



# Office of Chicago City Clerk



O2011-2626

Office of the City Clerk

## Tracking Sheet

Meeting Date:	4/13/2011
Sponsor(s):	Mayor Daley
Type:	Ordinance
Title:	Ordinance amending a previously executed trust indenture and loan documentation regarding 2002 empowerment zone revenue bonds for Midway Moving
Committee(s) Assignment:	Committee on Finance

**AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND  
RESTATED TRUST INDENTURE AND AN AMENDED AND RESTATED LOAN AGREEMENT  
WITH RESPECT TO THE CITY OF CHICAGO ENTERPRISE ZONE REVENUE BONDS  
(J & A, LLC PROJECT), SERIES 2002; AUTHORIZING THE EXECUTION AND DELIVERY OF  
CERTAIN OTHER DOCUMENTS IN RELATION THERETO; AND AUTHORIZING CERTAIN  
OTHER MATTERS IN RELATION THERETO**

**WHEREAS**, by virtue of Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois, the City of Chicago (the "City"), is a home rule unit of local government and as such may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, pursuant to an ordinance adopted by the City Council of the City (the "City Council") on July 31, 2002 and published at pages 91043 through 91191 in the Journal of Proceedings of the City Council (the "Journal") of such date, as amended by an ordinance adopted by the City Council on November 6, 2002 and published at pages 95583 through 95585 in the Journal (collectively, the "Original Ordinance"), the City authorized the issuance of \$6,850,000 aggregate principal amount of Enterprise Zone Revenue Bonds (J & A, LLC Project), Series 2002 (the "Bonds"); and

**WHEREAS**, pursuant to the Original Ordinance the Bonds were designated as empowerment zone facility bonds pursuant to Section 1394(f) of the Internal Revenue Code of 1986, as amended (the "Code"); and

**WHEREAS**, the Bonds were issued on December 10, 2002 pursuant to the terms of a Trust Indenture dated as of December 1, 2002 (the "Indenture") between the City and Amalgamated Bank of Chicago, as successor to Midwest Bank and Trust Company (the "Trustee") and are currently outstanding in the aggregate principal amount of \$6,395,000, and the proceeds thereof were loaned to J and A, LLC (the "Company") pursuant to the terms of a Loan Agreement dated as of December 1, 2002 (the "Loan Agreement") between the City and the Company; and

**WHEREAS**, on April 18, 2011, the irrevocable, transferrable, direct pay letter of credit issued by Charter One Bank, NA to pay the principal and purchase price of, and interest on, the Bonds expired, causing the Bonds to be subject to mandatory tender for purchase pursuant to the terms of the Indenture; and

**WHEREAS**, First Bank & Trust (the "Purchaser") purchased the Bonds upon their mandatory tender for purchase and is holding the Bonds as "Purchased Bonds," as defined in the Indenture; and

**WHEREAS**, the Purchaser has agreed to continue to hold the Bonds without the Bonds being considered Purchased Bonds and under financial terms currently not contained in the Indenture, and the Company and the Purchaser have reached agreement upon amendments and restatements of the Indenture and Loan Agreement incorporating such terms, which would cause a reissuance of the Bonds for purposes of the Code; and

**WHEREAS**, by this ordinance, the City Council has determined that it is necessary and in the best interests of the City to assist in the retention of ownership of the Bonds by the Purchaser by entering into an amendment and restatement of the Indenture (the "Amended and Restated Indenture"), an amendment and restatement of the Loan Agreement (the "Amended

and Restated Loan Agreement") and an agreement relating to tax and arbitrage matters regarding the reissuance of the Bonds (the "Tax Agreement"); and

WHEREAS, the Bonds will remain special, limited obligations of the City payable from the loan payments received by the City pursuant to the Amended and Restated Loan Agreement and secured under the Amended and Restated Indenture for the benefit of the Purchaser, and do not now and shall never constitute an indebtedness or any obligation of the City, the State of Illinois or any political subdivision thereof, within the purview of any constitutional limitation or statutory provision, or a charge against the general credit or taxing powers of any of them nor will any owner of the Bonds have any right to compel the taxing powers of any of the City, the State of Illinois or any political subdivision thereof to pay any principal installment of, premium, if any, or interest thereon.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO, AS FOLLOWS:

Section 1. Incorporation of Recitals. The recitals contained in the preambles to this ordinance are hereby incorporated into this ordinance by this reference. All capitalized terms used in the ordinance, unless otherwise defined herein, shall have the meanings ascribed thereto in the Amended and Restated Loan Agreement and the Amended and Restated Indenture.

Section 2. Findings and Determinations. The City Council hereby finds and determines that the delegations of authority that are contained in this ordinance, including the authority to make the specific determinations described herein, are necessary and desirable because the City Council cannot itself as advantageously, expeditiously or conveniently exercise such authority and make such specific determinations.

Section 3. Authorized Officers. As further detailed in Section 5 of this ordinance, each of (i) the Mayor of the City (the "Mayor"), (ii) the Chief Financial Officer of the City (as defined below or (iii) any other officer designated in writing by the Mayor (the Mayor, the Chief Financial Officer or any such other officer being referred to as an "Authorized Officer") is hereby authorized to execute and deliver the Amended and Restated Indenture and the Amended and Restated Loan Agreement on behalf of the City.

As used herein, the term "Chief Financial Officer" shall mean the Chief Financial Officer of the City appointed by the Mayor, or, if there is no such officer then holding said office, the City Comptroller.

An Authorized Officer is hereby authorized to execute and deliver the Tax Agreement on behalf of the City, in substantially the form of tax agreements or certificates used in previous issuances of empowerment zone facility bonds, with appropriate revision to reflect the terms and provisions of the Bonds, and the applicable provisions of the Code and the regulations promulgated thereunder, and with such other revision in text as the Authorized Officer executing the same shall determine are necessary or desirable in connection with the exclusion from gross income for federal income tax purposes of interest on the Bonds. The execution of such Tax Agreement by such Authorized Officer shall be deemed conclusive evidence of such Authorized Officer's approval and the approval of the City Council to the terms provided in the Tax Agreement.

The City's legal reserve fee with respect to the Bonds, payable from the proceeds of the Bonds or from funds contributed by the Company, shall be 0.10% of the currently outstanding principal amount of the Bonds. Such fee shall be used by the City to pay legal costs or other expenses in connection with the Bonds or other City issuances.

Section 4. Bonds are Special Limited Obligations. The Bonds and the interest thereon shall be limited obligations of the City, payable solely and only from the revenues, receipts or other amounts derived by the City pursuant to the Amended and Restated Loan Agreement (except to the extent payable from Bond proceeds or moneys from the investment thereof), from certain funds pledged under the Amended and Restated Indenture, and shall be otherwise secured as provided in the Amended and Restated Indenture and the Amended and Restated Loan Agreement. The Bonds shall not in any respect be a general obligation of the City, nor shall they be payable in any manner from funds of the City raised by taxation. The Bonds shall state that they do not constitute an indebtedness of the City or a loan of credit thereof within the meaning of any constitutional or statutory provision.

Nothing in this ordinance, the Amended and Restated Loan Agreement, the Amended and Restated Indenture, the Tax Agreement or the Bonds (hereinafter referred to collectively as the "Financing Documents"), or in any document or agreement required hereby and thereby, shall be construed as an obligation or commitment by the City to expend any of its funds other than (i) the revenues, receipts or other amounts derived from the Amended and Restated Loan Agreement, and (ii) any moneys arising out of the investment or reinvestment of said proceeds, income, revenues, receipts or moneys.

Section 5. Form of Amended and Restated Loan Agreement and Amended and Restated Indenture. The form, terms and provisions of the Amended and Restated Loan Agreement and the Amended and Restated Indenture, attached hereto as *Exhibit A* and *Exhibit B*, respectively, each as presented to this meeting, are in all respects approved, and the Authorized Officer and/or the City Clerk or Deputy City Clerk of the City, are each hereby authorized and empowered to execute, acknowledge and deliver the Financing Documents to which the City is a party, with or without an impression of the official seal of the City as required thereby

The Financing Documents, as so executed and delivered, shall be in substantially the forms now before this meeting and hereby approved, with only such changes therein as shall be approved by the officers of the City executing the same, their execution thereof to constitute conclusive evidence of their approval and the approval of this City Council of any and all changes or revisions therein from the forms thereof now before this meeting, and from and after the execution and delivery of the Financing Documents to which the City is a party, the Authorized Officer and/or the City Clerk or Deputy City Clerk of the City are hereby authorized and empowered to do all such acts and things, and to execute all documents (including, without limitation, an IRS Form 8038, any certifications, including tax certifications, financing statements, assignments and other instruments), as may be necessary, in the opinion of Co-Bond Counsel (as defined in the Amended and Restated Indenture) and counsel to the City, to carry out and comply with the provisions of such Financing Documents as executed, and in any other documents and instruments required to effectuate any portion of the financing transaction.

If any of the officers of the City who shall have signed or sealed any of the Bonds shall cease to be such officers of the City before the Bonds so signed and sealed shall have been authenticated by the Trustee, or delivered by or on behalf of the City, such Bonds, nevertheless, may be authenticated and delivered with the same force and effect as though the person or

persons who signed or sealed the same had not ceased to be such officer or officers of the City; and also any such Bonds may be signed and sealed on behalf of the City by those persons who, at the actual date of the execution of such Bonds, shall be the proper officers to the City, although at the nominal date of such Bonds any such persons shall not have been such an officer of the City.

Section 6. Supplemental Authority. The Authorized Officer and the City Clerk or Deputy City Clerk of the City are each hereby authorized to do all such acts and things, and to execute all such documents (including any certifications, tax compliance agreements and tax certificates, financing statements, assignments and other instruments), as may be necessary, in the opinion of the Co-Bond Counsel and counsel to the City, to carry out and comply with the purposes of this ordinance including to maintain the tax-exempt status of the Bonds for Federal income tax purposes.

Section 7. Separability. The provisions of this ordinance are hereby declared to be separable, and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereof.

Section 8. No Recourse. No recourse shall be had for the payment of the principal of, or premium, if any, or interest on the Bonds, or for any claim based thereon or upon any obligation, covenant or agreement contained herein or in the Amended and Restated Loan Agreement or the Amended and Restated Indenture, respectively, against any past, present or future officer, member, agent, employee or alderman of the City or successor thereto, either directly or indirectly through the City, under any rule of law or equity, statute or regulation or by the enforcement of any assessment or penalty or otherwise.

Section 9. Proxies. The Authorized Officer may each designate another to act as their respective proxy and to affix their respective signatures to each Bond, whether in temporary or definitive form, and to any other instrument, certificate or document required to be executed by the Authorized Officer pursuant to this ordinance. In each case each shall send to the City Council written notice of the person so designated by each, such notice stating the name of the person so selected and identifying the instruments, certificates and statements which such person shall be authorized to sign as proxy for the Authorized Officer. A written signature of the Authorized Officer executed by the person so designated underneath, shall be attached to each notice. Such notice, with signatures attached, shall be recorded in the Journal and filed with the City Clerk. When the signature of the Authorized Officer, as the case may be, is so affixed to an instrument, certificate or document at the direction of the Chief Financial Officer or the City Comptroller, the same, in all respects, shall be binding on the City as if signed by the Chief Financial Officer or the City Comptroller, as the case may be, in person.

Section 10. Conflicts. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict. No provision of the Municipal Code of the City of Chicago (the "Municipal Code") or violation of any provision of the Municipal Code shall be deemed to impair the validity of this ordinance or the instruments authorized by this ordinance or to impair the security for or payment of the instruments authorized by this ordinance; provided further, however, that the foregoing shall not be deemed to affect the availability of any other remedy or penalty for any violation of any provision of the Municipal Code.

Section 11. Effective Date. This ordinance shall take effect and be in full force immediately upon its execution and approval.

**Exhibit A**

**Amended and Restated Loan Agreement**

**AMENDED AND RESTATED LOAN AGREEMENT**

**by and between**

**CITY OF CHICAGO**

**and**

**J AND A, LLC**

**\$8,850,000  
CITY OF CHICAGO  
ENTERPRISE ZONE REVENUE BONDS  
(J & A, LLC PROJECT), SERIES 2002**

**DATED AS OF MAY 1, 2011**



## TABLE OF CONTENTS

	Page
ARTICLE I	DEFINITIONS ..... 12
Section 1.1.	Definitions ..... 12
Section 1.2.	Interpretation ..... 13
ARTICLE II	REPRESENTATIONS AND WARRANTIES ..... 13
Section 2.1.	Representations, Covenants and Warranties of the Issuer ..... 13
Section 2.2.	Representations, Covenants and Warranties of the Borrower ..... 14
Section 2.3.	Bond Counsel May Rely on Representations and Warranties ..... 16
ARTICLE III	ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT; ISSUANCE OF THE BONDS; APPLICATION OF THE BOND PROCEEDS ..... 16
Section 3.1.	Agreement To Acquire, Construct and Equip the Project ..... 16
Section 3.2.	Issuance of Bonds; Deposit of Bond Proceeds ..... 16
Section 3.3.	Disbursements From the Project Fund ..... 17
Section 3.4.	Obligation of the Borrower To Cooperate in Furnishing Documents; Trustee Reliance ..... 19
Section 3.5.	Borrower Required To Pay Costs in the Event Project Fund Insufficient ..... 19
Section 3.6.	No Warranty by Issuer ..... 19
Section 3.7.	Investment of Funds and Arbitrage ..... 20
ARTICLE IV	THE LOAN ..... 20
Section 4.1.	The Loan ..... 20
Section 4.2.	Borrower's Repayment Obligation ..... 20
Section 4.3.	Compliance With Applicable Laws ..... 22
Section 4.4.	Obligations of the Borrower Hereunder Unconditional ..... 22
Section 4.5.	Taxes and Governmental and Utility Charges ..... 23
Section 4.6.	Credit Facility ..... 23
Section 4.7.	Purchase of Bonds Prohibited ..... 23
ARTICLE V	DAMAGES, DESTRUCTION AND CONDEMNATION ..... 23
ARTICLE VI	SPECIAL COVENANTS ..... 23
Section 6.1.	Preservation of Project ..... 23
Section 6.2.	Insurance Required ..... 24
Section 6.3.	Financial Statements ..... 24
Section 6.4.	Inspection of the Project ..... 24
Section 6.5.	Issuer and Borrower Representatives ..... 24
Section 6.6.	Assignment and Pledge by Issuer ..... 24
Section 6.7.	Indemnity ..... 24
Section 6.8.	Borrower's Approval of Issuance of Bonds by Issuer ..... 26
Section 6.9.	Tax-exempt Status of the Bonds ..... 26
Section 6.10.	Environmental Covenants ..... 27
Section 6.11.	Assignment, Selling and Leasing ..... 28
Section 6.12.	Transfer of Assets; Merger or Consolidation ..... 28

ARTICLE VII	DEFAULTS AND REMEDIES .....	29
Section 7.1.	Events of Default.....	29
Section 7.2.	Remedies.....	30
Section 7.3.	Additional Remedies .....	30
Section 7.4.	No Remedy Exclusive .....	30
Section 7.5.	No Additional Waiver Implied by One Waiver .....	30
Section 7.6.	Waiver of Extension, Appraisalment, Stay, Laws .....	31
ARTICLE VIII	MISCELLANEOUS .....	31
Section 8.1.	Notice.....	31
Section 8.2.	Concerning Successors and Assigns .....	32
Section 8.3.	Governing Law .....	33
Section 8.4.	Modifications in Writing .....	33
Section 8.5.	Further Assurances and Corrective Instruments.....	33
Section 8.6.	Captions.....	33
Section 8.7.	Severability .....	33
Section 8.8.	Counterparts .....	33
Section 8.9.	Amounts Remaining in Bond Fund or Other Funds .....	33
Section 8.10.	Effective Date and Term.....	33
Section 8.11.	References to Credit Entity and Liquidity Entity Ineffective During Certain Periods.....	33
Section 8.12.	Indenture Provisions .....	34
Section 8.13.	Default by Issuer—Limited Liability.....	34
Section 8.14.	Immunity of Incorporators, Officers, Directors and Employees .....	34
Section 8.15.	Borrower Representations, Warranties and Covenants to the City of Chicago re: Certain Matters.....	34
EXHIBIT A	PROJECT DESCRIPTION	
EXHIBIT B	PROMISSORY NOTE	
EXHIBIT C	SECTION 6.10 EXCEPTIONS	
EXHIBIT D	FORM OF REQUISITION	
EXHIBIT E	FORM OF COMPLETION CERTIFICATE	

## AMENDED AND RESTATED LOAN AGREEMENT

THIS AMENDED AND RESTATED LOAN AGREEMENT (this "Agreement") is made and entered into as of May 1, 2011, by and between the CITY OF CHICAGO, a municipality and home rule unit of local government, duly organized and validly existing under the Constitution and the laws of the State of Illinois, whose address is 121 North LaSalle Street, Chicago, Illinois 60602 (the "Issuer"), and J and A, LLC, an Illinois limited liability company whose address is 4104-4134 Ferdinand Street, Chicago, Illinois 60624 (the "Borrower").

### WITNESSETH:

WHEREAS, in order to maintain and increase employment opportunities and improve the tax base in the City of Chicago, the Issuer previously agreed to undertake the financing of the acquisition, construction and equipping of a warehouse, office and training facility located at 4104-4134 West Ferdinand Street within the City of Chicago, Illinois (the "Project") by issuing its Enterprise Zone Revenue Bonds (J & A, LLC Project), Series 2002 (the "Bonds"), in the original principal amount of \$6,850,000, for the purpose of lending the proceeds from the sale of the Bonds to the Borrower; and

WHEREAS, in connection with the issuance of the Bonds, the Issuer through its City Council adopted an Ordinance on July 31, 2002, as amended by an Ordinance adopted by the City Council of the Issuer on November 6, 2002 (collectively, the "Original Bond Ordinance"), and in accordance with the procedures and details set forth in said Original Bond Ordinance, the Bonds were issued under and secured by a Trust Indenture dated as of December 1, 2002 (the "Original Indenture") by and between the Issuer and the original corporate trustee named thereunder; and

WHEREAS, the Bonds are payable solely out of the payments made by the Borrower on the promissory note of the Borrower (the "Note") in the form attached hereto as Exhibit B, and otherwise under this Agreement; and

WHEREAS, when the Bonds were originally issued, in order to further secure repayment of the Bonds, the Borrower caused a financial institution to deliver an irrevocable direct pay letter of credit (the "Credit Facility") as security for the Bonds; and

WHEREAS, the term of the existing Credit Facility is expiring and the Borrower has received a commitment from a financial institution whereby the financial institution would be willing to hold the Bonds for investment purposes pursuant to a newly created Bank Interest Rate Period, pursuant to the terms of an Amended and Restated Trust Indenture dated as of May 1, 2011 (the "Restated Indenture" and, together with the Original Indenture, the "Indenture"), between the Issuer and Amalgamated Bank of Chicago, as trustee (the "Trustee"); and

WHEREAS, at the expiration of the existing Credit Facility, the Bonds will be tendered by existing Bondholders who will be paid the Purchase Price of their Bonds by the Credit Facility, at which time the Bank (as hereinafter defined) will reimburse the Credit Entity on behalf of the Borrower, and the Bonds will be held as Borrower Bonds, registered in the name of the Bank; and

WHEREAS, as owner of 100% of the beneficial interest in the Bonds following the tender thereof and the reimbursement of the Credit Entity, the Bank, together with the Borrower,

will consent to the Restated Indenture and this Agreement and, following the effective date of the Amending Bond Ordinance (each as hereinafter defined) the Bank will hold the Bonds in a Bank Interest Rate Period; and

WHEREAS, on \_\_\_\_\_, 2011, the City Council of the Issuer adopted an Ordinance (the "Amending Bond Ordinance" and, together with the Original Bond Ordinance, the "Bond Ordinance") approving the transaction described above, including the execution and delivery of the Restated Indenture and this Agreement; and

WHEREAS, the Issuer and the Borrower previously entered into a Loan Agreement dated as of December 1, 2002 (the "Original Loan Agreement") pursuant to which the Issuer loaned the proceeds from the issuance of the Bonds to the Borrower, and in connection with the transaction described above, the Issuer and the Borrower are entering into this Agreement (this Agreement and the Original Loan Agreement to be referred to collectively as the "Loan Agreement");

NOW, THEREFORE, in consideration of the premises, and of the covenants and undertakings herein expressed, the parties hereto agree as follows (provided that in the performance of the agreements of the Issuer herein contained, any obligation it may thereby incur for the payment of money shall not be a debt, liability or obligation of the Issuer, the State or any other political subdivision thereof, and shall never be payable from tax revenues or other public or general funds or assets of the Issuer, the State or any other political subdivision thereof, except to the extent the Bonds shall be a limited obligation of the Issuer, payable solely from the Revenues and other amounts payable hereunder):

## ARTICLE I.

### DEFINITIONS

**Section 1.01. Definitions.** All words and phrases defined in Article I of the Indenture shall have the same meanings in this Agreement. In addition, the following words and phrases shall have the following meanings:

**"Bank"** means the holder of the Bonds when the Bonds bear interest at the Bank Interest Rate.

**"Bond Purchase Agreement"** means the Bond Purchase Agreement dated December 9, 2002, by and among the Issuer, the Borrower and the Underwriter.

**"Borrower Documents"** means this Agreement, the Note, the Bond Purchase Agreement, the Remarketing Agreement, the Tax Compliance Agreement, the Credit Facility Agreement, the Official Statement and all certificates executed and delivered by the Borrower with respect to the issuance of the Bonds.

**"Credit Facility Agreement"** means, (i) initially and collectively, the Reimbursement Agreement dated as of December 1, 2002, by and between the Borrower and Midway Moving & Storage, Inc. and the Reimbursement Bank, as amended from time to time, and the Letter of Credit Agreement dated as of December 1, 2002 between the Reimbursement Bank and the Credit Entity, (ii) in the event an Alternate Credit Facility is provided, the agreement pursuant to which the Credit Entity issues or causes the issuance of such Alternate Credit Facility, including any agreement pursuant to which a Reimbursement Bank shall agree to reimburse the Credit Entity issuing the Alternate Credit Facility for amounts paid by the Credit Entity under the Alternate Credit Facility, and (iii) during any period in which the Bonds bear interest at the Bank Interest Rate, the agreement or agreements governing the relationship and covenants agreed to by the Borrower and the Bank.

**"Enterprise Zone"** means the Round I empowerment zone within the City of Chicago designated by the Secretary of the United States Department of Housing and Urban Development.

