of the Bonds), and are an obligation of the Issuer only to the extent of the Revenues. The Bonds are not secured by an obligation or pledge of any money raised by taxation and do not represent or constitute a debt or pledge of the faith and credit of the Issuer.

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

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

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

Neither the Issuer nor the Borrower shall be liable for an acceleration of the Bonds or payment of additional interest thereon in the event that interest on the Bonds is declared or becomes includable in gross income for federal income tax purposes.

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

This Bond is transferable by the Holder hereof in person or by his attorney duly authorized in writing at the principal corporate trust office of the Bond Trustee, but only in the manner and subject to the limitations provided in the Bond Indenture upon payment of any tax, fee or other governmental charge required to be paid with respect to such transfer, and upon surrender and cancellation of this Bond. Upon such transfer a new registered Bond or bonds of the same maturity and interest rate and of authorized denomination or denominations for the same aggregate principal amount will be issued to the transferee in exchange therefor.

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

Subject to the limitations of the Bond Indenture and upon payment of any tax, fee or other governmental charge required to be paid with respect to such exchange, Bonds may be exchanged for a like aggregate principal amount of Bonds of the same maturity and interest rate.

The principal hereof may be declared or may become due on the conditions and in the manner and at the time set forth in the Bond Indenture upon the occurrence of an event of default as provided in the Bond Indenture.

No recourse shall be had for the payment of the principal of, premium, if any, or interest on this Bond, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Bond Indenture or any indenture supplemental thereto, against any trustee, officer or employee, as such, past, present or future, of the Issuer or any successor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released. The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

UNIF GIFT MIN ACT --

\_\_\_\_\_  
(Cust) Custodian (Minor)  
Under Uniform Gift to Minors



Act \_\_\_\_\_  
(State)

TEN COM – as tenants in common  
TEN ENT – as tenants by the entirety  
JT TEN – as joint tenants with right of  
Survivorship and not as  
Tenants in common

Additional abbreviations may also be used though not in the above list.

It is hereby certified, recited and declared that all facts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law and that the issuance of this Bond, together with all other obligations of the Issuer, does not exceed or violate any constitutional or statutory limitation.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual or facsimile signature of an authorized officer and its corporate seal to be hereunto impressed or imprinted hereon and attested to by the manual or facsimile signature of an authorized officer of the Issuer, all as of the Dated Date identified above.

**CITY OF CHICAGO, ILLINOIS**

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

Attest:

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

## FORM OF CERTIFICATE OF AUTHENTICATION

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

**THE HUNTINGTON NATIONAL BANK,**  
as Bond Trustee

By: \_\_\_\_\_  
Authorized Signature

Date of Authentication: \_\_\_\_\_

Date from which interest is payable: Dated Date

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the issuer or its agent for registration or transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is required by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as if required by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

## FORM OF ASSIGNMENT

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

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

(Please Print or Type Name and Address of Assignee)

Social Security or Taxpayer Identification Number: \_\_\_\_\_

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

\_\_\_\_\_

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

\_\_\_\_\_  
Notice: The signature to this assignment must correspond with the name as it appears on the face of the within note in every particular, without alteration or enlargement or any change whatever. The signature must be guaranteed by a member of a signature medallion program.

Signature guaranteed by:

\_\_\_\_\_

\_\_\_\_\_  
Authorized Signature

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





## **EXHIBIT B**

### **LEGAL DESCRIPTION OF PROJECT SITE**

A tract of land situated in the Northeast quarter of Section 20, Township 39 North, Range 14 East of the Third Principal Meridian comprising all or a part of the following mentioned subdivided lots and blocks to wit:

Lots 1 to 24 in Barron's Subdivision of the South Three Quarters of Block 15 and Lots 1 through 6 in Barron's Subdivision of the South Quarter of Block 16, all in Brand's Addition to Chicago, being the East half of the Northeast quarter of Section 20, aforesaid;

Lots 1 through 7 in D.B. Lee's Subdivision of the North Quarter of Block 15 in Brand's Addition to Chicago aforesaid;

Lots 1 through 8 in Falter's Subdivision of the North Three Quarters of Block 16 in Brand's Addition to Chicago, aforesaid;

Lots 1 through 14 and 26 through 37 in Block 4 and Lots 1 through 90 (except the North 80.00 feet of Lots 15 through 25) in Block 5, all in Henry Waller's Subdivision of the Northwest Quarter of the Northeast Quarter of Section 20, aforesaid;

Lots 1 through 53 in Block 1 and Lots 1 through 51 in Block 2 all in Swift and McAuley's Subdivision of the North Half of the Southwest Quarter of the Northeast Quarter of Section 20;

The vacated streets and alleys in and adjoining the above described lots and blocks.

The above mentioned tract being all or part of the above mentioned lots and blocks together, with adjoining vacated streets and alleys and that part of Waller's Subdivision of the Northwest Quarter of the Northeast Quarter of Section 20, aforesaid, being described as follows:

Commencing at the Northwest corner of Lot 7 in D.B. Lee's Subdivision of the North Quarter of Block 15 in Brand's Addition to Chicago aforesaid; thence running West 1 foot to the East line of Miller Street (formerly Waller Street); thence South on the East line of said street to a Point 1 foot West of and opposite the Southwest corner of original Lot 12 in Barron's Subdivision of the South Three Quarters of Block 15 in Brand's Addition aforesaid (said Lot 12 being in the North half of 14th Street and the South line of said Lot 12 being also the South line of the North half of 14th Street); thence East 1 foot more or less to the Southwest corner of said Lot 12; thence North to the point of beginning;

Being more particularly described as follows:

(Phase I:)

Beginning at the intersection of the West line of South Morgan Street and the South line of West Maxwell Street; thence South along the West line of South Morgan Street, a distance of 819.82 feet to the Northeasterly line of West 14th Place as opened by ordinance passed May 18, 1885 and by Instrument Recorded December 7, 1900 as Document 3041346; thence Northwesterly along the Northeasterly line of said street as opened, a distance of 220.15 feet to its intersection with the North line of West 14th Place as laid out in Swift and McAuley's Subdivision, aforesaid; thence West along the North line of West 14th Place, a distance of 574.16 feet to its intersection with the extension South of the West line of Lots 21 and 70 in Block 5 in Henry Waller's Subdivision aforesaid; thence North along the extension South of the West line of said Lots 21 and 70, a distance of 469.65 feet to a point in the West line of said Lot 21 which is 80.00 feet South of the South line of West Liberty Street; thence East parallel to the South line of West Liberty Street to the East line of Lot 15 in said Block 5; thence North along the East line of Lot 15 and said East line produced North and along the East line of Lot 15 in Block 4 in said Henry Waller's Subdivision to

the South line of West Maxwell Street; thence East along the South line of West Maxwell Street and said South line extended a distance of 327.97 feet; thence South parallel to South Morgan Street, 14 feet; thence East parallel to the South line of West Maxwell Street, extended East, 80.06 feet; thence North parallel to South Morgan Street 14 feet to the South line of West Maxwell Street extended; thence East along said South line of West Maxwell Street, a distance of 185.72 feet to the point of beginning, in Cook County, Illinois.

**Common Address:** 1354 South Morgan Street, Chicago, IL 60608

**PIN Numbers:**

17-20-211-037-0000  
17-20-213-088-0000  
17-20-213-090-0000  
17-20-214-016-0000  
17-20-214-020-0000  
17-20-220-061-0000  
17-20-220-062-0000  
17-20-220-065-0000