**"Environmental Laws"** means all local, state and federal laws, ordinances, regulations and orders related to: environmental protection; the use, storage, generation, production, treatment, emission, discharge, remediation, removal, disposal or transport of any Hazardous Substance; public or employee health or safety; or any other environmental matter.

**"Events of Default"** means that term as it is defined in Section 7.1 hereof.

**"Force Majeure"** means that term as it is defined in Section 7.1 hereof.

**"Hazardous Substance"** means any one or more substances, materials, constituents or wastes which are listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. 172.101, as amended from time to time) or by the Environmental Protection Agency as a hazardous substance (40 C.F.R. Part 302, as amended from time to time), which are toxic, ignitable, reactive or corrosive, which poses a hazard to the health and safety of any person or which are or become regulated by any governmental authority, including, without limitation, any substance, material, waste or constituent which is (a) petroleum; (b) asbestos; (c)

polychlorinated biphenyls; (d) radioactive; or (e) a "pollutant," "contaminant," "hazardous substance" or "hazardous waste" as defined in or pursuant to any Environmental Law.

"Official Statement" means the final Official Statement dated December 9, 2002 with respect to the Bonds.

"Project" means the acquisition, construction and equipping of a facility as described on Exhibit A hereto, located within the territorial boundaries of the Issuer and within the Enterprise Zone and any item of tangible personal property acquired in addition to, substitution for, or as the renewal or replacement of, or modification or an improvement to, such building and equipment.

"State" means the State of Illinois.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms referred to this Agreement; the term "heretofore" means before the date of execution of this Agreement; and the term "hereafter" means after the date of execution of this Agreement.

**Section 1.02. Interpretation.** Words importing persons include firms, associations and corporations. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. References to Articles, Sections and other subdivisions of this Agreement are to the Articles, Sections and other subdivisions of this Agreement as originally executed.

## ARTICLE II.

### REPRESENTATIONS AND WARRANTIES

**Section 2.01. Representations, Covenants and Warranties of the Issuer.** The Issuer represents, covenants and warrants that:

(a) The Issuer is a duly constituted and existing municipality and home rule unit of government within the meaning of Section 6(a), Article VII of the 1970 Constitution of the State (the "Constitution") and as such may legislate matters which pertain to its government and affairs, including the issuance of the Bonds and the making of the Loan.

(b) To the knowledge of the undersigned representatives of the Issuer, there are no actions, suits, proceedings, inquiries or investigations pending or threatened against the Issuer in any court or before any governmental authority or arbitration board or tribunal which would materially and adversely affect the validity or enforceability of the Bonds, the Bond Ordinance, the Indenture, the Bond Purchase Agreement, the Tax Compliance Agreement or this Agreement or the performance by the Issuer of its obligations hereunder or thereunder.

(c) The issuance and sale of the Bonds and the execution and delivery by the Issuer of the Indenture, the Bond Purchase Agreement, the Tax Compliance Agreement and this Agreement, and the performance by the Issuer of its obligations hereunder and thereunder: (i) are within the purposes, power and authority of the Issuer; (ii) comply with the Constitution and laws of the State; (iii) are legal, valid and binding limited obligations of the Issuer except as enforceability may be limited by applicable

bankruptcy, insolvency, moratorium, reorganization, or other laws affecting the enforcement of creditors' rights generally and general principles of equity; and (iv) have been duly authorized by all necessary action on the part of the Issuer. The Bonds do not and will not constitute a debt of the Issuer, the State of Illinois or any other political subdivision thereof or a loan of credit thereof within the meaning of any constitutional or statutory provision or limitation, nor shall the Bonds constitute or give rise to a pecuniary liability of the Issuer.

(d) The City Council of the Issuer has approved the Bond Ordinance, and the Bond Ordinance has not been amended, modified or rescinded and is in full force and effect as of the date of the execution and delivery hereof.

(e) To the knowledge of the undersigned representatives of the Issuer, the Issuer has not pledged and will not pledge or grant any security interest in its interest in, to or under this Agreement or the Note and the payments made hereunder and thereunder, or the revenues or income to be derived by the Issuer hereunder and thereunder for any purpose other than to secure the Bonds.

(f) The Issuer will not knowingly engage in any activity which results in the interest on the Bonds becoming taxable to the Owners thereof under federal income tax laws.

**Section 2.02. Representations, Covenants and Warranties of the Borrower.** The Borrower hereby represents, covenants and warrants, as applicable, as follows:

(a) The Borrower is duly organized as an Illinois limited liability company, is validly existing and is in good standing under the laws of the State, is not in violation of any provision of its organizational documents, has power to enter into each of the Borrower Documents and has duly authorized the execution and delivery of each of the Borrower Documents by proper corporate action.

(b) The Borrower agrees that during the term hereof it will maintain its legal existence, will continue to be a limited liability company qualified to transact business in the State, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another legal entity or permit one or more other legal entities to consolidate with or merge into it; provided, however, that the Borrower may, without violating the agreement contained in this Section, consolidate with or merge into another legal entity, or permit one or more legal entities to consolidate with or merge into it, or sell or otherwise transfer to another legal entity all or substantially all of its assets as an entirety and thereafter dissolve, provided that in accordance with Section 6.11 hereof (i) the surviving, resulting or transferee legal entity, as the case may be, shall be a legal entity organized and existing under the laws of one of the states of the United States of America, shall be qualified to do business in the State, and shall assume in writing all of the obligations of the Borrower under each Borrower Document other than the Official Statement in which event the Issuer may release the Borrower in writing, concurrently with and contingent upon such assumption, from all liability hereunder, provided the Issuer shall provide such written release upon the direction of the Credit Entity (so long as the Credit Facility is in effect) or the owners of 100% of the Bonds; (ii) such acquisition, consolidation, merger, or transfer will not, in the opinion of the Bond Counsel, adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds; (iii) prior to such acquisition,

consolidation, merger, or transfer the Trustee shall be furnished a certificate from the Authorized Borrower Representative stating that in the opinion of such Authorized Borrower Representative none of the covenants contained in this Agreement will be violated as a result of such acquisition, consolidation, merger, or transfer; and (iv) if the Credit Facility is in effect, the prior written consent of the Credit Entity is obtained. The Borrower shall send written notice to the Trustee promptly upon the occurrence of any such event.

(c) Neither the execution and delivery by the Borrower of the Borrower Documents, the consummation of the transaction contemplated hereby nor the fulfillment of or compliance with the terms and conditions of the Borrower Documents, conflicts with or results in a material breach of the terms, conditions, or provisions of any material restriction or any material agreement or instrument to which the Borrower is now a party or by which the Borrower or its property is or may be bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any material lien, charge, or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any instrument or agreement.

(d) There is no litigation or proceeding pending, or to the knowledge of the Borrower threatened, against the Borrower affecting in any material manner whatsoever the right of the Borrower to execute the Borrower Documents, or the ability of the Borrower to make the payments required hereunder or thereunder or to otherwise comply with its obligations contained herein or therein.

(e) The Project is of the type authorized and permitted by the Code, and the Cost of the Project was not less than \$6,850,000.

(f) The proceeds from the sale of the Bonds were used only for payment of the Cost of the Project, including Costs of Issuance.

(g) The Borrower will not take or permit to be taken any action which would have the effect, directly or indirectly, of subjecting interest on any of the Bonds to federal income taxation.

(h) The Project is located within the boundaries of the Enterprise Zone.

(i) To the knowledge of the Borrower, the Project complies with all presently applicable building, zoning, planning and environmental ordinances and regulations.

(j) The loan of the proceeds of the Bonds by the Issuer to the Borrower was intended to help relieve conditions of unemployment and encourage the increase of industry and commerce within the boundaries of the Issuer by maintaining jobs within the Issuer and by creating new job opportunities.

(k) The Project is located within the territorial boundaries of the Issuer.

(l) No member of the City Council of the Issuer or any official, agent or employee thereof is, in his or her own name or in the name of a nominee, an officer, director or holder of an ownership interest of more than 7-1/2% in any person, association, trust, corporation, partnership or other entity which is, in its own name or in



the name of a nominee, a party to any contract or agreement related to the transactions contemplated by the Bond Ordinance, this Agreement or the Indenture.

(m) No member of the City Council of the Issuer or any official, agent or employee thereof is, in his or her own name or in the name of a nominee, a holder of any direct or indirect interest in the Project or any contract or agreement related to the transactions contemplated by, the Bond Ordinance, this Agreement or the Indenture.

(n) The initial Credit Entity does not control, either directly or indirectly through one or more intermediaries, the Borrower. "Control" for this purpose has the meaning given to such term in Section 2(a)(9) of the Investment Company Act of 1940. The Borrower agrees to provide written notice to the Trustee, the Remarketing Agent, and the Bondowners at least 30 days prior to the consummation of any transaction that would result in the Borrower controlling or being controlled by the Credit Entity or any provider of an Alternate Credit Facility or Substitute Credit Facility.

**Section 2.03. Bond Counsel May Rely on Representations and Warranties.** The Issuer and the Borrower agree that Co-Bond Counsel, shall be entitled to rely upon the factual representations and warranties of the Issuer and the Borrower set forth in this Article II in connection with the delivery of their opinions.

### **ARTICLE III.**

#### **ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT; ISSUANCE OF THE BONDS; APPLICATION OF THE BOND PROCEEDS**

**Section 3.01. Agreement To Acquire, Construct and Equip the Project.** The Borrower made all contracts and did all things necessary for the acquisition, construction and equipping of the Project, with or without advertising for bids, in accordance with this Agreement, and the Borrower:

(a) Caused the Project to be acquired, constructed, equipped on that portion of the Project constituting land, which land is located within the jurisdiction of the Issuer, together with any additional building or equipment which in the reasonable judgment of the Borrower was necessary for operation of the Project, and which acquisition, rehabilitation and equipping was made in accordance with the specifications of and at the direction of the Borrower.

(b) The Borrower acquired, constructed and equipped the Project with all reasonable dispatch and caused the acquisition, rehabilitation, equipping and occupancy of the Project to be completed by December 1, 2005.

(c) So long as no Event of Default or event which, with the lapse of time or giving of notice or both, would constitute an Event of Default has occurred and is continuing under any of the provisions of this Agreement, the Borrower shall have full power to carry out the acts and agreements provided in this Section 3.1, and such power is granted and conferred irrevocably by the Issuer to the Borrower and is accepted by the Borrower, and shall not be terminated by any act of the Issuer or of the Borrower.

**Section 3.02. issuance of Bonds; Deposit of Bond Proceeds.** To provide funds to make the Loan, the Issuer issued the Bonds. The Bonds have been issued and are

Outstanding pursuant to the Indenture in the aggregate principal amount, will bear interest, will mature, will be subject to redemption and tender and will contain such other terms as are set forth in the Bonds and the Indenture and will be limited obligations of the Issuer payable solely from the sources described in the Indenture. The Borrower hereby approves the terms and conditions of the Indenture and the Bonds, and the terms and conditions under which the Bonds will be issued, sold and delivered. On the Closing Date, the proceeds from the sale of the Bonds and the Loan to the Borrower were paid directly to the Trustee as directed under the Indenture.

### **Section 3.03. Disbursements From the Project Fund.**

(a) Authorization. The Issuer has authorized in the Indenture and directed the Trustee to disburse the monies from the Project Fund to pay the Cost of the Project (including Costs of Issuance), or to reimburse the Borrower for any Cost of the Project (including Costs of Issuance) paid by the Borrower, subject in each case to the limitations and restrictions contained herein and in the Tax Compliance Agreement.

(b) Disbursement Requests. The Trustee shall make each such disbursement upon receipt of a written request for disbursement substantially in the form of Exhibit D attached hereto signed by the Authorized Borrower Representative and approved in writing by the Credit Entity:

(a) stating with respect to each disbursement to be made:

(i) the requisition number;

(ii) the name and address of the person, firm or corporation to whom payment is due;

(iii) the amount to be disbursed;

(iv) that each obligation mentioned therein has been properly incurred, is a proper charge against the Project Fund, and has not been the basis of any previous disbursement;

(v) that the expenditure of such disbursement, when added to all disbursements under previous requisitions, will result in at least 95% of the net proceeds of the Bonds within the meaning of Section 150(a)(3) of the Code (meaning total proceeds of the Bonds, less any proceeds deposited in a reasonably required reserve or replacement fund), having been used for the acquisition, construction, rehabilitation, renovation or equipping of land or property of a character subject to the allowance for depreciation under the Code, or for payment of amounts which are, for federal income tax purposes, chargeable to the Project's capital account or would be so chargeable either with a proper election by the Borrower or but for a proper election by the Borrower to deduct such amounts, and will result in not more than 2% of the aggregate face amount of the Bonds (less the amounts, if any, constituting original issue discount) having been used to pay "issuance costs" within the meaning of Section 147(g) of the Code;

(vi) that the amount remaining in the Project Fund, together with (1) monies then on hand with the Borrower or committed to the Borrower which are or will be available, and are anticipated by the Borrower to be applied, to any Cost of the Project and (2) expected investment earnings to be deposited into the Project Fund pursuant to the Indenture and not required to be deposited into the Rebate Fund pursuant to the terms of the Indenture, will, after payment of the amount requested in said written request, be sufficient to pay the costs of completing the Project substantially in accordance with the construction contracts, plans and specifications and building permits therefor, if any, then in effect; provided, however, that the Credit Entity may provide the Trustee with a written waiver of compliance with this subsection (F), upon which the Trustee may rely, but solely in connection with the disbursement referenced in such waiver;

(b) specifying in reasonable detail the nature of the obligation; and

(c) accompanied by a bill or statement of account for such obligation.

The Borrower agrees to cause such requisition to be directed to the Trustee and the Credit Entity as may be necessary to effect payments from the Project Fund in accordance with the terms of this Section 3.3. The Trustee will retain a record of all such requisitions.

Disbursements from the Project Fund, as may be required by the Credit Facility Agreement (other than the amount, if any, of a disbursement for Costs of Issuance or costs associated with reimbursement or acquisition of land and other reimbursements approved by the Credit Entity on the Closing Date) may be made payable directly to the entity identified pursuant to Section 3.3(b)(i)(B), which may be the Borrower.

(c) Completion Certificate. The Borrower shall cause to be submitted to the Issuer and to the Trustee and the Credit Entity within 90 days after the completion of the Project, a Completion Certificate, substantially in the form of Exhibit E attached hereto, signed by the Authorized Borrower Representative:

(a) stating that all portions of the Project have been fully completed substantially in accordance with the construction contracts and/or the plans and specifications therefor, as then amended, and the date of completion and that all Bond proceeds have been applied solely to the payment of the Cost of the Project on account of which the Bonds were issued;

(b) stating that such persons have made such investigation of such sources of information as are deemed by such persons to be necessary, including pertinent records of the Borrower, and are of the opinion that the Project has been fully paid for and that no claim or claims exist against the Borrower (or to the best of its knowledge, against the Issuer) or against the properties of the Borrower out of which a lien based on furnishing labor or material for the Project exists or might ripen; provided, however, there may be excepted from the foregoing statement any claim or claims out of which a lien exists or might ripen in the event that the Borrower intends to contest such claim or claims, in which event such claim or claims shall be described; provided, further, however, that in such event such certificate shall state either that funds

are on deposit in the Project Fund sufficient to make payment of the full amount which might in any event be payable in order to satisfy such claim or claims or such claims shall be insured over, and a certificate evidencing such insurance shall be delivered with the Completion Certificate; and

(c) stating that 95% or more of the sum of the amount received from the proceeds of the Bonds, plus the income derived from the investment of monies or deposits in the Project Fund or in any other fund held under the Indenture during the period of construction, were used to pay, or reimburse the Borrower for the payment of, costs incurred in connection with acquisition, construction, improvement, rehabilitation, renovation or equipping of the Project.

(d) Disposition of Project Fund Monies After Completion. All proceeds of the Bonds, including monies earned pursuant to the provisions hereof (other than amounts required to be held in the Rebate Fund which shall be applied in accordance with the Indenture), remaining in the Project Fund upon delivery of the Completion Certificate, and after payment of all other items provided for in the preceding subsections (b)(i) to (b)(iii), inclusive, of this Section 3.3, then due and payable, shall be transferred by the Trustee to the Bond Fund and the Borrower shall direct the redemption of Bonds to the extent of monies in the Bond Fund on the earliest date upon which Bonds may be called for redemption in accordance with the terms of the Indenture.

**Section 3.04. Obligation of the Borrower To Cooperate in Furnishing Documents; Trustee Reliance.** The Borrower agrees to furnish to the Trustee the documents referred to in Section 3.3 hereof that are required to effect payments out of the Project Fund. Such agreement is subject to any provisions of the Indenture requiring additional documentation with respect to payment, and shall not extend beyond monies in the Project Fund available for payments under the terms of the Indenture or this Agreement. In making any such payments from the Project Fund, the Trustee may conclusively rely on any such orders, requisitions and certifications delivered to it pursuant to Section 3.3 hereof.

**Section 3.05. Borrower Required To Pay Costs in the Event Project Fund Insufficient.** In the event the funds in the Project Fund available for payment of the Cost of the Project shall not be sufficient to make such payment in full, the Borrower agrees to pay directly, or to deposit (or cause to be deposited) monies in the Project Fund for the payment of, such costs of completing the Project as may be in excess of the monies available therefor in the Project Fund. THE ISSUER DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, THAT THE MONIES WHICH WILL BE DEPOSITED INTO THE PROJECT FUND, AND WHICH UNDER THE PROVISIONS OF THIS AGREEMENT WILL BE AVAILABLE FOR PAYMENT OF THE COST OF THE PROJECT, WILL BE SUFFICIENT TO PAY ALL OF THE COSTS WHICH WILL BE INCURRED IN CONNECTION THEREWITH. The Borrower agrees that if, after exhaustion of the monies in the Project Fund, the Borrower should pay, or deposit monies in the Project Fund for the payment of, any portion of the Cost of the Project pursuant to the provisions of this Section 3.5, it shall not be entitled to any reimbursement therefor from the Issuer, the Trustee, from any Credit Entity, or from the owners of any of the Bonds, nor shall they be entitled to any diminution of the amounts payable under Section 4.1 or 4.2 hereof,

**Section 3.06. No Warranty by Issuer.** THE BORROWER RECOGNIZES THAT THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO

WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, OR AS TO THE BORROWER'S TITLE THERETO OR OWNERSHIP THEREOF OR OTHERWISE, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE BORROWER. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION 3.6 HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OF THE STATE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

Section 3.07. Investment of Funds and Arbitrage. Any monies held as a part of any of the funds established under the Indenture shall be invested or reinvested by the Trustee in accordance with the Indenture. The Issuer and the Borrower, each on its own behalf, covenant to each other and to and for the benefit of the purchasers and owners of the Bonds from time to time outstanding that so long as any of the Bonds remain outstanding, monies on deposit in any fund established under the Indenture in connection with the Bonds, whether or not such monies were derived from the proceeds of the Bonds or from any other sources, will not be used in a manner which will cause the Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Code. The Borrower covenants and agrees to comply with the provisions of the Tax Compliance Agreement and to timely make any deposits required thereunder.

#### ARTICLE IV.

##### THE LOAN

Section 4.01. The Loan. The Issuer agrees, upon the terms and subject to the conditions hereinafter set forth, to use the proceeds of the Bonds to cause the Loan to be made to the Borrower, such Loan to be made by causing funds to be applied as provided in Section 3.2 hereof. The Issuer shall pledge its interest in this Agreement and other documents related to the Loan (other than Unassigned Rights) to the Trustee, all pursuant to the Indenture.

Section 4.02. Borrower's Repayment Obligation. The Borrower promises to pay to the Issuer, or order, on the basis specified herein, with interest, the principal sum of the outstanding principal amount of the Bonds. Interest shall be determined, and principal and interest on the Loan shall be payable, as set forth herein. The Borrower shall in all events pay the entire principal amount outstanding together with any accrued but unpaid interest upon the final maturity of the Bonds and shall pay any premium applicable in the event of any optional redemption of the Bonds.

(a) Notwithstanding any other provision of this Agreement to the contrary contained herein, this Agreement evidences, and the Borrower agrees to pay, the principal of, premium, if any, and interest when due. All payments of principal of, and premium, if any, and interest paid pursuant to this Section 4.2 must be equal to all payments of principal of, and premium, if any, and interest paid on the Bonds on each Interest Payment Date pursuant to the provisions of the Indenture. All payments made

with respect to this Agreement shall be applied first to the payment of accrued interest then due and thereafter to the payment of principal and premium, if any.

(b) Payments of principal, premium, if any, and interest due under this Agreement shall be made in lawful money of the United States of America to the Trustee at the address set forth in the Indenture or at such other place as any assignee of this Agreement may designate by a notice in writing given to the Borrower. When the Bonds bear interest at the Bank Interest Rate, the Borrower may make payments directly to the Bank; provided, that in such case the Trustee shall be given written notice from the Borrower and the Bank regarding such arrangement and that the Trustee is provided with prompt notices of the failure to make such direct payments.

(c) The Borrower waives presentment for payment, notice of dishonor, demand, protest, notice of protest, and all demand, notice and suretyship defenses generally in connection with the delivery, acceptance, performance, default or endorsement of this repayment obligation and specifically assents to any extension or postponement of the time for payment or other indulgence and/or to the addition or release of any other party or person primarily or secondarily liable.

(d) The Borrower agrees to pay all fees and expenses of the Issuer (including the Issuer's legal reserve fee with respect to the Bonds, payable from the proceeds of the Bonds or from funds contributed by the Borrower, which fee shall be 0.10% of the currently outstanding principal amount of the Bonds) incurred in connection with the issuance of the Bonds (which amounts shall be due and payable in full, upon Closing) and incurred after the issuance of the Bonds in fulfilling the Issuer's obligations under this Agreement and the Indenture, which are not otherwise required to be paid by the Borrower under the terms of this Agreement.

(e) The Borrower agrees to pay to the Bond Registrar, the Tender Agent, the Paying Agent and the Trustee (i) the initial acceptance fee of the Trustee and the costs and expenses, including reasonable attorneys' fees, incurred by the Trustee in entering into and executing the Indenture, (ii) during the term of this Agreement (A) an amount equal to the annual fee of the Trustee for the ordinary services of the Trustee, as trustee, rendered and its ordinary expenses incurred under the Indenture, including reasonable attorneys' fees, as and when the same become due, (B) the fees, charges and expenses of the Trustee, the Bond Registrar, Paying Agent and the Tender Agent, as and when the same become due, and (C) the fees, charges and expenses of the Trustee for the necessary extraordinary services rendered by it and including reasonable attorneys' fees, as and when the same become due.

(f) The Borrower agrees to pay the fees, charges and expenses of the Remarketing Agent as set forth in the Remarketing Agreement in carrying out its duties and obligations and performing its services under and pursuant to the Indenture and the Remarketing Agreement.

(g) In addition to the payments required to be made by the Borrower pursuant to the foregoing subsections of this Section 4.2, the Borrower agrees to pay to the Tender Agent or the Remarketing Agent, as applicable, amounts sufficient to pay the Purchase Price of any Bonds to be purchased pursuant to Section 3.06 or 3.07 of the Indenture on the purchase date of such Bonds as set forth in said Section 3.06 or said Section 3.07, as the case may be. All such payments shall be made to the Tender Agent in lawful

money of the United States of America in federal or other immediately available funds at the principal corporate trust office of the Tender Agent or the Remarketing Agent, as applicable. Any amounts owed pursuant to this Section 4.2(g) may be paid with moneys that do not constitute Eligible Funds if, and only if, there is a failure by the Credit Entity to make timely payment on the Credit Facility or Liquidity Facility and there are no other Eligible Funds available at the time necessary to pay such Purchase Price.

(h) Any monies derived from a drawing under the Credit Facility or Liquidity Facility and any remarketing proceeds available for such purpose shall constitute a credit against the obligation of the Borrower to make corresponding payments under Section 4.2 (a) or (g).

(i) If the date when any of the payments required to be made by this Section 4.2 is not a Business Day, then such payments may be made on the next Business Day with the same force and effect as if made on the nominal due date.

(j) The Borrower shall have, and is hereby granted, the option to elect to convert the interest rate borne by the Bonds and to prepay in whole or in part the principal of the Bonds, together with the payment of premium, if any, pursuant to the provisions of the Indenture, subject to the terms and conditions set forth therein. The Borrower shall also be required to prepay the Loan whenever the Bonds are subject to mandatory redemption or acceleration pursuant to the Indenture.

**Section 4.03. Compliance With Applicable Laws.** The Project will comply, in a material manner, with all applicable federal, State, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter; provided that the Borrower may, in good faith, contest the validity or applicability of any federal, State, county or municipal law, ordinance, rule, regulation or requirement if such contest does not impair the ability of the Borrower to operate the Project.

**Section 4.04. Obligations of the Borrower Hereunder Unconditional.** The obligations of the Borrower to make payments required hereunder and under the Note and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or right to setoff, counterclaim or recoupment arising out of any breach by the Issuer or the Trustee of any obligation to the Borrower, whether hereunder or otherwise, or out of any indebtedness or liability at any time owing to the Borrower, the Issuer or the Trustee, and until such time as the principal of, redemption premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, the Borrower will not suspend or discontinue any payments provided for in Section 4.2 hereof or under the Note. The Borrower may, however, at its own cost and expense and in its own name or in the name of the Issuer, prosecute or defend any action or proceeding to take any other action involving third persons which the Borrower deems reasonably necessary in order to secure or protect the Borrower's right of possession, occupancy, and use of the Project, and in such event the Issuer hereby agrees to cooperate with the Borrower and to take all action necessary to effect the substitution of the Borrower for the Issuer in any such action or proceeding if the Borrower shall so request; provided, however, that the Issuer shall cooperate and shall take such actions only to the extent that such cooperation and actions do not conflict with any other legal actions pursued by the Issuer.

**Section 4.05. Taxes and Governmental and Utility Charges..** The Borrower will pay or cause to be paid when and as the same come due, so long as any of the Bonds remain outstanding, all taxes, assessments and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any part thereof.

The Borrower may, at its own expense and in its name, in good faith contest any such taxes, assessments, and other charges and, in the event of any such contest, may permit the taxes, assessments, or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless by nonpayment of any such items the security afforded pursuant to the terms of the Indenture will be materially endangered or the Project or any essential part thereof will be subject to loss or forfeiture, in which event such taxes, assessments, or charges shall be paid forthwith.

**Section 4.06. Credit Facility.** The Borrower shall provide for the delivery of the initial Credit Facility to the Trustee simultaneously with the original issuance and delivery of the Bonds. The Borrower may provide for the delivery of an Alternate Credit Facility in substitution or replacement for the then current Credit Facility but only in accordance with Section 2.12 of the Indenture. No Credit Facility shall be in effect when Bonds bear interest at the Bank Interest Rate.

**Section 4.07. Purchase of Bonds Prohibited.** So long as a Credit Facility is in effect, the Borrower shall not, directly or indirectly, purchase any Bonds with any funds that do not constitute Eligible Funds, except as required by Section 4.2(g) of this Agreement.

## **ARTICLE V.**

### **DAMAGES, DESTRUCTION AND CONDEMNATION**

If the Project shall be damaged or either partially or totally destroyed, or if title to or the temporary use of the whole or any part of the Project shall be taken or condemned by a competent authority for any public use or purpose, there shall be no abatement or reduction in the amounts payable under this Agreement.

## **ARTICLE VI.**

### **SPECIAL COVENANTS**

**Section 6.01. Preservation of Project.** The Borrower will preserve and protect the Project in decent, safe and sanitary condition and from time to time will make, or cause to be made, all reasonably required, proper repairs, renewals, replacements, betterments and improvements thereto. The Borrower shall have the privilege of remodeling the Project or making substitutions, additions, modifications and improvements to the Project from time to time as the Borrower, in its discretion, may deem to be desirable for its use for its purposes, the costs of which remodeling, substitutions, additions, modifications and improvements shall be paid by the Borrower, and the same shall be the property of the Borrower. The Borrower reserves the right (a) to use the Project for any purpose that will not result in the Project being deemed to be other than an "enterprise zone business" under the Code, and (b) to cease operation of the Project without redeeming the Bonds or prepaying their obligations hereunder or under the Note, as long as in either case an opinion of Bond Counsel is provided that such



will not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes.

**Section 6.02. Insurance Required.** The Borrower agrees to insure the Project or cause it to be insured with insurance companies licensed to do business in the state in such amounts and in such manner and against such loss, damage and liability, including liability to both parties, as is customary with entities in the same or similar business.

**Section 6.03. Financial Statements.** If at any time there shall not be a Credit Facility in effect with respect to the Bonds, the Borrower shall furnish the Trustee or cause to be furnished to the Trustee, with a copy to the Issuer, reviewed annual financial and operating statements of the Borrower, within 120 days after the close of the Borrower's fiscal year, containing an opinion of an independent certified public accountant of recognized standing. The Borrower shall also provide the Trustee with copies of any filings made by the Borrower with the Securities and Exchange Commission promptly upon making such filings. The Trustee's only responsibility with respect to such filings and financial statements shall be to make such filings and financial statements available for inspection by Owners upon reasonable notice at the Principal Office of the Trustee.

**Section 6.04. Inspection of the Project.** For purposes of determining compliance with its obligations hereunder, the Borrower agrees that the Issuer, the Trustee and their duly authorized agents, upon prior written notice, will have the right at all reasonable times during normal business hours to enter upon and to examine and inspect the Project, and the Trustee and the Issuer shall also be permitted, at all reasonable times, to examine the books and records of the Borrower with respect to the Project, and provided that such examination does not disclose any event of default hereunder or event which, with the lapse of time or giving of notice, or both, would constitute an event of default hereunder, shall treat such information obtained for such inspection or examination as confidential.

**Section 6.05. Issuer and Borrower Representatives.** Whenever under the provisions of this Agreement the approval of the Issuer or the Borrower is required to take some action at the request of the other, such approval or such request shall be given for the Issuer by an Authorized Issuer Representative and for the Borrower by an Authorized Borrower Representative, and any party hereto and the Trustee shall be authorized to act on any such approval or request.

**Section 6.06. Assignment and Pledge by Issuer.** The Issuer shall assign its interest in and pledge any monies, revenues and receipts receivable under this Agreement or the Note to the Trustee pursuant to the Indenture, subject to certain exceptions set forth in the Indenture, as security for payment of the principal of, premium, if any, and interest on the Bonds and as security for the obligations of the Borrower under the Credit Facility Agreement and the Liquidity Facility Agreement. The Borrower consents to such assignment and pledge.

**Section 6.07. Indemnity.** The Borrower shall indemnify and save the Issuer and the members of the City Council of the Issuer, and the Issuer's officers, officials, agents, employees, successors and assigns harmless against and from any and all claims, damages, demands, expenses, liabilities, losses and taxes asserted by or on behalf of any person, firm, corporation or governmental authority arising or resulting from or in any way connected with the Borrower's acquisition or ownership of the Project, or the offering, issuance or sale of the Bonds, including but not limited to: (a) any condition, occupancy, use, possession, conduct or management of the Project; (b) any act or failure to act by any underwriter, broker, dealer or any other person, firm,

corporation or governmental authority, including the Issuer or the Credit Entity, in connection with the offering, sale or delivery of the Bonds; (c) any breach or default on the part of the Borrower in the performance of any of its obligations under this Agreement or the Note; (d) any act or negligence of the Issuer, the Credit Entity (except as to the Credit Entity only, as limited by the Credit Facility Agreement), the Borrower or its officers, contractors, servants, employees, agents or licensees; or (e) any accident, injury or death of any person or damage to any property occurring in or about the Project. The Borrower shall indemnify and save the Issuer, the members of the City Council of the Issuer, and the Issuer's officers, agents, employees, successors and assigns harmless from and against all costs, expenses and charges, including attorneys' fees, incurred in or in connection with any such claim arising as aforesaid, or in connection with any action or proceeding brought thereon.

In addition to the foregoing and notwithstanding anything contained in this Agreement or in the Indenture which might be construed to the contrary, the Borrower covenants and agrees to indemnify and save the Issuer, the members of the City Council, and the Issuer's officers, agents, employees, successors and assigns harmless with respect to any liability resulting from the performance or non-performance by the Issuer, the Borrower, the Trustee, the Credit Entity, the Remarketing Agent or the Tender Agent of any covenant or undertaking herein or in the Indenture. The indemnification provided in the first two paragraphs of this Section 6.7 shall not apply to the extent such cost, expense or charge arose as a result of the willful misconduct of the indemnified party.

The Borrower shall indemnify and save the Trustee and the Tender Agent harmless against and from all loss, liability or damages and reasonable attorneys' fees incurred by the Trustee or the Tender Agent in the exercise and performance of any of the Trustee's or Tender Agent's powers and duties hereunder or under the Indenture and with respect to the matters described in the first paragraph of this Section 6.7 except to the extent that such loss, liability or damage, including reasonable attorneys' fees, is incurred by reason of the Issuer's, the Trustee's or the Tender Agent's gross negligence or willful misconduct.

The Borrower hereby agrees to pay to all of the foregoing indemnified parties, as the case may be, all their costs, charges and expenses, including attorneys' fees, related to the Project or requested by the Borrower or required by this Agreement or the Indenture, or incurred in enforcing the provisions of this Agreement or the Indenture, which are not otherwise required to be paid by the Borrower by the terms of this Agreement.

Promptly after receipt by an indemnified party under this Section 6.7 of notice of the commencement of any action or threatened action, such indemnified party will, if a claim in respect thereof is to be made against the Borrower under this Section, notify the Borrower in writing of the commencement thereof, but the omission to so notify the Borrower will not relieve it from any liability which it may have to any indemnified party otherwise than under this Section. In case any such action is brought against any indemnified party, and it notified the Borrower of the commencement thereof, the Borrower will be entitled, but shall not be obligated, to participate in and, to the extent that it may wish, to assume the defense thereof, with counsel satisfactory to such indemnified party. Any such indemnified party will reasonably cooperate with the Borrower in any investigation relating to such action. After notice from the Borrower to such indemnified party of its assumption of the defense of any such action, the Borrower will not, except as hereinafter provided, be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof. If the Borrower shall not have employed counsel to have charge of the defense of any such action or if any such indemnified party or parties shall have reasonably

concluded (to the reasonable satisfaction of the Borrower) that there may be defenses available to it or them which are different from or additional to those available to the Borrower (in which case the Borrower shall not have the right to direct the defense of such action on behalf of the indemnified party or parties), legal and other expenses thereafter incurred by the indemnified party shall be borne by the Borrower. Notwithstanding any other language contained in this Section 6.7, the Borrower shall not be liable to any indemnified party hereunder for the costs of, or any expenses associated with, the settlement of any loss, claim, damages or liability to which the Borrower did not consent, if such consent was not unreasonably withheld.

**Section 6.08. Borrower's Approval of issuance of Bonds by Issuer.** The Borrower hereby approves the Issuer's issuance of the Bonds pursuant to the Indenture. Except as otherwise provided in the Indenture, the Indenture shall not be modified or amended except with the written consent of the Borrower.

**Section 6.09. Tax-exempt Status of the Bonds.** The Borrower and, as provided below, the Issuer hereby represent, warrant, covenant and agree that:

(a) It will not take or permit, or omit to take or cause to be taken, any action that would adversely affect the excludability from gross income for purposes of federal income taxation of the interest on the Bonds, and if it should take or permit, or omit to take or cause to be taken, any such action, the Borrower shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

(b) Upon the request of the Issuer or the Trustee, the Borrower will take such action or actions as may be reasonably necessary, in the written opinion of Bond Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service pertaining to obligations issued under Section 103 of the Code.

(c) The Borrower and the Issuer agree that they will not make any use of the proceeds from the sale of the Bonds in any manner which will cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the applicable regulations thereunder.

(d) The Borrower and the Issuer agree (and with respect to the Issuer to the extent it is within the Issuer's control) that they will not take or permit to be taken any action in connection with the Project or otherwise which would jeopardize the status of the Project as Qualified Zone Property (as defined in the Code).

(e) The Borrower represents that the "average maturity" of the Bonds does not exceed 120% of the remaining "average reasonably expected economic life" of the Project within the meaning of Section 147(b) of the Code, with such percentage to be computed pursuant to the requirements of Section 147(b) of the Code.

(f) The Borrower and the Issuer (to the extent of the Issuer's control) represent that they each will comply fully, during the term of this Agreement, with all effective rules, rulings and regulations promulgated by the Department of Treasury or the Internal Revenue Service with respect to the Bonds issued under the Code and the Borrower will take all action necessary to maintain the federal tax-exempt status of the interest

payable on the Bonds. The Issuer will provide reasonable assistance to the Borrower as may be necessary to maintain the federal tax-exempt status of the interest payable on the Bonds.

(g) The information furnished by the Borrower to the Issuer and used in preparing the Information Return for State and Local Bond Issues to be filed with the Internal Revenue Service pursuant to Section 149(e) of the Code, is true and correct.

(h) The Borrower covenants that the net proceeds of the Bonds will not be used to provide a facility the primary purpose of which is the provision of retail food and beverage services, automobile sales or service, recreation or entertainment; and none of the proceeds of the Bonds will be used to provide any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice skating), racquet sports facilities (including any handball or racquetball court), hot tub facility, sunbath facility, racetrack, airplane, skybox or other private luxury box, any health club facility, any facility used primarily for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off the premises.

(i) The Borrower will comply with each of the covenants and agreements of the Borrower set forth in the Tax Compliance Agreement.

#### Section 6.10. Environmental Covenants.

(a) The Borrower represents that except as may be set forth in Exhibit C attached hereto, there is no claim, action, suit, proceeding, arbitration, investigation or inquiry pending or to the Borrower's knowledge threatened against the Borrower before any federal, state, municipal, foreign or other court, or any governmental, administrative or self-regulatory body or agency, or any private arbitration tribunal, and there neither is nor, except as may be set forth in Exhibit C, has been any complaint, order, directive, claim, citation, notice or lien by or in favor of any governmental authority or private person with respect to: (i) air emissions; (ii) spills, releases or discharges of Hazardous Substances on, in or to: any real property owned or leased by the Borrower; any other property as a result of operations or activities on real property owned or leased by the Borrower; surface water; groundwater; or the sewer, septic system or waste water treatment system servicing any real property owned or leased by the Borrower; (iii) noise emissions; (iv) solid or liquid water disposal; (v) the use, storage, generation, treatment, transportation or disposal of Hazardous Substances; (vi) exposure to airborne or friable asbestos; or (vii) violation of any Environmental Law. To the Borrower's knowledge, there is no circumstance, matter or thing existing which might give rise to any of the foregoing, except as may be described in Exhibit C.

(b) The Borrower will at all times and in all respects be in substantial and material compliance with all Environmental Laws, provided that the Borrower shall be entitled to contest with due diligence any determination or assertion that it is not in such compliance, and no breach of this covenant shall be deemed to occur until such contest has been concluded. The Borrower's duties of compliance with Environmental Laws includes, without limitation, the duty to undertake the following specific actions: (i) the Borrower will, each at its own expense, procure, maintain in effect, and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required by all Environmental Laws, including, without limitation, permits

required for discharge of (appropriately treated) Hazardous Substances into the ambient air or any sanitary sewers serving any real property owned or leased by the Borrower; and (ii) except as discharged into the ambient air or a sanitary sewer in compliance with all applicable Environmental Laws, any and all Hazardous Substances to be treated and/or disposed by the Borrower will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal (except when applicable Environmental Laws permit on-site treatment or disposal in a sanitary landfill).

**Section 6.11. Assignment, Selling and Leasing.** This Agreement may be assigned and the Project leased or sold, as a whole or in part, by the Borrower without the necessity of obtaining the consent of either the Issuer or the Trustee, subject, however, to each of the following conditions:

(a) An opinion of Bond Counsel is delivered to the effect that such assignment, lease or sale does not adversely affect the exclusion from gross income of the interest on the Bonds for federal income tax purposes.

(b) The assignee, purchaser, or lessee shall assume the obligations of the Borrower hereunder to the extent of the interest assigned or leased.

(c) The Borrower shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Issuer and the Trustee a true and complete copy of each assignment, assumption of obligation, contract of sale, or lease, as the case may be.

(d) If a Credit Facility is then in effect and held by the Trustee, the written consent of the Credit Entity in its sole discretion shall be obtained.

(e) If the Bonds bear interest at the Bank Interest Rate, the written consent of the Bank shall be obtained.

For the purposes of this Section 6.11, neither of the following in and of itself shall be deemed an assignment: (i) any foreclosure or conveyance in lieu of foreclosure by or to the Credit Entity pursuant to the terms of any deed to secure debt, mortgage or security agreement securing the Credit Facility; or (ii) any other transfer to the Credit Entity or to a nominee of the Credit Entity which is an affiliate of the Credit Entity.

Nothing herein shall be deemed to relieve the Borrower from its liabilities hereunder without the consent of the Issuer and the Credit Entity and unless an opinion of Bond Counsel is provided that such release will not adversely affect the exemption from gross income of the interest on the Bonds.

**Section 6.12. Transfer of Assets; Merger or Consolidation.** The Borrower covenants and agrees that it will not sell, lease or otherwise dispose (including, without limitation, any involuntary disposition resulting from an act or failure to act by the Borrower) of, directly or indirectly, in whole or in part, of any of the Bond-financed property and will not consolidate with or merge into another legal entity or permit one or more legal entities to consolidate with or merge into it, except as permitted by Section 2.2(b) of this Agreement and unless prior to such sale, lease or other disposition, or merger or consolidation, the Borrower delivers to the Trustee and the Issuer an opinion of Bond Counsel to the effect that any such disposition or other action

will not adversely affect the validity of the Bonds or any exemption from federal income taxation to which the interest on the Bonds would otherwise be entitled.

## **ARTICLE VII.**

### **DEFAULTS AND REMEDIES**

**Section 7.01. Events of Default.** Any one or more of the following events shall constitute an event of default hereunder (an "Event of Default"):

(a) Except as specified in subsection (e) hereof, failure by the Borrower to observe and perform any covenant, condition or agreement herein on its part to be observed or performed for a period of 30 days after written notice specifying such failure and requesting that it be remedied shall have been given to the Borrower by the Issuer or the Trustee, unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period (but can be corrected within such longer period), the Trustee will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the default is corrected.

(b) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Borrower in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Borrower or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days.

(c) The commencement by the Borrower of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by the Borrower to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Borrower or for any substantial part of the property of the Borrower or the making by it of any assignment for the benefit of creditors, or the failure of the Borrower generally to pay its debts as such debts become due, or the taking of action by the Borrower in furtherance of any of the foregoing.

(d) An "Event of Default" as defined in the Indenture.

(e) Any failure to pay amounts sufficient to pay principal of, premium, if any, or interest on the Bonds pursuant to Section 4.2(a) hereof or the Purchase Price of the Bonds pursuant to Section 4.2(g) hereof on the due date thereof.

The foregoing provisions of this Section are subject to the following limitations: if by reason of Force Majeure the Borrower is unable in whole or in part to carry out its agreements on its part herein contained, other than the obligations on the part of the Borrower contained in Section 4.2 hereof, the Borrower shall not be deemed in default during the continuance of such inability. The term "Force Majeure" as used herein shall mean, without limitation, the following:

acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or of any of their departments, agencies, or officials, or of any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of the Borrower. The Borrower agrees, however, to use its best efforts to remedy with all reasonable dispatch the cause or causes preventing the Borrower from carrying out its agreement.

**Section 7.02. Remedies.** Upon the occurrence of an Event of Default pursuant to Section 7.1, and at any time thereafter during the continuance of such Event of Default, the Trustee may, with the consent of the Credit Entity or the Bank, as applicable (subject to Section 8.11 of this Agreement), pursue any action at law or in equity, appointing a receiver, collecting the payments then and thereafter due or enforcing performance and observance of any obligation, agreement or covenant of the Borrower thereunder or hereunder. Upon any acceleration of the Bonds pursuant to Section 8.01 of the Indenture, the amounts payable under the Note shall be automatically accelerated.

If the Trustee shall have proceeded to enforce the rights of the Issuer under this Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then the Borrower, the Issuer and the Trustee shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Borrower, the Issuer and the Trustee shall continue as though no such proceedings had taken place.

**Section 7.03. Additional Remedies.** In addition to the above remedies, if the Borrower commits a breach, or threaten to commit a breach of this Agreement, the Trustee shall have the right and remedy, without posting bond or other security, to have the provisions of this Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the Issuer and that money damages will not provide an adequate remedy thereto.

**Section 7.04. No Remedy Exclusive.** No remedy herein conferred or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give notice, other than such notice as may be required in this Article. Such rights and remedies as are given the Trustee hereunder shall also extend to the Owners of the Bonds, who shall be entitled to the benefit of all covenants and agreements herein contained, subject to the provisions of the Indenture.

**Section 7.05. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 7.06. **Waiver of Extension, Appraisalment, Stay, Laws.** To the extent permitted by law, the Borrower will not during the continuance of any Event of Default hereunder insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of Article IV of this Agreement; nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisalment of the Project prior to any sale or sales thereof which may be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted by the United States of America or by any state or territory, or otherwise, to redeem the Project so sold or any part thereof; and the Borrower hereby expressly waives all benefits or advantage of any such law or laws and covenant not to hinder, delay or impede the execution of any power herein granted or delegated to the Issuer, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

## ARTICLE VIII.

### MISCELLANEOUS

Section 8.01. **Notice.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail or certified mail, postage prepaid, return receipt requested or sent by Facsimile, or by commercial overnight delivery service, charges prepaid, addressed as follows:

if to the Issuer:

Department of Finance -- Room 600  
33 North LaSalle Street  
Chicago, IL 60603  
Attention: Comptroller  
Telephone: (312) 744-3361  
Facsimile: (312) 744-0014

with a copy to:

Department of Finance  
City Hall -- Room 600  
121 North LaSalle Street  
Chicago, IL 60602  
Attention: City Comptroller  
Telephone: (312) 744-3361  
Facsimile: (312) 744-8538

and

Department of Housing and Economic Development  
City Hall -- Room 1006  
121 North LaSalle Street  
Chicago, IL 60602  
Attention: Commissioner  
Telephone: (312) 744-9475  
Facsimile: (312) 744-8538



If to the Borrower:

J and A, LLC  
4100 West Ferdinand St.  
Chicago, IL 60624  
Attention: Mr. Jerry Siegel  
Telephone: (773) 533-7397  
Facsimile: (773) 558-7555

if to the Trustee:

Amalgamated Bank of Chicago  
One West Monroe Street, 3<sup>rd</sup> Floor  
Chicago, Illinois 60603  
Attention: April Lopez  
Telephone: (312) 822-3151  
Facsimile: (312) 267-8786

if to the Tender Agent:

Amalgamated Bank of Chicago  
One West Monroe Street, 3<sup>rd</sup> Floor  
Chicago, Illinois 60603  
Attention: April Lopez  
Telephone: (312) 822-3151  
Facsimile: (312) 267-8786

if to the Remarketing Agent:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

if to the Bank:

First Bank & Trust  
1250 North Arlington Heights Road, Suite 175  
Itasca, IL 60143  
Attention: \_\_\_\_\_  
Telephone: (630) 250-3510

A duplicate copy of each notice, certificate or other communication given hereunder by the Issuer or the Borrower shall also be given to the Trustee and the Bank. Each addressee listed above may, by notice given hereunder to the other addressees, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 8.02. Concerning Successors and Assigns. All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding and unpaid. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Agreement shall bind each of their successors and assigns and inure to the benefit of the successors and assigns of the Issuer.

**Section 8.03. Governing Law.** This Agreement and the exhibits attached hereto shall be construed in accordance with and governed by the laws of the State and where applicable the laws of the United States of America.

**Section 8.04. Modifications in Writing.** Subject to provisions of the Indenture, modification or the waiver of any provisions of this Agreement, or consent to any departure by the Borrower therefrom, shall in no event be effective unless the same shall be in writing approved by the parties thereto and then such waiver or consent shall be effective only in specific instance and for the purpose for which given and so long as the interests of any Bondowners are not adversely affected and the Trustee assents thereto. Subject to provisions of the Indenture, any amendments to this Agreement shall require the written consent of all of the parties hereto and may be entered into only in accordance with the terms of Article XI of the Indenture. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice of demand in the same circumstances.

**Section 8.05. Further Assurances and Corrective Instruments.** The Borrower agrees, and the Issuer agrees to the extent that approval is granted by the competent authority therefor, that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required and agreed upon for correcting any inadequate or incorrect description of the provisions of this Agreement.

**Section 8.06. Captions.** The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

**Section 8.07. Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof; provided, however, that no finding of illegality or unenforceability shall require payment by Issuer of any funds from any source other than Revenues derived hereunder.

**Section 8.08. Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

**Section 8.09. Amounts Remaining In Bond Fund or Other Funds.** It is agreed by the parties hereto that any amounts remaining in the Bond Fund or other funds established under the Indenture upon expiration or sooner termination of the term hereof, as provided below, after payment in full of the Bonds (or provisions for payment thereof having been made in accordance with the provisions of the Indenture) and the fees and expenses of the Trustee, Bond Registrar, Tender Agent, Remarketing Agent, the Credit Entity, the Liquidity Entity and any Paying Agent in accordance with the Indenture, shall be paid in accordance with the Indenture.

**Section 8.10. Effective Date and Term.** This Agreement shall become effective upon its execution and delivery by the parties hereto, shall remain in full force from the date hereof and, subject to the provisions hereof, shall expire on such date as the Bonds shall be released pursuant to the terms and provisions of the Indenture.

**Section 8.11. References to Credit Entity and Liquidity Entity Ineffective During Certain Periods.** During any period of time which (a) no Credit Facility is in effect and no

amounts remain unreimbursed to the Credit Entity under the Credit Facility Agreement or (b) the Credit Entity is in default under the Credit Facility, references in this Agreement to the Credit Entity shall be ineffective. During any period of time in which (a) no Liquidity Facility is in effect and no amounts remain unreimbursed to the Liquidity Entity under the Liquidity Facility Agreement, or (b) the Liquidity Facility Entity is in default under the Liquidity Facility, references in this Agreement to the Liquidity Entity shall be ineffective.

**Section 8.12.Indenture Provisions.** The Indenture provisions concerning the Bonds and the other matters therein are an integral part of the terms and conditions of the Loan made by the Issuer to the Borrower pursuant to this Agreement and the execution of this Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower to the extent it relates to the Borrower. Additionally, the Borrower agrees that, whenever the Indenture by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower was an express party to the Indenture, and the Borrower hereby agrees to carry out and perform all of its obligations under the Indenture as fully as if the Borrower was a party to the Indenture.

**Section 8.13.Default by Issuer—Limited Liability.** Notwithstanding any provision or obligation to the contrary hereinbefore or hereinafter set forth, no provision of this Agreement shall be construed so as to give rise to a pecuniary liability of the Issuer or to give rise to a charge upon the general credit of the Issuer; the liability of the Issuer hereunder shall be limited to its interest in the Project, this Agreement, the Note and all other related documents and collateral and the lien of any judgment shall be restricted thereto. In the performance of the agreements of the Issuer herein contained, any obligation it may incur for the payment of money shall not be a debt of the Issuer, nor shall the Issuer be liable on any obligation so incurred. The Issuer does not assume general liability for the repayment of the Bonds or for the costs, fees, penalties, taxes, interest, omissions, charges, insurance or any other payments recited herein, and shall be obligated to pay the same only out of the amounts payable by the Borrower hereunder. The Issuer shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Borrower if a default shall occur hereunder.

**Section 8.14.Immunity of Incorporators, Officers, Directors and Employees.** No recourse shall be had on any obligation, covenant or agreement in this Agreement against the Issuer or any past, present or future incorporator, official, officer, member, director or employee of the Issuer, or any successor corporation either directly or indirectly, under any rule of law or equity, statute or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporators, officials, officers, members, directors or employees as such is hereby expressly waived and released as a condition of and consideration for the delivery of this Agreement and the issuance of the Bonds.

**Section 8.15.Borrower Representations, Warranties and Covenants to the City of Chicago re: Certain Matters.**

(a) The Borrower warrants and represents to the Issuer that neither the Borrower, any member of the Borrower, nor any Affiliate of the Borrower or any member of the Borrower, is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the Issuer may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. "Affiliate" when used to indicate a relationship with a specified person or

entity, shall mean a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

(b) The Borrower covenants to the Issuer as follows:

(i) no member, official or employee of the Issuer shall have any personal interest, direct or indirect, in the Borrower's business or shall participate in any decision relating to the Borrower's business which affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly interested; and

(ii) no former member, official or employee of the Issuer shall, for a period of one year after the termination of the member's, official's or employee's term of office or employment, assist or represent the Borrower in any business transaction involving the Issuer or any of its agencies, if the member, official or employee participated personally and substantially in the subject matter of the transaction during his/her term of office or employment, provided that if the member, official or employee exercised contract management authority with respect to a contract (including any loan from the Issuer), this prohibition shall be permanent as to that contract.

(c) Pursuant to Section 2-156-030(b) of the Municipal Code of Chicago, it is illegal for any elected official of the Issuer, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship. Violation of Section 2-156-030(b) by any elected official, or any person acting at the direction of such official, with respect to any of the Bond Documents, or in connection with the transactions contemplated thereby, shall be grounds for termination of the Loan Agreement and the transactions contemplated thereby (the "Loan Documents"). The Borrower hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030(b) has occurred with respect to any of the Loan Documents or the transactions contemplated thereby.

(d) It is the Borrower's duty and the duty of any bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all of the Borrower's officers, directors, agents, partners, and employees and any such bidder, proposer, contractor, subcontractor or such applicant: (a) to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code and (b) to cooperate with the Legislative Inspector General in any investigation undertaken pursuant to Chapter 2-55 of the Municipal Code. The Borrower represents that it understands and will abide by all provisions of Chapters 2-56 and 2-55 of the Municipal Code and that the Borrower will inform subcontractors of this provision and require their compliance.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and caused it to be executed and sealed by their authorized representatives, as of the day and year first above written above.

(SEAL)

CITY OF CHICAGO

By:

Name: \_\_\_\_\_  
Title: Chief Financial Officer

ATTEST:

By:

Name: \_\_\_\_\_  
Title: City Clerk

## **EXHIBIT A**

### **PROJECT DESCRIPTION**

The Project includes the land, building with approximately 107,000 square feet of usable space for warehouse, office and training and the equipment therein. The facility is located at 4104-4134 West Ferdinand Street in the City of Chicago.

## EXHIBIT B

### PROMISSORY NOTE

\$6,850,000

Chicago, Illinois

December 10, 2002

FOR VALUE RECEIVED, J and A, LLC, an Illinois limited liability company (the "Borrower") promises to pay to the City of Chicago (the "Issuer"); the principal sum of- Six Million Eight Hundred Fifty Thousand Dollars (\$6,850,000) on December 1, 2032 (or such earlier date when the hereinafter defined Bonds become due by redemption or acceleration) together with (a) interest thereon in an amount sufficient to enable the Issuer to make payment of all interest becoming due and payable on the City of Chicago, Enterprise Zone Revenue Bonds (J & A, LLC Project), Series 2002 (the "Bonds"), dated December 10, 2002, issued in the aggregate principal amount of Six Million Eight Hundred Fifty Thousand Dollars (\$6,850,000) pursuant to a Trust Indenture dated as of December 1, 2002 (the "Indenture"), between the Issuer and Midwest Bank and Trust Company, as Trustee (the "Trustee"), which Indenture and Bonds are incorporated herein by reference and made a part hereof, and (b) such redemption premium, Purchase Price and other amounts as are required to be paid by the Borrower to the Issuer as loan repayments as provided in the Loan Agreement dated as of December 1, 2002 (the "Loan Agreement"), between the Borrower and the Issuer which is incorporated herein by reference and made a part hereof.

The foregoing amounts shall be paid by means of loan repayments which shall be due and payable (less any credits to which the Borrower may be entitled under the Loan Agreement), in immediately available funds, as follows:

On or before the first Business Day of each month, commencing the first Business Day of January 2002, the Borrower shall make payments to the Trustee in an amount necessary to pay the interest on the Bonds on the corresponding Interest Payment Date (as defined in the Indenture), taking into account all other monies available in the Bond Fund (as defined in the Indenture) to make such interest payments. If interest on the Bonds becomes payable on semiannual Interest Payment Dates in accordance with the terms of the Indenture, the amounts owed under clause (a) above shall be equal to one-sixth of the amount owed on the next succeeding Interest Payment Date, except when the first such semiannual Interest Payment Date is less than six months from the Rate Conversion Date, in which event the monthly installments of Interest shall be paid in equal amounts until such first semiannual Interest Payment Date. Principal hereunder shall be payable on the dates and in amounts sufficient to pay principal of the Bonds when due under the Indenture.

This Note also evidences the obligation of the Borrower to pay the Purchase Price of Bonds tendered for purchase as provided in Section 4.2(g) of the Loan Agreement.

If the date when any of the payments required to be made hereunder is not a Business Day, then such payments may be made on the next Business Day with the same force and effect as if made on the nominal due date, and no interest shall accrue for the period after such date.

The Borrower shall have the option to make advance payments of amounts due hereunder, from time to time, which advance payments shall be deposited with the Trustee in

the Bond Fund established by the Indenture and shall be applied as provided in the Loan Agreement and the Indenture.

All payments shall be made in coin or currency of the United States of America in immediately available funds at the principal corporate trust office of the Trustee, or at the principal corporate trust office of any successor Trustee.

If the Borrower fails to pay any installment of principal, premium, if any, and interest when due under this Note, or upon the occurrence of any one or more of the Events of Default specified in the Loan Agreement, the Trustee then, or at any time thereafter, may under certain conditions specified in Article VIII of the Indenture and Article VII of the Loan Agreement give notice to the Borrower declaring all unpaid amounts then outstanding hereunder or under the Loan Agreement (including all fees and expenses), to be due and payable, and thereupon, without further notice or demand, all such amounts shall become and be immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any time in the event of any continuing or subsequent default.

If an Event of Default has not occurred, then all payments hereon shall be applied first to accrued interest, then to principal and premium, if any, and then to all other amounts owed under the Loan Agreement and Indenture.

The undersigned waives demand, protest, presentment for payment and notice of nonpayment and agrees to pay all costs of collection when incurred, including reasonable attorneys' fees, and to perform and comply with each of the covenants, conditions, provisions and agreements of the undersigned contained in every instrument evidencing or securing the indebtedness evidenced hereby. No extension of the time for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability under this Note, either in whole or in part, of the undersigned if not a party to such agreement.

This Note is issued under and is subject to the terms and conditions of the Loan Agreement. All terms, conditions, rights and provisions set forth in the Loan Agreement are hereby incorporated herein in their entirety.



This Note and all instruments securing the same are to be construed according to the laws of the State of Illinois.

J and A, LLC,  
an Illinois limited liability company

By: \_\_\_\_\_  
Name: Jerry I. Siegel  
Title: Manager

PAY TO THE ORDER OF MIDWEST BANK AND TRUST COMPANY, AS TRUSTEE  
UNDER THAT CERTAIN TRUST INDENTURE DATED AS OF DECEMBER 1, 2002, BY AND  
BETWEEN MIDWEST BANK AND TRUST COMPANY, AS TRUSTEE, AND THE CITY OF  
CHICAGO WITHOUT WARRANTY OR RECOURSE.

CITY OF CHICAGO

By: \_\_\_\_\_  
City Comptroller

**EXHIBIT C**

**SECTION 6.10 EXCEPTIONS**

**NONE**

## EXHIBIT D

### FORM OF REQUISITION

Midwest Bank and Trust Company, as Trustee  
1606 North Harlem Avenue  
Elmwood Park, Illinois 60707  
Attention: Corporate Trust Department

Re: \$6,850,000 City of Chicago Enterprise Zone Revenue Bonds  
(J & A, LLC Project), Series 2002 (the "Bonds")

#### Request for Disbursement from Project Fund

Ladies and Gentlemen:

Pursuant to Section 3.3(b) of the Loan Agreement dated as of December 1, 2002 (the "Loan Agreement"), between the City of Chicago (the "Issuer") and J and A, LLC (the "Borrower"), you are hereby requested to disburse from the Project Fund (the "Project Fund") referred to in the Trust Indenture dated as of December 1, 2002 (the "Indenture"), between you and the Issuer the amount indicated below.

As required by Section 3.3(b) of the Loan Agreement, the undersigned hereby states as follows:

1. None of the items for which payment is sought hereunder has formed the basis for any prior payment from the Project Fund.
2. The obligation with respect to which payment is being sought has been properly incurred in accordance with the Loan Agreement and the Indenture and is a proper charge against the Project Fund.
3. Such payment does not include any amount in excess of the actual cost to the Borrower of the item for which payment is being requested.
4. That the expenditure of such disbursement, when added to all disbursements under previous requisitions, will result in at least 95% of the net proceeds of the Bonds within the meaning of Section 150(a)(3) of the Code (meaning total proceeds of the Bonds, less any proceeds deposited in a reasonably required reserve or replacement fund), having been used for the acquisition, construction, rehabilitation, renovation, improvement or equipping of land or property of a character subject to the allowance for depreciation under the Code, or for payment of amounts which are, for federal income tax purposes, chargeable to the Project's capital account or would be so chargeable either with a proper election by the Borrower or but for a proper election by the Borrower to deduct such amounts, and will result in not more than 2% of the aggregate face amount of the Bonds (less the amounts, if any, constituting original issue discount) having been used to pay "issuance costs" within the meaning of Section 147(g) of the Code.

## EXHIBIT E

### FORM OF COMPLETION CERTIFICATE

Midwest Bank and Trust Company, as Trustee  
1606 North Harlem Avenue  
Elmwood Park, Illinois 60707  
Attention: Corporate Trust Department

Re: \$6,850,000 City of Chicago Enterprise Zone Revenue Bonds (J & A, LLC Project), Series 2002 (the "Bonds")

Ladies and Gentlemen:

Pursuant to Section 3.3(c) of the Loan Agreement dated as of December 1, 2002 (the "Loan Agreement") between the City of Chicago (the "Issuer") and J and A, LLC (the "Borrower"), you are hereby advised as follows:

(a) all portions of the Project have been fully completed substantially in accordance with the construction contracts and/or the plans and specifications therefor, as then amended, and all Bond proceeds have been applied solely to the payment of the Costs of the Project on account of which the Bonds were issued; and

(b) the undersigned has made such investigation of such sources of information as are deemed by the undersigned to be necessary, including pertinent records of the Borrower, and is of the opinion that the Project has been fully paid for and that no claim or claims exist against the Borrower (or to the best of its knowledge, against the Issuer) or against the properties of the Borrower out of which a lien based on furnishing labor or material for the Project exists or might ripen, except. Funds are on deposit in the Project Fund sufficient to make payment of the full amount which might in any event be payable in order to satisfy such claim or claims or such claims have been insured over, and a certificate evidencing such insurance is attached hereto; and

(c) 95 percent or more of the sum of the amount received from the proceeds of the Bonds, plus the income derived from the investment of moneys or deposits in the Project Fund or in any other fund held under the Indenture during the period of construction, were used to pay, or reimburse the Borrower for the payment of, costs incurred in connection with acquisition, renovation, construction, remodeling or improving of the Project.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

J and A, LLC,  
an Illinois limited liability company

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

**Exhibit B**

**Amended and Restated Indenture**

**CITY OF CHICAGO**  
as Issuer

to

**AMALGAMATED BANK OF CHICAGO,**  
as Trustee

**AMENDED AND RESTATED TRUST INDENTURE**

Dated as of May 1, 2011

\$6,850,000  
City of Chicago  
Enterprise Zone Revenue Bonds  
(J & A, LLC Project), Series 2002

## TABLE OF CONTENTS

ARTICLE I. DEFINITIONS .....	53
ARTICLE II. THE BONDS .....	63
Section 2.01. Authorized Amount of Bonds.....	63
Section 2.02. Issuance of Bonds.....	63
Section 2.03. Interest Rates on Bonds.....	63
Section 2.04. Manner of Payment for Bonds.....	68
Section 2.05. Execution; Limited Obligation .....	70
Section 2.06. Authentication .....	70
Section 2.07. Form of Bonds .....	70
Section 2.08. Delivery of Bonds .....	71
Section 2.09. Mutilated, Lost, Stolen or Destroyed Bonds.....	72
Section 2.10. Registration and Exchange of Bonds; Persons Treated as Owners .....	72
Section 2.11. Temporary Bonds.....	73
Section 2.12. Alternate Credit Facility and Substitute Liquidity Facility.....	73
Section 2.13. Book Entry System.....	74
ARTICLE III. REDEMPTIONS AND TENDERS OF BONDS .....	77
Section 3.01. Redemption.....	77
Section 3.02. Selection of Bonds to Be Redeemed .....	80
Section 3.03. Procedure for Redemption .....	80
Section 3.04. No Partial Redemption After Default.....	81
Section 3.05. Payment of Redemption Price.....	81
Section 3.06. Optional Tenders While Bonds Bear Interest at the Weekly Rate or Monthly Rate.....	82
Section 3.07. Mandatory Tender Upon Rate Conversion Date and Expiration or Substitution of Credit Facility or Liquidity Facility .....	86
Section 3.08. Inadequate Funds for Tenders .....	88
Section 3.09. Duties of the Tender Agent .....	88
Section 3.10. Duties of the Remarketing Agent.....	89
Section 3.11. Untendered Bonds .....	89
Section 3.12. Cancellation .....	89
Section 3.13. Bonds Redeemed in Part .....	89
Section 3.14. Holding and Purchase of Purchased Bonds .....	90
Section 3.15. Tender Fund .....	90
Section 3.16. Book-Entry Only System; Redemptions; Tender of Bonds .....	91
ARTICLE IV. GENERAL COVENANTS .....	91
Section 4.01. Payment of Principal and Interest.....	91
Section 4.02. Performance of Covenants; Issuer .....	92
Section 4.03. Instruments of Further Assurance .....	92
Section 4.04. Recording and Filing .....	92
Section 4.05. Inspection of Project Books.....	92
Section 4.06. List of Bondholders .....	92
Section 4.07. Exemption.....	93
Section 4.08. Arbitrage .....	93
Section 4.09. Lack of Agreement Between Issuer and Borrower for Purchase of Bonds.....	93
Section 4.10. Notices to Rating Agency .....	93



ARTICLE V. FUNDS AND APPLICATION OF REVENUES AND OTHER MATTERS .....	93
Section 5.01. Establishment of Funds and Accounts .....	93
Section 5.02. Bond Fund .....	94
Section 5.03. Disposition of Bonds Upon Payment .....	95
Section 5.04. The Trustee's Maintenance of Records on Payment of Bonds .....	95
Section 5.05. Project Fund .....	95
Section 5.06. Application of Bond Proceeds .....	96
Section 5.07. Completion of the Project .....	96
Section 5.08. Rebate Fund .....	96
ARTICLE VI. INVESTMENT OF FUNDS AND CREDIT FACILITY DRAWS .....	97
Section 6.01. Investment of Funds and Accounts Held by the Trustee .....	97
Section 6.02. Valuation .....	97
Section 6.03. Sale of Investments .....	97
Section 6.04. Liability of the Trustee and Issuer for Investments .....	98
Section 6.05. Draws on the Credit Facility .....	98
ARTICLE VII. DISCHARGE OF LIEN .....	98
Section 7.01. Defeasance .....	98
ARTICLE VIII. REMEDIES OF TRUSTEE AND BONDHOLDERS UPON DEFAULT .....	99
Section 8.01. Events of Default .....	99
Section 8.02. Enforcement of Remedies .....	101
Section 8.03. Right of Credit Entity or Bank to Direct Proceedings .....	102
Section 8.04. Priority of Payments After Default .....	102
Section 8.05. Remedies Vested in the Trustee .....	104
Section 8.06. Rights and Remedies of Bondholders .....	104
Section 8.07. Termination of Proceedings .....	104
Section 8.08. Waivers of Events of Default .....	105
Section 8.09. Notice of Defaults Under Section 8.01(d); Opportunity of Issuer and Borrower to Cure Such Defaults .....	105
ARTICLE IX. TRUSTEE .....	106
Section 9.01. Acceptance of the Trusts .....	106
Section 9.02. Fees, Charges and Expenses of the Trustee .....	108
Section 9.03. Notice to Bondholders if Default Occurs .....	108
Section 9.04. Intervention by the Trustee .....	108
Section 9.05. Successor to the Trustee .....	109
Section 9.06. Resignation by the Trustee .....	109
Section 9.07. Removal of the Trustee .....	109
Section 9.08. Appointment of Successor Trustee by the Bondholders; Temporary Trustee .....	109
Section 9.09. Concerning Any Successor Trustee .....	110
Section 9.10. Designation and Succession of Paying Agents .....	110
Section 9.11. Appointment of Co-Trustee .....	111
Section 9.12. Remarketing Agent .....	111
Section 9.13. Tender Agent .....	112
ARTICLE X. SUPPLEMENTAL INDENTURES .....	113
Section 10.01. Supplemental Indentures Not Requiring Consent of Registered Owners .....	113
Section 10.02. Supplemental Indentures Requiring Consent of Registered Owners ....	113

Section 10.03.	Supplemental Indentures Requiring Consent of Borrower, Credit Entity and Liquidity Entity .....	114
ARTICLE XI. AMENDMENT OF DOCUMENTS .....		114
Section 11.01.	Amendments, etc., to Loan Agreement Not Requiring Bondholder Consent .....	114
Section 11.02.	Amendments, etc., to Documents Requiring Bondholder Consent .....	115
ARTICLE XII. MISCELLANEOUS .....		115
Section 12.01.	Consents, etc., of Registered Owners .....	115
Section 12.02.	Limitation of Rights .....	116
Section 12.03.	Severability .....	116
Section 12.04.	Notices .....	116
Section 12.05.	Payments Due on Saturdays, Sundays and Holidays .....	118
Section 12.06.	Counterparts .....	118
Section 12.07.	Applicable Provisions of Law .....	118
Section 12.08.	Rules of Interpretation .....	118
Section 12.09.	Captions .....	118
Section 12.10.	References to Credit Entity and Liquidity Entity Ineffective During Certain Periods .....	118
Section 12.11.	Third Party Beneficiary .....	118
Section 12.12.	Consent and Directions in Writing; Authorized Representatives .....	118
Section 12.13.	No Personal Liability .....	118

## **AMENDED AND RESTATED TRUST INDENTURE**

**THIS AMENDED AND RESTATED TRUST INDENTURE**, dated as of May 1, 2011, is entered into by and between the **CITY OF CHICAGO**, a municipality and home rule unit of local government, duly organized and validly existing under the Constitution and laws of the State of Illinois (the "Issuer"), and **AMALGAMATED BANK OF CHICAGO**, a banking corporation organized and existing under the laws of the State of Illinois, as trustee (the "Trustee").

### **WITNESSETH:**

**WHEREAS**, the Issuer, as a home rule unit, and pursuant to the Constitution of the State of Illinois and a Bond Ordinance adopted by the City Council of the Issuer on July 31, 2002 as amended by an Ordinance adopted by the City Council of the Issuer on November 6, 2002 (collectively, the "Original Bond Ordinance"), was authorized and empowered to issue enterprise zone revenue bonds to finance or refinance the acquisition, and construction or purchase of land, buildings, improvements and equipment, or any interest therein, suitable for use by any enterprise zone business within an enterprise zone; and

**WHEREAS**, pursuant to and in accordance with the Original Bond Ordinance, the Issuer issued its "City of Chicago Enterprise Zone Revenue Bonds (J & A, LLC Project), Series 2002" (the "Bonds") in the original aggregate principal amount of \$6,850,000 (now outstanding in the principal amount of \$\_\_\_\_\_) to finance or refinance permitted costs in connection with the acquisition of land and the construction and equipping of an approximately 107,000 square foot building thereon, to be used as a warehouse, office and training facility (the "Project") and owned and operated by J and A, LLC, an Illinois limited liability company (the "Borrower"), and located at 4104-4134 West Ferdinand Street, Chicago, Illinois 60624; and

**WHEREAS**, in connection with the issuance of the Bonds, the Issuer and the Trustee entered into a Trust Indenture dated as of December 1, 2002 (the "Original Indenture" and together with this Amended and Restated Trust Indenture, the "Indenture"); and

**WHEREAS**, Bonds were initially issued in a Weekly Rate Period and have been secured by a Credit Facility in the form of a direct-pay letter of credit; and

**WHEREAS**, the term of the existing Credit Facility is expiring and the Borrower has received a commitment from a financial institution whereby the financial institution would be willing to hold the Bonds for investment purposes pursuant to a newly created Bank Interest Rate Period; and

**WHEREAS**, at the expiration of the existing Credit Facility, the Bonds will be tendered by existing Bondholders who will be paid the Purchase Price of their Bonds by the Credit Facility, at which time the Bank (as hereinafter defined) will reimburse the Credit Entity on behalf of the Borrower, and the Bonds will be held as Borrower Bonds, registered in the name of the Bank; and

**WHEREAS**, as owner of 100% of the beneficial interest in the Bonds following the tender thereof and the reimbursement of the Credit Entity, the Bank, together with the Borrower, will consent to the Amended and Restated Indenture and the Amended and Restated Loan Agreement (each as hereinafter defined) and, following the effective date of the Amending Bond Ordinance (as hereinafter defined) the Bank will hold the Bonds in a Bank Interest Rate Period; and

**WHEREAS**, on \_\_\_\_\_, 2011, the City Council of the Issuer adopted an Ordinance (the "Amending Bond Ordinance" and, together with the Original Bond Ordinance, the "Bond Ordinance") approving the transaction described above, including the execution and delivery of the Amended and Restated Indenture and the Amended and Restated Loan Agreement; and

**WHEREAS**, the Issuer and the Borrower previously entered into a Loan Agreement with dated as of December 1, 2002 (the "Original Loan Agreement") pursuant to which the Issuer loaned the proceeds from the issuance of the Bonds to the Borrower, and in connection with the transaction described above, the Issuer and the Borrower are entering into an Amended and Restated Loan Agreement, dated as of May 1, 2011 (the "Amended and Restated Loan Agreement" and, together with the Original Loan Agreement, the "Loan Agreement"); and

**WHEREAS**, all Bonds issued and Outstanding under this Indenture will be secured by a pledge and assignment of certain rights of the Issuer under the Loan Agreement and the Note, as defined herein; and

**WHEREAS**, the Bonds are payable solely from the Revenues, as defined herein, 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, when the Bonds are in a Period other than a Bank Interest Rate Period, from the Credit Facility, and the Bonds shall never be construed to constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions whatsoever; and

**WHEREAS**, the execution and delivery of this Indenture has been duly authorized by the Issuer and all conditions, acts and things necessary and required by the Constitution or laws of the State of Illinois or otherwise, to exist, to have happened, or to have been performed precedent to or in the execution and delivery of this Indenture, do exist, have happened and have been performed in regular form, time and manner; and

**WHEREAS**, all things necessary to make the Bonds, when authenticated by the Trustee or the Tender Agent 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 Indenture a valid assignment and pledge of the amounts pledged to the payment of the principal of, premium, if any, and interest on the Bonds, and to constitute this Indenture a valid assignment of certain of the rights of the Issuer under the Loan Agreement, have been done and performed, and the creation, execution and issuance of the Bonds, subject to the terms thereof, have in all respects been duly authorized;

**NOW, THEREFORE, THIS TRUST INDENTURE WITNESSETH:**

#### **GRANTING CLAUSES**

That the Issuer in consideration of the premises, the acceptance by the Trustee of the trusts created hereby and, the purchase and acceptance of the Bonds by the owners thereof, and of the sum of one dollar, lawful money of the United States of America, to it duly paid by the Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect and, except for Bonds paying interest at the Bank Interest Rate, the payment of the obligations of the Borrower under the Credit Facility Agreement and the Liquidity Facility Agreement and to secure the performance and observance by the Issuer of all the

covenants expressed or implied herein and in the Bonds, does hereby pledge and assign, and grant a security interest in, the following to Amalgamated Bank of Chicago, as Trustee, and its successors in trust and assigns forever, for the securing of the performance of the obligations of the Issuer hereinafter set forth:

#### **GRANTING CLAUSE FIRST**

All right, title and interest of the Issuer in and to any monies held under this Indenture by the Trustee, including the proceeds of the Bonds and the interest, profits and other income derived from the investment thereof other than amounts held by the Trustee or the Tender Agent in the Tender Fund or elsewhere to pay the Purchase Price of Bonds delivered or deemed delivered for purchase pursuant to Article III hereof and the Rebate Fund.

#### **GRANTING CLAUSE SECOND**

All right, title and interest of the Issuer in and to the Loan Agreement and the Note (save and except for the Unassigned Rights).

#### **GRANTING CLAUSE THIRD**

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

**TO HAVE AND TO HOLD** all and singular the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its respective successors in said trust and assigns forever;

**IN TRUST NEVERTHELESS**, upon the terms and trust herein set forth for the equal and proportionate benefit, security and protection of all present and future owners of the Bonds from time to time issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds (except as otherwise provided herein), and for the benefit, security, and, when applicable, protection of the Credit Entity, the Liquidity Entity and the Reimbursement Bank with respect to the obligations of the Borrower under the Credit Facility Agreement and Liquidity Facility Agreement, respectively, but only after all owners of the Bonds have been paid all principal, premium, if any, and interest due them;

**PROVIDED, HOWEVER**, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of, premium, if any, and interest on the Bonds due or to become due thereon, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, and shall cause the payments to be made on the Bonds as required under Article III or Article VII of this Indenture, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee the entire amount due or to become due thereon, and shall well and truly cause to be kept, performed and observed all of its covenants and conditions pursuant to the terms of this Indenture, and shall pay or cause to be paid all sums of money due or to become due in accordance with the terms and provisions hereof, the Credit Facility Agreement and the Liquidity Facility Agreement, then upon the final payment

thereof; this Indenture and the rights hereby granted shall cease, determine and be void; otherwise this Indenture is to be and remain in full force and effect.

**THIS TRUST INDENTURE FURTHER WITNESSETH**, and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all said property, rights and interests, including, without limitation, the payments due pursuant to the Loan Agreement and other amounts hereby assigned and pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as herein expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant with the Trustee and with the respective owners of the Bonds as follows:

## **ARTICLE I.**

### **DEFINITIONS**

In addition to the words and terms defined elsewhere herein, the following words and phrases as used in this Indenture shall have the following meanings unless the context or use indicates another or different meaning and intent:

"Act of Bankruptcy" means the filing of a petition in bankruptcy (or the other commencement of bankruptcy or similar proceedings) by or against the Borrower or the Issuer under any applicable bankruptcy, insolvency, reorganization or similar law, as now or hereafter in effect.

"Adjustable Rate" means the interest rate per annum applicable during each Adjustable Rate Period and determined as provided in Section 2.03(e) hereof.

"Adjustable Rate Period" means the Rate Period during which the Bonds bear interest at an Adjustable Rate.

"Alternate Credit Facility" means any Credit Facility delivered to the Trustee in accordance with Section 2.12 hereof to replace the Credit Facility then in effect, and also shall include any confirming or standby Credit Facility supporting another Credit Facility.

"Authorized Borrower Representative" means such person or persons duly designated by the Borrower to act on its behalf in a writing delivered to the Trustee.

"Authorized Denominations" means \$100,000 principal amount or any integral multiple of \$5,000 in excess thereof; provided, however, that when the Bonds are in the Bank Interest Mode, the Authorized Denomination shall be the Outstanding principal amount of the Bonds.

"Authorized Issuer Representative" means such person or persons duly designated by the Issuer to act on its behalf.

"Bank" means the holder of the Bonds when the Bonds bear interest at the Bank Interest Rate.

"Bank Interest Rate" means for the Initial Bank Interest Rate Period, the rate of interest per annum equal to the Bank's Prime Rate (as determined from time to time) multiplied by eighty percent (80%). Following the Initial Bank Interest Rate Period, the Bank Interest Rate shall mean for any subsequent Bank Interest Rate Period (a) the rate of interest per annum, or a formula pursuant to which such rate of interest is calculated, determined by reference to an objective benchmark (e.g., applicable term U.S. Treasury Bond) or index and adjusted based on a percentage of or a spread off of such benchmark or index. In no event shall the Bank Interest

Rate exceed the Cap Rate. After the Initial Bank Interest Rate Period, the determination of a new Bank Interest Rate shall be subject to the receipt of an opinion of Bond Counsel to the effect that the adoption of the new rate will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

"Bank Interest Rate Period" shall mean the Initial Bank Interest Rate Period and thereafter any period of at least one (1) year and no longer than five (5) years (provided that any such period in excess of one year shall be in six (6) month intervals if not a full year), selected at the sole discretion of the Borrower by giving notice to the Trustee no less than 180 days prior to expiration of the then-current Bank Interest Rate Period.

"Bankruptcy Code" means Title 11 of the United States Code, as amended.

"Beneficial Owner" is defined in Section 2.13 of this Indenture.

"Bond Counsel" means a firm of attorneys of nationally recognized expertise with respect to the tax-exempt obligations of political subdivisions, selected by the Borrower and acceptable to the Trustee and the Issuer.

"Bond Fund" means the Bond Fund established and created by Section 5.02 of this Indenture.

"Bond Ordinance" means, collectively, the Ordinance of the Issuer adopted on July 31, 2002, as amended by an Ordinance of the Issuer adopted on November 6, 2002, authorizing the issuance of the Bonds, and the Bond Ordinance adopted by the City Council of the Issuer on \_\_\_\_\_, 2011.

"Bond Registrar" means the Trustee or any successor or successors to such position under this Indenture.

"Bonds" means the bonds authorized to be issued by Article I of hereof.

"Bond Service Charges" means (a) during any period of time, the principal of and interest and any premium due on the Bonds for that period or payable at that time, as the case may be and (b) with respect to any Credit Facility or Liquidity Facility, the principal of and interest and any premium on the Purchased Bonds to the extent payable under and in accordance with the terms of the Credit Facility or Liquidity Facility.

"Bond Year" means, during the period while any of the Bonds are outstanding, the annual period provided for the computation of Excess Earnings for the Bonds, as provided in the Tax Compliance Agreement.

"Borrower" means J and A, LLC, an Illinois limited liability company, and its respective successors and assigns.

"Borrower Bonds" means Bonds owned or held by the Borrower, or by the Trustee or the Tender Agent or the agent of either of them for the account of the Borrower which, or with respect to which the Borrower has notified the Trustee, were purchased by another person for the account of the Borrower or by a person directly or indirectly controlled by or under direct or indirect common control with the Borrower, including but not limited to Purchased Bonds.

"Business Day" means any day which is not a Saturday, Sunday or a legal holiday or a day on which banking institutions in New York, New York, Chicago, Illinois, or the city where the principal corporate trust office of the Trustee, the Paying Agent, the Tender Agent, the office of the Credit Entity at which drawings under the Credit Facility are to be honored is located or the office of the Liquidity Entity at which drawings under the Liquidity Facility are to be honored is located, are required or authorized by law to close, or other than a day on which the New York Stock Exchange is closed.

"Cap Rate" means the rate per annum equal to the lesser of (a) 15% per annum or (b) the maximum rate at the time then specified in any Credit Facility or Liquidity Facility for sizing the interest component of the Purchase Price or the amount available to be drawn to pay interest to accrue on the Bonds.

"Closing Date" means the date of issuance and delivery of the Bonds to the Underwriter against payment therefor.

"Code" means the Internal Revenue Code of 1986, as amended.

"Cost of the Project" shall mean the cost of acquisition, construction, reconstruction, improvement, equipping, rehabilitation, renovation, installation and expansion, including the cost of the acquisition of all land, rights-of-way, property rights, easements and interests, the cost of all machinery and equipment, financing charges, fees of the Credit Entity or any Liquidity Entity for so long as the Project is under construction, interest on the Bonds prior to and during construction, necessary reserve funds, cost of estimates and of engineering, architectural and legal services, plans, specifications, estimates of costs and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, renovating, improving, installing and expanding the Project, administrative expense and such other expense as may be necessary or incident to the acquisition, construction, reconstruction, improvement, installation and expansion thereof, the placing of the same in operation, and the financing or refinancing of the Project, including the refunding of any outstanding obligations, mortgages or advances issued, made or given by any person for any of the aforementioned costs incurred subsequent to November 17, 2001.

"Costs of Issuance" shall mean all costs paid or incurred by the Issuer or the Borrower at any time prior to or after delivery of the Bonds and the Note with respect to the issuance, sale and delivery of the Bonds and the Note including, but not limited to, legal, accounting, financial, bank, printing and rating agency fees, fees of the Issuer and the Trustee, and other fees and expenses in connection therewith including the fees of the Underwriter.

"Credit Account" means the account so designated within the Bond Fund established and created by Section 5.02 of this Indenture.

"Credit Entity" means, initially, LaSalle Bank National Association, its successors and assigns, and thereafter the issuer of any Alternate Credit Facility and its successors and assigns.

"Credit Facility" means the transferable irrevocable direct pay letter of credit initially issued by LaSalle Bank National Association, as extended or renewed, pursuant to the Credit Facility Agreement, or any letters of credit, lines of credit or any other instruments, such as a policy of bond insurance, collateral agreement, surety bond or guarantee issued by a financial institution, which provide security for payment of principal and premium of, and interest on the Bonds when due or upon redemption or acceleration and which constitutes an Alternate Credit Facility hereunder.

"Credit Facility Agreement" means, (i) initially and collectively, the Reimbursement Agreement dated as of December 1, 2002, by and between the Borrower and Midway Moving & Storage, Inc. and the Reimbursement Bank, as amended from time to time, and the Letter of Credit Agreement dated as of December 1, 2002 between the Reimbursement Bank and the Credit Entity, (ii) in the event an Alternate Credit Facility is provided, the agreement pursuant to which the Credit Entity issues or causes the issuance of such Alternate Credit Facility, including any agreement pursuant to which a Reimbursement Bank shall agree to reimburse the Credit Entity issuing the Alternate Credit Facility for amounts paid by the Credit Entity under the Alternate Credit Facility, and (iii) during any period in which the Bonds bear interest at the Bank



Interest Rate, the agreement or agreements governing the relationship and covenants agreed to by the Borrower and the Bank.

The terms "default" and "Event of Default" mean any occurrence or event specified and defined in, or pursuant to, Section 8.01 hereof.

"Depository" means any bank, trust company, savings and loan association or other financial institution selected by the Trustee as a depository of monies and securities held under the provisions of this Indenture, and may include the Trustee.

"Determination of Taxability" means (a) the entry by a court of a final judgment or order or (b) the promulgation by the Internal Revenue Service of a final ruling or decision or (c) an opinion of Bond Counsel, in any such case to the effect that the interest on the Bonds (other than interest on any Bond for any period during which such Bond is held by a "substantial user" of any facility financed with the proceeds of the Bonds or a "related person," as such terms are used in Section 147 of the Code) is includable for federal income tax purposes in the gross income of all recipients thereof subject to federal income taxes. For purposes of this definition, a judgment or order of a court or a ruling or decision of the Internal Revenue Service will not be considered final during the pendency of any appeal or other action for judicial or administrative review which may be filed within the time allowed therefor.

"Eligible Funds" means amounts held by the Trustee which (a) if the Bonds are then supported by a Credit Facility or Liquidity Facility, are (i) amounts drawn under the Credit Facility or Liquidity Facility (and the proceeds of the investment thereof); (ii) the proceeds of the Bonds; (iii) the proceeds of any bonds issued to refund the Bonds (and the proceeds of the investment thereof) if a nationally-recognized counsel experienced in federal bankruptcy matters (selected by the Borrower and reasonably acceptable to the Issuer and the Trustee) renders an opinion to the effect that such proceeds do not constitute a voidable preference under Section 547 of the Bankruptcy Code in a case commenced by or against the Borrower, any "insider" of the Borrower or the Issuer; (iv) monies which have been on deposit in the Bond Fund, other than those monies mentioned in (i), (ii) or (iii) above, with the Trustee (and the proceeds of the investment thereof) for a period of at least 91 consecutive days (or such shorter period as may be approved in a written opinion of counsel (selected by the Borrower and reasonably acceptable to the Issuer and the Trustee) with nationally recognized expertise in matters of federal bankruptcy law as not resulting in a voidable preference under Section 547 of the Bankruptcy Code) during which no Act of Bankruptcy by or against the Borrower or the Issuer, or any "insider" of the Borrower or the Issuer shall have occurred; (v) the proceeds of remarketing of the Bonds (except to the Borrower, or any "insider" of the Borrower or the Issuer or any "insider" thereof within the meaning of the Bankruptcy Code, including but not limited to any insider which is a guarantor); and (vi) any other monies for which a nationally-recognized counsel (selected by the Borrower and reasonably acceptable to the Issuer and the Trustee) experienced in federal bankruptcy matters renders an opinion to the effect that such monies shall not constitute a voidable preference under Section 547 of the Bankruptcy Code in a case commenced against the Borrower, or any "insider" of the Borrower or the Issuer and (b) if the Bonds are not then supported by any Credit Facility or Liquidity Facility, those monies mentioned in (a) above and any other monies provided by or on behalf of the Borrower or the Issuer.

"Expiration Date" means the date specified in the Credit Facility or the Liquidity Facility, as the case may be, as the expiration date of said facility, including any date to which the expiration or termination of said facility may be extended, from time to time.

"Federal Obligations" means obligations of or unconditionally guaranteed as to principal and interest by the United States of America.

"Fixed Rate" means the fixed interest rate per annum applicable until the maturity or earlier redemption of the Bonds and determined as provided in Section 2.03(f) hereof,

"Fixed Rate Period" means the Rate Period during which the Bonds bear interest at a Fixed Rate.

"General Account" means the account so designated within the Bond Fund established and created by Section 5.02 of this Indenture.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Indenture; the term "heretofore" means before the date of execution of this Indenture; and the term "hereafter" means after the date of execution of this Indenture.

"Holder" or "Bondholder" or "Owner" or "Owner of the Bonds" or "Registered Owner" means the registered owner of any Bond.

"Indenture" means the Original Indenture and this Amended and Restated Trust Indenture, and any amendments hereof and supplements hereto.

"Independent Counsel" means an attorney duly admitted to practice law before the highest court of the State who is not a full-time employee of the Issuer, the Borrower, the Barik, the Credit Entity, the Liquidity Entity or the Trustee.

"Initial Bank Interest Rate Period" means the period from May \_\_, 2011 through March 31, 2016, inclusive.

"Interest Payment Date" means (a) in the case of the Weekly Rate, the Bank Interest Rate and the Monthly Rate, (i) the first Business Day of each month prior to the Maturity Date, commencing with the first Business Day of January, 2003, (ii) each Rate Conversion Date and (iii) the Maturity Date; (b) in the case of the Adjustable Rate each June 1 and December 1, commencing with the first such June 1 or December 1 occurring after the Rate Conversion Date for the Adjustable Rate and each Rate Conversion Date and (c) in the case of the Fixed Rate on each June 1 and December 1 commencing with the first such day occurring after the Fixed Rate Conversion Date for such Fixed Rate.

"Investment Obligations" or "Permitted Investments" means any of the following which at the time are legal investments for the Issuer under applicable laws and ordinances or the Municipal Code of the City of Chicago and which are not prohibited investments under the Code, for the monies held hereunder then proposed to be invested therein:

(a) Federal Obligations;

(b) Obligations of, or obligations guaranteed as to principal and interest by, agencies or instrumentalities of the United States of America which are backed by the full faith and credit of the United States of America;

(c) Debentures of the Federal Housing Administration;

(d) Participation certificates or senior debt obligations issued by any of the following: Federal Home Loan Mortgage Corporation, Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives; or senior debt obligations issued by any of the following: Federal National Mortgage Association ("FNMA") and Student Loan Marketing Association ("SLMA");

(e) FNMA mortgage-backed securities;

(f) SLMA letter of credit backed issues;

(g) Federal Funds, Eurodollars, certificates of deposit, time deposits and bankers' acceptances (in each case having maturities of not more than 365 days) of any bank the debt obligations of which (or, in the case of the principal bank in a bank holding company, debt obligations of the bank holding company) have been rated "A-1+" or better by Standard & Poor's Ratings Service or "MIG-1" or "VMIG-1" by Moody's Investors Service, Inc.;

(h) Deposits which are fully insured by the Federal Deposit Insurance Corporation ("FDIC") or a fund administered by the FDIC;

(i) Repurchase agreements with any institution with AAA-rated debt or with financial institutions insured by the FDIC or any broker-dealer with retail customers which is under Securities Investors Protection Corporation jurisdiction, provided, (i) the repurchase agreements have a rating from each Rating Agency equal to or higher than the Bonds, (ii) the Trustee or a third party acting solely as agent for the Trustee has possession of the collateral, (iii) the Trustee has a perfected first security interest in the collateral, (iv) the collateral is free and clear of third-party liens and (v) failure to maintain the requisite collateral percentage will require the Trustee to liquidate the collateral;

(j) Commercial paper (having original maturities of not more than 270 days) rated "A-1" by Standard & Poor's Ratings Service or "P-1" by Moody's Investors Service, Inc.;

(k) Investments in money market funds which are rated "AAAm" by Standard & Poor's Ratings Service or "Aaa" by Moody's Investors Service, Inc.;

(l) Corporate debt obligations rated "A" or better by Standard & Poor's Ratings Service or "A" or better by Moody's Investors Service, Inc.; and

(m) Any other investment approved in writing by the Credit Entity or the Bank, as applicable.

(n) Mutual Funds investing in securities or obligations that are permissible investments under this Indenture including any mutual fund from which the Trustee or any of its affiliates may receive compensation.

"Issuer" means the City of Chicago, a municipality and home rule unit of local government duly organized and validly existing under the Constitution and laws of the State of Illinois, and its successors and assigns.

"Issuer's Service Charge" shall mean a payment to the Issuer for its own use which consists of a payment of  $\frac{1}{4}$  of 1% of the principal amount of the Bonds on the original date of delivery of the Bonds.

"Liquidity Entity" means, initially, LaSalle Bank National Association, and thereafter, the issuer of any Substitute Liquidity Facility.

"Liquidity Facility" means, initially, the Credit Facility, as extended or renewed, and, thereafter, any bond purchase agreement, letter of credit, revolving credit agreement, surety bond or other agreement or instrument under which any person or persons (other than the Issuer or the Borrower) undertakes to make or provide funds to make payment of the Purchase

Price of Bonds tendered and not remarketed. Unless the term indicates otherwise, the term "Liquidity Facility" shall include any Substitute Liquidity Facility.

"Liquidity Facility Agreement" means, initially, the initial Credit Facility Agreement, as amended from time to time, and thereafter, the agreement pursuant to which any Substitute Liquidity Facility is to be provided.

"Loan" means the loan to the Borrower pursuant to Article IV of the Loan Agreement.

"Loan Agreement" means the Original Loan Agreement and the Amended and Restated Loan Agreement dated as of the date of this Amended and Restated Indenture with respect to the Bonds by and between the Issuer and the Borrower, as amended in accordance with the terms hereof and thereof.

"Mandatory Tender Date" means any date on which Bonds shall be subject to mandatory tender pursuant to Section 3.07 hereof.

"Maturity Date" means December 1, 2032, or any earlier date to which the maturity of the Bonds has been accelerated.

"Monthly Rate" means the interest rate per annum applicable during each Rate Period and determined and redetermined on a monthly basis as provided in Section 2.03(d) hereof.

"Monthly Rate Period" means the Rate Period during which the Bonds bear interest at a Monthly Rate.

"Note" means the promissory note of the Borrower evidencing and securing its obligations under the Loan Agreement in the form attached as Exhibit B to the Loan Agreement.

"Notice by Mail" or "notice" of any action or condition "by Mail" (except as otherwise expressly provided herein) shall mean a written notice meeting the requirements of this indenture mailed by first-class mail, postage prepaid to the Registered Owners at the addresses shown in the registration books maintained pursuant to this Indenture; provided, however, that if, because of temporary or permanent suspension of mail service, it is impossible or impracticable to mail notices in the manner herein described, then such notification in lieu thereof as shall be made with the approval of the Trustee (or, if there be no Trustee hereunder, the Issuer) shall constitute a sufficient giving of such notice.

"Optional Tender Date" means a date, other than a Mandatory Tender Date, on which Bonds are to be tendered by the Holder in accordance with this Indenture

The terms "outstanding" or "Bonds Outstanding" mean all Bonds which have been authenticated and delivered by the Trustee under this Indenture, except:

(a) Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity;

(b) Bonds for the payment of which cash or Federal Obligations shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds) and which are deemed paid within the meaning of Article VII hereof;

(c) Bonds in lieu of which others have been authenticated under Sections 2.09, 2.10 or 2.11 hereof; and

(d) Untendered Bonds.

"Paying Agent" means the institution(s) designated as such in or pursuant to Section 9.10 hereof.

"Prime Rate" means the floating per annum rate of interest which at any time, and from time to time, shall be most recently announced by the Bank as its prime rate, which is not intended to be the Bank's lowest or most favorable rate of interest at any one time.

"Principal Office," when used with respect to the Trustee, the Tender Agent, the Remarketing Agent and any Paying Agent, means the principal, or corporate trust, or head or principal trust, office of such entity situated in the city in which such entity is described as being located.

"Project" means the project described in Exhibit A to the Loan Agreement.

"Project Fund" means the Project Fund established and created by Section 5.05 of this Indenture.

"Purchase Price" means an amount equal to 100% of the principal amount of any Bond tendered or deemed to have been tendered for purchase, plus unpaid and accrued interest, if any, to the date of purchase.

"Purchased Bonds" means Bonds purchased pursuant to any Credit Facility Agreement or Liquidity Facility Agreement from and including the date they are registered in the name of the Borrower or the Credit Entity or Liquidity Entity or its designee, nominee or agent, to, but not including, the earliest of (a) their payment at maturity, (b) their payment at redemption, (c) their remarketing by the Remarketing Agent pursuant to the Remarketing Agreement, (d) their sale by the Credit Entity or Liquidity Entity, its designee, its nominee or agent, on the open market or (e) their satisfaction and discharge otherwise.

"Purchased Bonds Rate" has the meaning set forth in any Alternate Credit Facility Agreement or Substitute Liquidity Facility Agreement, if applicable.

"Rate Adjustment Date" means the date from and after which a particular Weekly Rate, Monthly Rate, Bank Interest Rate or Adjustable Rate, as applicable, shall be effective. During a Weekly Rate Period the Rate Adjustment Date will be (a) a Rate Conversion Date and (b) otherwise, Thursday of each week. During a Monthly Rate Period, Bank Interest Rate Period or an Adjustable Rate Period, the Rate Adjustment Date will be the Rate Conversion Date. Notwithstanding anything to the contrary, the first Rate Adjustment Date shall be Thursday, December 12, 2002.

"Rate Conversion Date" means the date on which the interest rate determination method for the Bonds is changed as provided in Section 2.03(b) hereof. In the case of a conversion from the Weekly Rate to the Monthly Rate, from the Monthly Rate to the Weekly Rate or from the Weekly Rate or the Monthly Rate to the Adjustable Rate, the Bank Interest Rate or the Fixed Rate, the Rate Conversion Date shall be the first Business Day of a month. In the case of a conversion from the Bank Interest Rate to another Bank Interest Rate, the Adjustable Rate to another Adjustable Rate, or the Bank Interest Rate or Adjustable Interest Rate to the Weekly Rate, the Monthly Rate or the Fixed Rate, the Rate Conversion Date shall be the first Business Day of a month and the day which follows by one day the final day of the Rate Period for the Bank Interest Rate or Adjustable Rate, as applicable.

"Rate Determination Date" means the day on which the Remarketing Agent determines the Weekly Rate, the Monthly Rate or the Adjustable Rate, as applicable, for the next Rate Period. In the case of the Weekly Rate commencing with the Rate Period beginning December 12, 2002, and in the case of the Monthly Rate, the Rate Determination Date for each Rate Period shall be the Business Day immediately preceding the Rate Adjustment Date or

such other day as shall be necessary, in the case of the Weekly Rate, as provided in the last sentence of the first paragraph of Section 2.03(c) hereof and, in the case of the Monthly Rate, as provided in the last sentence of the first paragraph of Section 2.03(d) hereof. In the case of the Adjustable Rate, the Rate Determination Date for each Rate Period shall be the Business Day selected by the Remarketing Agent (and concurred in by the Borrower) and occurring not earlier than 10 Business Days and not later than two Business Days prior to the Rate Conversion Date. In the case of the Bank Interest Rate, the Rate Determination Date shall be a date not later than 45 days prior to the end of the current Bank Interest Rate Period, as established by the Bank and the Borrower. If any Rate Determination Date would not be a Business Day, such Rate Determination Date shall be the immediately preceding Business Day. Notwithstanding anything to the contrary, the first Rate Determination Date for the initial Rate Period shall be Monday, December 9, 2002.

"Rate Period" means the period during which a particular Weekly Rate, Monthly Rate, Bank Interest Rate or Adjustable Rate, as applicable, determined on a particular Rate Determination Date, is effective. The Initial Bank Interest Rate Period is effective on April \_\_, 2011. Thereafter, each subsequent Rate Period shall become effective on and including the applicable Rate Adjustment Date and remain in effect until and including the day next preceding the earlier of (a) the next following Rate Adjustment Date, (b) the next following Rate Conversion Date or (c) the Maturity Date. In the case of the Weekly Rate, with the exception of the initial Rate Period and any Rate Period whose last day is a Rate Conversion Date or the Maturity Date, each Rate Period shall commence on Thursday and end on the next following Wednesday. In the case of the Monthly Rate, with the exception of the Rate Period whose last day is the Maturity Date, each Rate period shall commence on the first Business Day of a month and end on the day next preceding the first Business Day of the next following month. The Rate Period shall not be deemed to have been changed in the case of a Weekly Rate or Monthly Rate which is changed pursuant to the second paragraph of Section 2.03(c) or Section 2.03(d), as applicable. In the case of the Adjustable Rate, with the exception of the Rate Period whose last day is the Maturity Date, each Rate Period shall commence on the Rate Conversion Date, and end on the day next preceding the first Business Day of a month and be at least six months or an integral multiple of six months in length. In the case of the Bank Interest Rate, with the exception of the Rate Period whose last day is the Maturity Date, each Rate Period shall commence on the Rate Conversion Date and end on the day next preceding the next Rate Adjustment Date or the day preceding the Rate Conversion Date.

"Rating Agency" means any nationally recognized securities rating agency which has been requested to and has assigned a rating to the Bonds.

"Rating Category" or "Rating Categories" means one or more of the generic rating categories of a nationally recognized securities rating agency, without regard to any refinement or gradation of such rating category or categories by a numerical modifier or otherwise.

"Rebate Fund" means the fund created by Section 5.08 hereof.

"Record Date" or "Regular Record Date" means (a) with respect to any Interest Payment Date when the Weekly Rate, the Bank Interest Rate or the Monthly Rate is in effect, the Business Day next preceding that Interest Payment Date and (b) with respect to any Interest Payment Date when the Adjustable Rate or the Fixed Rate is in effect, the fifteenth day of the calendar month next preceding the month of that Interest Payment Date.

"Reimbursement Bank" means initially Midwest Bank and Trust Company, its successors and assigns and thereafter any entity other than the Borrower which agrees to reimburse the Credit Entity for draws on the Credit Facility.

"Remarketing Agent" means the entity appointed to serve in such capacity as set forth in Section 9.12 hereof, and any successor to such position under the Remarketing Agreement. During a Bank Interest Rate Period, the Remarketing Agent shall have no role with respect to the Bonds.

"Remarketing Agreement" means the Remarketing Agreement dated as of the date of the Original Indenture between the Borrower, Midway Moving & Storage, Inc. and the Remarketing Agent, and any successor to such agreement.

"Representation Letter" shall mean the Blanket Letter of Representations dated March 9, 1995, of the Issuer in the form attached hereto as Exhibit B.

"Revenues" means all revenues and receipts of the Issuer derived pursuant to the Loan Agreement, the Note or hereunder, including, but not limited to, loan payments, including prepayments, payments under the Credit Facility and the Liquidity Facility, recoveries of principal and investment earnings on Funds and Accounts (excluding the Rebate Fund) established by this Indenture.

"SIFMA Municipal Index" means the index produced by Municipal Market Data and made available or published by the Securities Industry & Financial Markets Association (formerly the Bond Market Association) ("SIFMA") determined on the basis of the seven-day high grade market index comprised of tax-exempt variable rate demand obligations contained in Municipal Market Data's database.

"Special Record Date" means the date and time established by the Trustee for determination of which Registered Owners shall be entitled to receive overdue interest on the Bonds pursuant to Section 2.04(b)(iii).

"State" means the State of Illinois.

"Substitute Liquidity Facility" means any Liquidity Facility delivered to the Trustee in accordance with Section 2.12 hereof to replace the Liquidity Facility then in effect, and shall also include any confirming or standby Liquidity Facility supporting another Liquidity Facility.

"Substitution Date" means the effective date of the substitution of an Alternate Credit Facility or a Substitute Liquidity Facility pursuant to Section 2.12.

"Tax Compliance Agreement" means, collectively, (i) the Tax Agreement by and among the Borrower, the Issuer and the Trustee, dated and delivered on the Closing Date, and (ii) the Reissuance Tax Regulatory Agreement by and among the Borrower, the Issuer and the Trustee dated the date of commencement of the Initial Bank Interest Rate Period.

"Tender Agent" means Amalgamated Bank of Chicago, or any successor or successors to such position under this Indenture.

"Tender Date" means (a) in the case of Bonds tendered at the option of their Holders pursuant to Section 3.06 hereof, the date specified by the Holder, in the written notice delivered to the Tender Agent pursuant to Section 3.06 hereof, as the purchase date of the Bonds, which must be a Business Day occurring not prior to the seventh day after receipt by the Trustee of the written notice of tender, (b) in the case of Bonds tendered pursuant to Section 3.07(a) hereof, the Rate Conversion Date or (c) in the case of Bonds tendered pursuant to Sections 3.07(b), the date designated pursuant to such applicable Section.

"Tender Fund" means the fund by that name created pursuant to Section 3.15 hereof,

"Trustee" means Amalgamated Bank of Chicago, a state banking corporation, and any qualified entity at the time serving as successor trustee hereunder.

"Trust Estate" means the property conveyed to the Trustee pursuant to the Granting Clauses of this Indenture.

"Unassigned Rights" means the Issuer's right to receive payment of certain fees and expenses under Section 4.02(d) of the Loan Agreement, its right to indemnification as provided under Section 6.07 of the Loan Agreement, and the rights of the Issuer to receive notices, certificates, requests, requisitions, directions and other communications thereunder.

"Underwriter" means the original investment banking firm that served as the underwriter for the Bonds when originally issued.

"Untendered Bonds" has the same meaning as set forth in Section 3.11 hereof.

"Weekly Rate" means the interest rate per annum applicable during each Rate Period and determined and redetermined on a weekly basis as provided in Section 2.03(c) hereof.

"Weekly Rate Period" means the Rate Period during which the Bonds bear interest at a Weekly Rate.

## ARTICLE II.

### THE BONDS

Section 2.01. Authorized Amount of Bonds. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total principal amount of Bonds that may be issued is hereby expressly limited to \$6,850,000.

Section 2.02. Issuance of Bonds. The Bonds shall be designated "City of Chicago Enterprise Zone Revenue Bonds (J & A, LLC Project), Series 2002," and shall mature on December 1, 2032. Each Bond shall be dated as of the date of authentication and delivery; shall be subject to prior redemption, shall be subject to purchase upon the terms and conditions hereinafter set forth, shall be issued as fully registered bonds without coupons in Authorized Denominations, and shall be numbered consecutively from R-1 upward.

Each Bond shall bear interest as provided in Section 2.04(b), payable on each Interest Payment Date. If interest on the Bonds shall be in default, Bonds issued in exchange for Bonds surrendered for transfer or exchange shall bear interest from the last date to which interest has been paid in full.

The principal of, premium, if any, and interest on the Bonds shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of public and private debts, and such principal, premium, if any, and interest shall be payable at the Principal Office of the Paying Agent.

#### Section 2.03. Interest Rates on Bonds.

(a) General. The Bonds were originally issued bearing interest at the Weekly Rate. Effective \_\_\_\_\_, 2011, the Bonds shall bear interest at the Bank Interest Rate. Thereafter for subsequent Rate Periods, the Weekly Rate shall be determined as provided in Section 2.03(c) hereof. Anything herein to the contrary notwithstanding, interest on the Bonds other than Purchased Bonds shall not accrue at a rate per annum in excess of the Cap Rate. If a Purchased Bond Rate is specified in any Alternate Credit Facility Agreement or Substitute Liquidity Facility Agreement, then Purchased Bonds



shall bear interest at such Purchased Bonds Rate not in any event to exceed 15% per annum.

The Bonds shall be dated and, interest on the Bonds shall accrue, from the Closing Date, and thereafter interest on the Bonds shall accrue from the Interest Payment Date next preceding the date of authentication, unless (i) authenticated prior to the first Interest Payment Date, in which event interest on such Bonds shall accrue from the Closing Date, (ii) authenticated on an Interest Payment Date, in which event interest on such Bonds shall accrue from the date of authentication or (iii) authenticated after a Record Date and before the following Interest Payment Date, in which event interest on such Bonds shall accrue from the following Interest Payment Date. If, as shown by the records of the Trustee, interest on the Bonds is in default, interest on Bonds issued in exchange for Bonds surrendered for registration of transfer or exchange shall accrue from the date to which interest has been paid in full on the Bonds, or, if no interest has been paid on the Bonds, from the Closing Date. The amount of interest payable on the Bonds on each Interest Payment Date shall be the amount of interest accrued thereon from the preceding Interest Payment Date (or other date as described above) to, but not including, the Interest Payment Date on which interest is being paid.

During any Rate Period when the Bonds bear interest at the Weekly Rate or the Monthly Rate, interest on the Bonds shall be computed on the basis of a 365-day year (366 during any calendar or fiscal year containing a February 29) for the actual number of days elapsed during such Rate Period. During any Rate Period when the Bonds bear interest at the Adjustable Rate or during any period when the Bonds bear interest at the Fixed Rate, interest on the Bonds shall be computed on the basis of a 360-day year, consisting of twelve 30-day months. During any Rate Period when the Bonds bear interest at the Bank Interest Rate, interest on the Bonds shall be computed on the basis of a 360-day year, based on the actual number of days elapsed. All determinations of any Weekly Rate, any Monthly Rate, any Bank Interest Rate, any Adjustable Rate or a Fixed Rate shall be rounded to the nearest 0.01% and shall be conclusive and binding upon the Issuer, the Trustee, the Remarketing Agent, the Bank, the Credit Entity, the Liquidity Entity, the Holders and the Borrower. The Remarketing Agent and, in certain limited instances as provided in this Article, the Trustee, shall determine the Weekly Rate, the Monthly Rate, the Adjustable Rate and the Fixed Rate, but it shall be the duty of the Trustee to calculate the amount of interest payable for any period on the Bonds and due and owing to each Holder. In the case of the Bank Interest Rate, it shall be the duty of the Bank to calculate the amount of interest payable for any period on the Bonds and due and owing to the Bank. Not later than the Business Day preceding each Interest Payment Date and at such other times upon request of the Borrower, the Trustee will provide the Borrower with a written notice of the interest rate(s) on the Bonds and the amount of interest accrued on the Bonds during the interest period. During any Bank Interest Rate Period, the Bank shall calculate the amount of debt service due and payable on the Bonds on each Interest Payment Date and provide such information to the Borrower and the Trustee at least \_\_\_ days prior to each such Interest Payment Date. The Remarketing Agent shall have no duties or obligations with respect to the Bonds during a Bank Interest Rate Period.

(b) Selection of Interest Rate Determination Method. During any Rate Period when the Bonds bear interest at the Weekly Rate or the Monthly Rate or at the conclusion of any Rate Period when the Bonds bear interest at the Bank Interest Rate or Adjustable Rate, the Borrower has the option (i) to select a new interest rate

determination method for the Bonds (i.e., from the Weekly Rate to the Monthly Rate, the Bank Interest Rate, Adjustable Rate or the Fixed Rate; from the Monthly Rate to the Weekly Rate, the Bank Interest Rate, the Adjustable Rate or the Fixed Rate; from the Bank Interest Rate to the Weekly Rate, the Monthly Rate or the Fixed Rate, or from the Adjustable Rate to the Weekly Rate, the Monthly Rate, the Bank Interest Rate or the Fixed Rate) or (ii) where the Bonds have, during the current Rate Period, been bearing interest at the Bank Interest Rate or the Adjustable Rate, to select a new Bank Interest Rate or an Adjustable Rate with a Rate Period of the same or different length from the length of the current Rate Period, respectively; provided that, from and after such time as the Bonds bear interest at the Fixed Rate, the Borrower shall no longer have the option to select a different interest rate determination method for the Bonds.

The Borrower may exercise this option by written notice given to the Issuer, the Trustee, the Credit Entity, the Liquidity Entity, the Bank, if applicable, and the Remarketing Agent (unless the Bonds are going from one Bank Interest Rate Period to another Bank Interest Rate Period, in which case no notice will be given to the Remarketing Agent). Such notice shall (i) state the Borrower's intention to select either a new interest rate determination method for the Bonds (specifically the choice of the Weekly Rate, the Monthly Rate, the Bank Interest Rate, the Adjustable Rate or the Fixed Rate) or the Borrower's decision that the Bonds should continue to bear interest at the Bank Interest Rate or the Adjustable Rate, as applicable, (ii) specify the Rate Conversion Date, (iii) if the Borrower elects to continue the Bank Interest Rate or the Adjustable Rate, the length of the new Rate Period, (iv) state whether the Bonds will be rated, and if so what the rating will be and (v) describe the nature and terms of the Credit Facility, if any, which will secure payment of the Bond Service Charges on, and the Liquidity Facility, if any, which will provide for the Purchase Price of the Bonds under the proposed interest rate determination method, including the identity of the Credit Entity and Liquidity Entity, if any, or state that no Credit Facility or Liquidity Facility will be provided; provided that there shall be a Credit Facility and a Liquidity Facility in effect at all times when the Bonds bear interest pursuant to the Weekly Rate, the Monthly Rate or the Adjustable Rate, and at the election of the Borrower a Credit Facility may or may not be effective for the Fixed Rate. In addition, no Rate Period except the Fixed Rate shall extend past the expiration date of the applicable Credit Facility and Liquidity Facility.

No conversion to an Adjustable Rate or Fixed Rate shall be effective unless prior written notice of same is provided to the Rating Agencies, if any, then rating the Bonds, and the Credit Facility and Liquidity Facility have been increased to cover at least 196 days' interest at the Cap Rate, the Adjustable Rate or the Fixed Rate, as may be applicable, provided that upon prior written notice to such Rating Agencies, the Bonds may be converted to a Fixed Rate without a Credit Facility being in effect.

The notice required by the second preceding paragraph shall be given by the Borrower to the Trustee, the Issuer, the Credit Entity, the Liquidity Entity, the Bank, if applicable and the Remarketing Agent (except when moving from one Bank Interest Rate Period to another Bank Interest Rate Period), at least 45 days prior to the Rate Conversion Date. On or before the thirty-fifth day preceding the Rate Conversion Date, the Borrower will, except when moving from one Bank Interest Rate Period to another Bank Interest Rate Period, (i) furnish the Issuer, the Trustee, the Credit Entity, the Liquidity Entity and the Remarketing Agent with the form of an opinion of Bond Counsel, addressed to the Issuer, the Trustee and the Remarketing Agent and to be dated the Rate Conversion Date (together with such certificates, opinions, resolutions or such

other material as Bond Counsel determines are necessary to render such opinion), stating that such redetermination of the method by which interest borne by the Bonds shall be calculated is permitted by, and has been conducted in accordance with, this Indenture and that such redetermination will not adversely affect the exclusion of the interest on the Bonds from the gross income of the Holders for purposes of federal income taxation and (ii) if the Bonds are to be secured by a Credit Facility and/or a Liquidity Facility, shall furnish the Issuer, the Trustee, the Credit Entity, the Liquidity Entity and the Remarketing Agent with written evidence that both the Credit Facility or any Substitute Credit Facility, and the Liquidity Facility or any Substitute Liquidity Facility, to be in effect on the Rate Conversion Date, have or will have as of the Rate Conversion Date a stated expiration date that is not sooner than the earlier of the Maturity Date or 364 days from the Rate Conversion Date.

In the event of a conversion to the Adjustable Rate or the Fixed Rate any Credit Facility or Liquidity Facility shall include coverage for payment of any premium pursuant to Section 3.01(a) or (b) hereof.

Except in the instance of Bonds going from one Bank Interest Rate Period to another Bank Interest Rate Period, the redetermination of the method by which interest borne by the Bonds is to be calculated is a circumstance compelling a mandatory tender of Bonds pursuant to Section 3.07 hereof. The Trustee shall give Notice by Mail to the Holders of any such redetermination.

The foregoing notwithstanding, no redetermination of the method for determining the interest rate to be borne by the Bonds pursuant to the procedures set forth in this Section 2.03(b) shall be required at the conclusion of any Rate Period when the Bonds bear interest at the Weekly Rate, the Monthly Rate, the Bank Interest Rate or the Adjustable Rate, but rather, absent the exercise by the Borrower of the option set forth in this Section, the Bonds shall continue to bear interest at the Weekly Rate, the Monthly Rate, the Bank Interest Rate or the Adjustable Rate, as applicable and if at an Adjustable Rate or a Bank Interest Rate, for a Rate Period of the same duration and the Rate Period then ending, or if sooner to the Maturity Date. In addition, except as provided in the last sentence of this paragraph, no redetermination of the method for determining the interest rate to be borne by the Bonds shall occur if the conditions specified in this Section and in Section 3.07 hereof are not set for any reason on or prior to the Rate Conversion Date. Upon learning that a condition necessary to the redetermination of the method for determining the interest rate to be borne by the Bonds cannot or will not be met, the Issuer, the Borrower or the Remarketing Agent, as applicable, shall immediately notify the Trustee. Upon being so notified or upon itself so learning, the Trustee shall as soon as possible thereafter notify the Issuer, the Remarketing Agent (except when moving from one Bank Interest Rate Period to another Bank Interest Rate Period), the Credit Entity, the Liquidity Entity, the Bank, if applicable, and the Borrower that the proposed redetermination of the interest rate to be borne by the Bonds cannot be accomplished and the reasons for such failure. If the conditions to redetermination of the interest rate to be borne by the Bonds specified in this Section and in Section 3.07 hereof cannot or will not be met for any reason on or prior to the Rate Conversion Date, the Bonds will continue to bear interest in accordance with the rate determination method in effect immediately prior to the new Rate Conversion Date, and the Bonds, nevertheless, will be mandatorily tendered on the proposed Rate Conversion Date (except for Bonds bearing interest at the Bank Interest Rate).

Except as otherwise expressly provided in this Section, all notices to persons other than Holders under this Section may be given by telephone, confirmed within one Business Day in writing.

(c) Weekly Rate. For all Weekly Rate Periods, the Weekly Rate shall be determined in the following manner. At or before 2:00 p.m., Chicago time, on each Rate Determination Date, the Remarketing Agent shall determine the interest rate which the Bonds shall bear during the next Rate Period. Such interest rate shall be the lowest interest rate which, in the sole and exclusive judgment of the Remarketing Agent (having due regard for prevailing financial conditions and the yields at which comparable securities are then being sold), would equal (but not exceed) the interest rate necessary to enable the Remarketing Agent to sell the Bonds (exclusive of accrued interest, if any) on the Rate Adjustment Date at a price equal to 100% of the principal amount thereof. The interest rate so determined shall be effective on the next Rate Adjustment Date or, if the Rate Determination Date and the Rate Adjustment Date are the same day, then on such day.

If, for any reason, the Weekly Rate cannot at any time be established as provided in the preceding paragraph of this Section or is held invalid or unenforceable by a court of law, then the Weekly Rate for such Rate Period shall be an interest rate equal to the SIFMA Municipal Index as in effect on the first day of such Rate Period.

On each Rate Determination Date, the Remarketing Agent shall give the Trustee, the Borrower, the Credit Entity and the Liquidity Entity telephonic notice, promptly confirmed in writing, or notice by telecopy or facsimile, of the Weekly Rate determined by the Remarketing Agent on such date.

(d) Monthly Rate. For all Monthly Rate Periods, the Monthly Rate shall be determined in the following manner. At or before 2:00 p.m., Chicago time, on each Rate Determination Date, the Remarketing Agent shall determine the interest rate which the Bonds shall bear during the next Monthly Rate Period. Such interest rate shall be the lowest interest rate which in the sole and exclusive judgment of the Remarketing Agent (having due regard for prevailing financial conditions and the yields at which comparable securities are then being sold), would equal (but not exceed) the interest rate necessary to enable the Remarketing Agent to sell the Bonds (exclusive of accrued interest, if any) on the Rate Adjustment Date at a price equal to 100% of the principal amount thereof. The interest rate so determined shall be effective on the next Rate Adjustment Date.

If, for any reason, the Monthly Rate cannot at any time be established as provided in the preceding paragraph of this Section or is held invalid or unenforceable by a court of law, then the Monthly Rate for such Rate Period shall be an interest rate equal to the SIFMA Municipal Index as in effect on the first day of such Rate Period.

On each Rate Determination Date, the Remarketing Agent shall give the Trustee, the Borrower, the Credit Entity and the Liquidity Entity telephonic notice, promptly confirmed in writing, or notice by facsimile, of the Monthly Rate determined by the Remarketing Agent on such date; provided that such telephonic notice need not be given unless the Monthly Rate so determined is different from the Monthly Rate for the preceding Rate Period.

(e) Adjustable Rate. For all Adjustable Rate Periods, the Adjustable Rate shall be determined in the following manner. At or before 2:00 p.m., Chicago time, on each Rate Determination Date, the Remarketing Agent shall determine the interest rate which the Bonds shall bear during the next Adjustable Rate Period. Such interest rate shall be that interest rate which, if borne by Bonds, would, in the sole and exclusive judgment of the Remarketing Agent (having due regard for the length of the proposed Rate Period, prevailing financial conditions and the yields at which comparable securities are then being sold), equal (but not exceed) the lowest interest rate necessary to enable the Remarketing Agent to sell all of the Bonds (exclusive of accrued interest, if any) on the Rate Conversion Date at a price equal to 100% of the principal amount thereof. No later than the first Business Day following the Rate Determination Date the Remarketing Agent shall notify the Trustee, the Issuer, the Credit Entity, the Liquidity Entity and the Borrower of the Adjustable Rate so determined.

(f) Fixed Rate. The Fixed Rate shall be determined in the following manner. At or before 2:00 p.m., Chicago time, on a day not earlier than 10 Business Days prior but no later than the Business Day prior to the Rate Conversion Date, the Remarketing Agent shall determine the interest rate which the Bonds shall bear during such Rate Period. Such interest rate shall be that interest rate which, if borne by the Bonds, would, in the sole and exclusive judgment of the Remarketing Agent (having due regard for the length of time remaining until maturity, prevailing financial conditions and the yields at which comparable securities are then being sold), equal (but not exceed) the lowest rate necessary to enable the Remarketing Agent to sell all of the Bonds (exclusive of accrued interest, if any) on the Rate Conversion Date at a price equal to 100% of the principal amount thereof. No later than the Business Day following the date the Fixed Rate is determined, the Remarketing Agent shall notify the Trustee, the Issuer, the Credit Entity, the Liquidity Entity and the Borrower of the Fixed Rate so determined.

(g) Bank Interest Rate. The Bank Interest Rate shall be determined in the following manner. At or before 2:00 p.m. Chicago time, on each Rate Determination Date, the Bank shall notify the Borrower of the Bank Interest Rate for the next succeeding Bank Interest Rate Period. No later than the first Business Day following the Rate Determination Date the Borrower shall notify the Trustee and the Issuer of the Bank Interest Rate so determined.

#### **Section 2.04. Manner of Payment for Bonds.**

(a) The principal or redemption price of each Bond shall be payable upon surrender of such Bond at the Principal Office of the Trustee. Payments of principal or redemption price of the Bonds shall be payable in immediately available funds in the city where the Principal Office of the Trustee is located. Such payments shall be made to the Registered Owner of the Bond so surrendered, as shown on the registration books maintained by the Bond Registrar on the date of payment. The Holder of the Bonds in an aggregate principal amount of \$1,000,000 or more shall also have the right to have payment of the principal of and premium on its Bonds to be made by wire transfer in accordance with, and by the procedures set forth in Section 2.04(b)(iv) hereof; provided that such Holder shall still be required to present and surrender its Bonds as provided in the first sentence of this Section before any payment of principal or premium (whether by wire transfer or otherwise) shall be made. Notwithstanding the foregoing, when the Bonds bear interest at the Bank Interest Rate, the Borrower and the Bank may agree that payments on the Bonds shall be made directly by the Borrower to the Bank, in which case the Borrower and the Bank shall notify the Trustee of such agreement in writing, and

the Trustee shall have no obligation with respect to the payment on the Bonds. In all such cases, however, the Trustee shall receive prompt notices by the Bank and the Borrower of any failure to make payments on the Bonds when due.

(b) Subject to the further provisions of this Section 2.04, each Bond shall bear interest and be payable as to interest as follows:

(i) Each Bond shall bear interest (at the applicable rate determined pursuant to Section 2.03) (A) from the date of authentication, if authenticated on the Closing Date or an Interest Payment Date to which interest has been paid or provided for, or (B) from the last preceding date to which interest has been paid or provided for (or the date of original issuance of the Bonds if no interest thereon has been paid) in all other cases.

(ii) Subject to the provisions of subparagraph (iii) below, the interest due on any Bond on any Interest Payment Date shall be paid to the Registered Owner of such Bond as shown on the registration books kept by the Bond Registrar on the Regular Record Date.

(iii) If the available funds under this Indenture are insufficient on any Interest Payment Date to pay the interest then due, the Regular Record Date shall no longer be applicable with respect to the Bonds. If sufficient funds for the payment of such overdue interest thereafter become available, the Trustee shall immediately establish a special interest payment date for the payment of the overdue interest and a Special Record Date (which shall be a Business Day) for determining the Registered Owners entitled to such payments. Notice of each date so established shall be mailed by the Trustee to each Registered Owner at least 10 days prior to the Special Record Date, but not more than 30 days prior to the special interest payment date. The overdue interest shall be paid on the special interest payment date to the Registered Owners, as shown on the registration books kept by the Bond Registrar as of the close of business on the Special Record Date.

(iv) All payments of interest on the Bonds shall be paid to the Registered Owners entitled thereto pursuant to Section 2.04(b)(ii) or (iii) above by the Trustee on the Interest Payment Date or special interest payment date, as applicable, by check or draft mailed by first class mail on the Interest Payment Date to the Registered Owners entitled thereto at such address appearing in the registration books of the Bond Registrar or at such other address as has been furnished to the Trustee in writing by such Registered Owners. The foregoing notwithstanding, if a Holder of Bonds in an aggregate principal amount of \$1,000,000 or more shall have given the Trustee notice of the wire transfer address in the continental United States of such Holder at least one day prior to a Record Date, then, for all Interest Payment Dates thereafter until such notice is revoked or modified in writing given to the Trustee, payment of the interest on the Bonds of that Holder shall be made by the Trustee by wire transfer to the wire transfer address set forth in such notice. Notwithstanding the foregoing, when the Bonds bear interest at the Bank Interest Rate, the Borrower and the Bank may agree that payments on the Bonds shall be made directly by the Borrower to the Bank and shall provide the Trustee with written notice of such agreement, in which case the Trustee shall have no obligation with respect to the payment on the Bonds. In all such cases, however, the Trustee shall receive prompt notices by the Bank and the Borrower of any failure to make payments on the Bonds when due.

**Section 2.05. Execution; Limited Obligation.** The Bonds will be executed on behalf of the Issuer with the manual or facsimile signature of its Mayor or other Authorized Officer as designated in the Bond Ordinance and attested by the manual or facsimile signature of its City Clerk or Deputy City Clerk, and may have impressed or imprinted thereon the official seal of the Issuer. All authorized facsimile signatures shall have the same force and effect as if manually signed. In case any official whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be such official before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such official had remained in office until the execution of such Bonds, are duly authorized or held the appropriate office of the Issuer, although on the date of the Bonds such persons were not so authorized or did not hold such offices.

The Bonds and the obligation to pay interest thereon and Purchase Price and redemption premiums with respect thereto do not and shall never constitute an indebtedness or an obligation of the Issuer, the State or any political subdivision thereof, within the purview of any constitutional limitation or statutory provision, or a charge against the general credit or taxing powers of any of them, but shall be payable solely from the revenues and receipts derived from the Loan Agreement, the Note and the Credit Facility. No owner of the Bonds shall have the right to compel the exercise of the taxing power of the Issuer, the State or any political subdivision thereof to pay any principal installment of, redemption premium, if any, or interest on the Bonds.

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

**Section 2.06. Authentication.** No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until a certificate of authentication of such Bond shall have been duly executed by the manual signature of an authorized representative of the Trustee or the Tender Agent, and such executed certificate of the Trustee or the Tender Agent upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized signatory of the Trustee or the Tender Agent, but it shall not be necessary that the same signatory sign the certificate of authentication on all the Bonds.

**Section 2.07. Form of Bonds.** The Bonds issued under this Indenture shall be substantially in the form set forth in Exhibit A hereto with such variations, omissions and insertions as are permitted or required by this Indenture.

**Section 2.08. Delivery of Bonds.** Prior to the delivery by the Trustee of the Bonds, there shall be filed with the Trustee:

(a) Copies, duly certified by the City Clerk, of the Bond Ordinance adopted by the Issuer authorizing the issuance of the Bonds and the execution and delivery of the original Indenture.

(b) A request and authorization to the Trustee on behalf of the Issuer and signed by the Authorized Issuer Representative to authenticate and deliver such Bonds to or upon the order of the Underwriter upon payment to the Trustee, but for the account of the Issuer, of a sum specified in such request and authorization in the aggregate principal amount of the Bonds.

(c) An opinion of counsel to the Issuer acceptable to the Trustee stating to the effect that, in the opinion of such counsel, the Original Loan Agreement, the Bonds and the Original Indenture have been duly authorized and lawfully executed and delivered on behalf of the Issuer and, assuming the due authorization, execution and delivery by the other parties thereto, are valid and binding obligations of the Issuer and enforceable against the Issuer in accordance with the respective terms thereof, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and to the extent that the availability of the remedies of specific performance and injunction may be subject to the discretion of the court.

(d) Original duly executed counterparts of the Original Loan Agreement, the Credit Facility Agreement, the Note and the Original Indenture.

(e) The original Credit Facility.

(f) An opinion of counsel for the Borrower stating, in the opinion of such counsel, subject to the exceptions set forth therein acceptable to counsel for the Credit Entity and Bond Counsel, that the Credit Facility Agreement, the Remarketing Agreement, the Note and the Original Loan Agreement are valid and binding obligations of the Borrower enforceable against the Borrower in accordance with the respective terms thereof, except as the enforcement thereof may be affected or limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting or limiting the rights of creditors generally, or general equitable principles, whether considered in a proceeding at law or in equity.

(g) A certification by the Issuer which may be included in the Tax Compliance Agreement, satisfactory to Bond Counsel, to the effect that on the basis of the facts, estimates and circumstances in existence on the date of such certificate, and based solely upon the unverified factual representations of the Borrower, it is not expected that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be arbitrage bonds within the meaning of **Section 148(a)** of the Code, as amended to the date of such certificate, and such certificate shall state that to the knowledge and belief of the officer signing such certificate, there are no other facts, estimates or circumstances that would materially change such expectation (in providing such certificate, the Issuer shall be entitled to rely upon factual matters contained in any similar certificate which shall be provided by the Borrower to the Issuer on or before the date of authentication of the Bonds).



(h) An opinion of counsel or counsels for each of the Credit Entity and the Reimbursement Bank stating, in the opinion of such counsel or counsels, subject to the exceptions set forth therein acceptable to counsel for the Borrower and Bond Counsel, that the Credit Facility and Credit Facility Agreement are valid and binding obligations of the Credit Entity or the Reimbursement Bank, as the case may be, enforceable against the Credit Entity or the Reimbursement Bank, as the case may be, in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws, judicial decisions or principles of equity relating to or affecting the enforcement of creditors' rights or contractual obligations generally, under the laws of the United States of America and the State of Illinois.

(i) An opinion of Bond Counsel stating that (i) there is lawful authority for the issuance and sale of the Bonds pursuant to the Constitution of the State and other applicable provisions of law and pursuant and subject to the provisions, terms and conditions of the Bond Ordinance and this Indenture, (ii) the Bond Ordinance has been duly adopted and is in full force and effect, (iii) the Bonds, the Original Indenture and the Original Loan Agreement are valid and binding obligations of the Issuer enforceable in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws, judicial decisions or principles of equity relating to or affecting the enforcement of creditors' rights or contractual obligations generally and (iv) the interest on the Bonds is excludable from gross income for Federal income tax purposes:

(j) Any other instruments, certificates, documents or opinions reasonably required by the Underwriter, the Credit Entity or Bond Counsel.

When the documents required above shall have been filed with the Trustee and when such Bonds shall have been executed and authenticated as required by the Original Indenture, the Trustee shall deliver such Bonds at one time to or upon the order of the Underwriter, but only upon payment to the Trustee of the purchase price of such Bonds. The Trustee shall be entitled to rely upon such documents as to all matters stated therein.

**Section 2.09. Mutilated, Lost, Stolen or Destroyed Bonds.** In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate a new Bond of like date, interest rate, maturity and denomination to that mutilated, lost, stolen or destroyed Bond, provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with an indemnity for the benefit of the Issuer, the Borrower and the Trustee, satisfactory to the Trustee. In the event any such Bond shall have matured, instead of issuing a duplicate Bond, the Trustee may pay the same without surrender thereof making such requirements as it deems fit for its protection including a lost instrument bond. The Issuer and the Trustee may charge the owner of such Bond with their fees and expenses in this connection.

**Section 2.10. Registration and Exchange of Bonds; Persons Treated as Owners.** The Issuer shall cause books for the registration and for the transfer of the Bonds as provided in this Indenture to be kept by the Trustee, which is hereby constituted and appointed the Bond Registrar of the Issuer. Bonds may not be registered to bearer. Upon surrender for transfer of any Bond at the Principal Office of the Trustee (or the Tender Agent with respect to tendered Bonds), duly endorsed for transfer or accompanied by an assignment duly executed by the

Registered Owner or his attorney duly authorized in writing, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond for a like aggregate principal amount.

Fully registered Bonds may be exchanged at the Principal Office of the Trustee for a like aggregate principal amount of fully registered Bonds of other Authorized Denominations. The Issuer shall execute and the Trustee shall authenticate and deliver Bonds which the Bondholder making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding. The execution by the Issuer of any fully registered Bond in an Authorized Denomination shall constitute full and due authorization of such denomination and the Trustee shall thereby be authorized to authenticate and deliver such registered Bond.

The Issuer or the Trustee shall not be required to issue, register, transfer or exchange any Bond during the period beginning with the Record Date and ending on the next Interest Payment Date, nor during the period beginning 15 days before the mailing of notice of redemption of Bonds and ending on the redemption date, except Bonds for which a notice of optional tender has been received by the Tender Agent pursuant to Section 3.06 of this Indenture.

In each case the Trustee may require the payment by the Bondholder requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer.

Notwithstanding anything to the contrary set forth above, while the Bonds are held in a book-entry only system, it shall be the duty of the Remarketing Agent to effect transfers and exchanges of beneficial interests in the Bonds in accordance with the foregoing provisions.

**Section 2.11. Temporary Bonds.** Until the definitive Bonds are prepared, the Issuer may execute and deliver, in lieu of definitive Bonds, but subject to the same provisions, limitations and conditions as the definitive Bonds, except as to exchangeability for Bonds, one or more temporary fully registered Bonds substantially of the tenor of the definitive Bonds in lieu of which such temporary Bond or Bonds are issued in Authorized Denominations and with such omissions, insertions and variations as may be appropriate to temporary Bonds. The Issuer shall promptly prepare and execute for exchange for surrendered temporary Bonds, and deliver in exchange therefor, at the Principal Office of the Trustee, definitive Bonds of the same aggregate principal amount and maturity as the temporary Bonds surrendered. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefits and security as definitive Bonds issued pursuant to this Indenture. All temporary Bonds surrendered in exchange for a definitive Bond or Bonds shall be forthwith canceled by the Trustee.

**Section 2.12. Alternate Credit Facility and Substitute Liquidity Facility.**

(a) The Borrower may, at any time not prohibited under any applicable Credit Facility Agreement or Liquidity Facility Agreement, deliver an Alternate Credit Facility or Substitute Liquidity Facility to replace the Credit Facility or Liquidity Facility, respectively, then in effect. The Borrower shall give at least 35 days notice of such replacement to the Trustee, which notice shall contain the information contained in Section 2.12(c) below.

(b) While the Bonds bear interest at either the Adjustable Rate or the Fixed Rate, the Borrower may not deliver or cause to be delivered an Alternate Credit Facility or

Substitute Liquidity Facility, unless the Trustee is furnished by the thirty-tifth day prior to the Substitution Date written evidence from each Rating Agency that the then current rating on the Bonds will not be reduced or withdrawn as a result of such replacement; provided that if the Bonds are not then rated, there shall be delivered to the Trustee by such thirty-tifth day written evidence that such Alternate Credit Facility or Substitute Liquidity Facility shall be issued by an entity whose long and short term unsecured debt ratings are not less than such ratings of the Credit Entity or Liquidity Entity, respectively, whose Credit Facility or Liquidity Facility is being replaced.

(c) The Trustee shall send written notice to all Registered Owners not later than 30 days prior to the Substitution Date identifying the identity of the new Credit Entity or Liquidity Entity and identifying the form of the Alternate Credit Facility or Liquidity Facility, i.e., whether the Alternate Credit Facility or Substitute Liquidity Facility is a letter of credit, surety bond, guaranty or any other arrangement qualifying as an Alternate Credit Facility or Substitute Liquidity Facility, and what the ratings, if any, on the Bonds will be as a result of such substitution.

(d) Any Alternate Credit Facility or Substitute Liquidity Facility shall have terms in all respects material to the Bondholders the same as the initial Credit Facility and Liquidity Facility (except for the term and maximum interest rate set forth in such Credit Facility or Liquidity Facility, a change in number of days of interest required to be covered and any change in form of the Credit Facility or Liquidity Facility due to the substitution of a Credit Facility or Liquidity Facility which is not a direct pay letter of credit). Any Alternate Credit Facility or Substitute Liquidity Facility delivered to the Trustee must be accompanied by (i) an opinion of counsel selected by the Borrower stating that delivery of such Alternate Credit Facility or Substitute Liquidity Facility is authorized under this Indenture and complies with its terms, (ii) an opinion of counsel to the issuer or provider of such Alternate Credit Facility or Substitute Liquidity Facility stating that such Alternate Credit Facility or Substitute Liquidity Facility is a legal, valid, binding and enforceable obligation of such issuer or provider in accordance with its terms (subject only to usual exceptions relating to bankruptcy and similar matters); and (iii) an opinion of Bond Counsel to the effect that the delivery of the Alternate Credit Facility or Substitute Liquidity Facility will not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes.

### **Section 2.13. Book Entry System.**

(a) Except for when the Bonds bear interest at the Bank Interest Rate and are held in physical form by the Bank as the holder of the Bonds, and except as provided in paragraphs (b), (c) and (f) below, the Holder of all of the Bonds shall be The Depository Trust Company ("DTC") and the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Payment of principal, premium, if any, and interest on any Bond registered in the name of Cede & Co. shall be made by transfer of immediately available funds to the account of Cede & Co. at the address indicated for Cede & Co. in the registration books of the Issuer kept by the Bond Registrar.

(b) The Bonds shall be initially issued in the form of a separate single authenticated fully registered certificate in the principal amount of the Bonds. The Trustee, Tender Agent, Bond Registrar, Paying Agent, Remarketing Agent and Issuer may treat DTC (or its nominee) as the sole and exclusive Holder of the Bonds registered in its name for the purposes of payment of the principal, premium, if any, and interest on

such Bonds, giving any notice permitted or required to be given to Bondholders under this Indenture, registering the transfer of such Bonds, obtaining any consent or other action to be taken by Bondholders and for all other purposes whatsoever, except as provided in paragraphs (c) and (f) below and neither the Trustee, Paying Agent, Bond Registrar, Remarketing Agent nor Issuer shall be affected by any notice to the contrary. Neither the Trustee, the Paying Agent, Tender Agent, the Bond Registrar, the Remarketing Agent nor the Issuer shall have any responsibility or obligation to any of DTC's participants (each a "Participant"), any person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant (each a "Beneficial Owner"), or any other person which is not shown on the registration books of the Bond Register as being a Registered Owner, with respect to the accuracy of any records maintained by DTC or any Participant; the payment by DTC or any Participant of any amount in respect of the principal, premium or interest on such Bonds, and notice which is permitted or required to be given to Bondholders under this Indenture or the Credit Facility; or any consent given or other action taken by DTC as Bondholders. The Trustee shall pay all principal, premium, if any, and interest on the Bonds registered in the name of Cede & Co. only to or upon the order of DTC (as that term is used in the Uniform Commercial Code as adopted in New York and the State), and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the principal, premium and interest on such Bonds to the extent of the sum or sums so paid. Except as otherwise provided in paragraphs (c) and (g) below, no person other than DTC shall receive an authenticated Bond certificate evidencing the obligation of the Issuer to make payments of principal, premium, if any, and interest on such Bonds pursuant to this Indenture. Upon delivery by DTC to the Bond Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions of this Indenture with respect to transfers of Bonds, the word "Cede & Co." in this Indenture shall refer to such new nominee of DTC.

(c) DTC may determine to discontinue providing its services with respect to any Bonds at any time by giving written notice to the Issuer and the Trustee and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor Book-Entry Depository), the Issuer, the Trustee, the Tender Agent and the Bond Registrar shall be obligated to issue, authenticate, register and deliver Bond certificates at the direction of DTC and its Participants as described in this Indenture. The Borrower shall pay costs in connection with the production of Bond certificates. If Bond certificates are issued, the provisions of this Indenture shall apply to, among other things, the transfer and exchange of such certificates and the method of payment of principal and interest on such certificates. Whenever DTC requests the Issuer and the Trustee to do so, the Issuer will direct the Trustee to cooperate with DTC in taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing such Bonds to any Participant or (ii) to arrange for another Book Entry Depository to maintain custody of certificates evidencing such Bonds registered in the name of Cede & Co. Any successor Book-Entry Depository must be a clearing agency registered with the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934 and must enter into an agreement with the Issuer and the Trustee agreeing to act as the depository and clearing agency for all Bonds (except as provided in paragraph (g) below). After such agreement has become effective, DTC shall present such Bonds for registration of transfer in accordance herewith, and the Bond Registrar shall register them in the name of the successor Book-Entry Depository or its nominee. If a successor Book-Entry Depository

has not accepted such position before the effective date of DTC's termination of its services, the Book-Entry System shall automatically terminate and may not be reinstated without the consent of all Beneficial Owners of such Bonds.

(d) Notwithstanding any other provision of this Indenture to the contrary, so long as the Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to the principal, premium, if any, and interest on such Bonds and all notices with respect to such Bonds shall be made and given, respectively, to DTC and all tenders for purchase and surrenders of such Bonds for payment shall be made as provided in the Representation Letter. Each of the Trustee, the Bond Registrar, the Paying Agent, the Tender Agent and the Remarketing Agent is hereby authorized and directed to comply with all terms of the Representation Letter.

(e) NEITHER THE ISSUER, CREDIT ENTITY, BOND REGISTRAR, PAYING AGENT, REMARKETING AGENT, THE TENDER AGENT, NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATIONS TO THE PARTICIPANTS OR THE BENEFICIAL OWNERS WITH RESPECT TO (i) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY PARTICIPANT; (ii) THE PAYMENT BY DTC OR ANY PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL AMOUNT OR PURCHASE PRICE OF OR INTEREST ON ANY BONDS; (iii) THE DELIVERY BY DTC OR ANY PARTICIPANT OF ANY NOTICE TO ANY BENEFICIAL OWNER THAT IS REQUIRED OR PERMITTED UNDER THE TERMS OF THIS INDENTURE TO BE GIVEN TO BONDHOLDERS; OR (iv) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS BONDHOLDER.

(f) SO LONG AS CEDE & CO. IS THE REGISTERED OWNER OF ANY BONDS AS NOMINEE OF DTC, REFERENCES HEREIN TO SUCH BONDS OR REGISTERED OWNERS OF SUCH BONDS SHALL MEAN CEDE & CO. AND SHALL NOT MEAN THE BENEFICIAL OWNERS OF SUCH BONDS NOR DTC PARTICIPANTS.

(g) The Issuer, at the direction of the Borrower, shall terminate the services of DTC with respect to the Bonds if the Issuer determines that: (i) DTC is unable to discharge its responsibilities with respect to the Bonds; or (ii) a continuation of the requirement that all of the outstanding Bonds be registered with the registration books kept by the Bond Registrar in the name of Cede & Co., as nominee of DTC, is not in the best interest of the Beneficial Owners of the Bonds. If no substitute Book-Entry Depository is found by the Issuer or restricted registration is no longer in effect, Bond certificates will be delivered as described herein.

(h) Upon the termination of the services of DTC with respect to the Bonds pursuant to subsection (c) or (g) of this Section 2.13 after which no substitute Book-Entry Depository willing to undertake the function of DTC hereunder can be found which, in the opinion of the Issuer, is willing and able to understand such functions upon reasonable and customary terms, the Bonds shall no longer be restricted to being registered in the registration books kept by the Bond Registrar in the name of Cede & Co., as nominee of DTC, but may be registered in whatever name or names the persons transferring or exchanging such Bonds shall designate in accordance with the provisions hereof.

(i) A Beneficial Owner wishing to tender its Bonds for purchase when the Bonds are held in the book-entry system must do so through its Participant which, in turn, must

give any required notice to the Remarketing Agent. Delivery of Bonds tendered or required to be tendered for purchase must be effected by a Beneficial Owner by causing the Direct Participant to transfer the Participant's interest in the Bonds, on DTC's records, to the Remarketing Agent. The requirement for physical delivery of Bonds in connection with a demand for purchase or a mandatory purchase will be deemed satisfied when the ownership rights in the Bonds are transferred by Direct Participants on DTC's records.

### ARTICLE III.

#### REDEMPTIONS AND TENDERS OF BONDS

**Section 3.01. Redemption.** The Bonds shall be subject to redemption prior to maturity as follows:

(a) **Optional Redemption.** The Bonds are subject to optional redemption prior to their stated maturity date as follows:

(i) During any Rate Period when the Bonds bear interest at the Weekly Rate, the Bank Interest Rate, or the Monthly Rate, the Bonds are subject to optional redemption by the Issuer, exercised at the written direction of the Borrower delivered to the Issuer, the Trustee, the Bank (if applicable), the Credit Entity and the Liquidity Entity, together with the written consent of the Credit Entity, if any, at least 45 days prior to the proposed redemption date, in whole on any Business Day or in part on any Interest Payment Date at a redemption price of 100% of the principal amount redeemed, plus accrued interest, if any, thereon to the redemption date.

(ii) During any Rate Period when the Bonds bear interest at the Adjustable Rate or at the Fixed Rate, the Bonds are subject to optional redemption by the Issuer, exercised at the written direction of the Borrower delivered to the Issuer, the Trustee, the Credit Entity and the Liquidity Entity, together with the written consent of the Credit Entity, at least 45 days prior to the proposed redemption date, in whole on any Business Day or in part on any Interest Payment Date at the redemption prices (expressed as a percentage of the principal amount of the Bonds to be redeemed), plus accrued interest, if any, thereof to the redemption date as follows:

<b>Length of Adjustable Rate Period, or Following Conversion to a Fixed Rate, Years Remaining from Rate Conversion Date until the <u>Maturity Date</u></b>	<b><u>Commencement of Redemption Period</u></b>	<b><u>Redemption Price</u></b>
<b>More than ten years</b>	<b>Tenth anniversary of Rate Conversion Date</b>	<b>102%, declining by 1% on each succeeding anniversary of the tenth anniversary of the Rate Conversion Date until reaching 100%, and 100% thereafter</b>

<b>Length of Adjustable Rate Period, or Following Conversion to a Fixed Rate, Years Remaining from Rate Conversion Date until the <u>Maturity Date</u></b>	<b><u>Commencement of Redemption Period</u></b>	<b><u>Redemption Price</u></b>
<b>More than seven, but not more than ten years</b>	<b>Fifth anniversary of Rate Conversion Date</b>	102%, declining by 1% on each succeeding anniversary of the fifth anniversary of the Rate Conversion Date until reaching 100%, and 100% thereafter
<b>More than four, but not more than seven years</b>	<b>Third anniversary of Rate Conversion Date</b>	102%, declining by 1% on each succeeding anniversary of the third anniversary of the Rate Conversion Date until reaching 100%, and 100% thereafter
<b>Four years or less</b>	<b>Non-callable</b>	

The foregoing notwithstanding, (i) if the Bonds bear interest at the Adjustable Rate and if any anniversary of the Rate Conversion Date falls on a date which is other than the first Business Day of a month, such anniversary shall be deemed to occur on the first Business Day of the month in which such anniversary falls and (ii) if the Bonds bear interest at the Fixed Rate and if any anniversary of the Rate Conversion Date falls on a date which is other than the first calendar day of a month, such anniversary shall be deemed to occur on the first calendar day of the month in which such anniversary falls.

(b) **Mandatory Redemption Upon Determination of Taxability.** The Bonds are subject to mandatory redemption in whole on the earliest date after the required notice of redemption can be given following a Determination of Taxability but not less than 35 days following the Trustee's receipt of notice of such occurrence at a redemption price equal to the principal amount thereof, without premium, plus accrued interest to the redemption date. Notwithstanding anything in this Indenture to the contrary the Trustee shall give immediate written notice of the occurrence of a Determination of Taxability to the Issuer, the Bondholders of the affected Bonds, the Borrower, any Credit Entity and any Liquidity Entity. All of the Bonds outstanding on the redemption date selected shall be redeemed on that date, except that Bonds maturing prior to that date, but after the selection thereof, shall be retired on their maturity date at the same price as if they had been called for redemption on the redemption date. No other premium shall be payable in the event of a Determination of Taxability.

(c) **Extraordinary Optional Redemption.** During an Adjustable Rate Period or after interest on the Bonds has been converted to a Fixed Rate, at the option of the Borrower, with the consent of the Credit Entity, the Bonds shall be subject to redemption in whole and not in part prior to maturity, at a redemption price of 100% of the principal amount to be redeemed plus accrued interest to the date fixed for redemption, upon receipt by the Trustee of a written certification of the Borrower fixing a redemption date (which date shall be at least 45 days but not more than 75 days after the date of the certification), and stating that one of the following events has occurred:

(i) The Project shall have been damaged or destroyed to such an extent that, in the opinion of the Borrower, (A) the required restoration and repair could not reasonably be expected to be completed within a period of nine months after commencement of restoration or repair, (B) the Borrower is prevented or would likely be prevented from using the Project for its normal purposes for a period of nine months or more or (C) the cost of restoration and repair would exceed 25% of the original cost of constructing the Project; or

(ii) title to the whole or any part of the Project or the use or possession thereof shall have been taken or condemned by a governmental authority to such an extent that, in the opinion of the Borrower, the Borrower is prevented from using the Project for its normal purposes for a period of nine months or more; or

(iii) changes, which the Borrower cannot reasonably control or overcome, in the economic availability of materials, supplies, labor, equipment and other properties and things necessary for the efficient operation of the Project for the purposes contemplated by the Borrower shall have occurred, or technological or other changes shall have occurred which, in the opinion of the Borrower, render uneconomic for such purposes the continued operation of the Project; or

(iv) unreasonable burdens or excessive liabilities, in the opinion of the Borrower, shall have been imposed upon the Borrower with respect to the Project or the operation of the Project, including, but without being limited to, federal, state or other ad valorem, property, income or other taxes, other than such taxes as are currently imposed on the date of this Indenture, including, but without being limited to, ad valorem taxes imposed on the date of this Indenture upon privately owned property used for the same general purposes as the Project; or

(v) as a result of any changes in the Constitution or laws of the State or of the United States of America or of any legislative, executive or administrative action (whether state or federal), or of any final decree, judgment or order of any court or administrative body (whether state or federal), the obligations of the Borrower under the Loan Agreement shall have become, in the opinion of counsel to the Borrower, void, unenforceable or impracticable to perform, in each case in any material respect in accordance with the intent and purpose of the parties as expressed in the Loan Agreement or the Borrower shall be unable to use the Project for a period of nine months or more.

(d) **Mandatory Redemption to the Extent of Excess Monies in the Project Fund.** The Bonds are subject to mandatory redemption, in the maximum principal amount of Authorized Denominations permitted from the balance of monies transferred to the Bond Fund as described in (ii) below, and not otherwise necessary for the payment of principal of, premium, if any, or interest on the Bonds within the next 12 months. Such redemption shall occur on the first Interest Payment Date upon which proper notice of redemption can be given following (i) delivery by the Borrower of the Completion Certificate pursuant to Section 3.3(c) of the Loan Agreement and (ii) the transfer of excess monies, if any, from the Project Fund to the Bond Fund pursuant to Section 3.3(d) of the Loan Agreement. Such Bonds shall be redeemed at a redemption price equal to the principal amount thereof, without premium, plus accrued interest to the redemption date.



(e) Eligible Funds. Except for those amounts to be applied to redeem or pay Borrower Bonds or Purchased Bonds, all amounts applied to effect the redemptions described in this Section 3.01 shall be Eligible Funds, unless the Bonds have been converted to a Fixed Rate without a Credit Facility being in effect in accordance with Section 2.03(b) hereof and when the Bonds bear interest at the Bank Interest Rate.

**Section 3.02. Selection of Bonds to Be Redeemed.** A redemption of Bonds shall be a redemption of the whole or of any part of the Bonds from any funds available for that purpose in accordance with the provisions of this Indenture, provided, that there shall be no partial redemption of any Bond which would result in the unredeemed portion not being of an Authorized Denomination. If less than all the Bonds shall be called for redemption under any provision of this Indenture permitting such partial redemption, the particular Bonds to be redeemed shall be selected first from Purchased Bonds, next from other Borrower Bonds and thereafter by the Trustee, in such manner as the Trustee in its discretion may deem fair and appropriate (except when the Bonds are held in the book-entry system, in which case the selection of Bonds to be redeemed will be made in accordance with the procedures established by DTC or any other applicable book-entry depository), in the principal amount designated to the Trustee by the Borrower or otherwise as required by this Indenture; provided, however, that the portion of any Bond to be redeemed shall be in an Authorized Denomination. If it is determined that a portion, but not all, of the principal amount represented by any such Bond is to be called for redemption, then, upon notice of intention to redeem such portion, the Registered Owner of such Bond upon surrender of such Bond to the Trustee for payments to such Registered Owner of the redemption price of the portion called for redemption shall be entitled to receive a new Bond or Bonds in the aggregate principal amount of the unredeemed balance of the principal amount of such Bond. New Bonds representing the unredeemed balance of the principal amount of such Bond shall be issued to the Registered Owner thereof, without charge therefor. If the Registered Owner of any such Bond of a denomination greater than the principal amount to be redeemed shall fail to present such Bond to the Trustee for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the date fixed for redemption to the extent of the portion of the principal amount called for redemption (and to that extent only).

**Section 3.03. Procedure for Redemption.**

(a) In the event any of the Bonds are called for redemption, the Trustee shall give notice, in the name of the Issuer, of the redemption of such Bonds, which notice shall (i) specify the Bonds (or portions thereof) to be redeemed, the redemption date, the redemption price and the place or places where amounts due upon such redemption will be payable (which shall be the Principal Office of the Paying Agent, if any) and, if less than all of the Bonds are to be redeemed, the numbers of the Bonds, and the portion of the Bonds, so to be redeemed, (ii) state any condition to such redemption and (iii) state that on the redemption date, and upon the satisfaction of any such condition, the Bonds to be redeemed shall cease to bear interest, provided that Eligible Funds are available for such purpose on that date, and if, in the case of any optional redemption, Eligible Funds are not available on such date, the redemption shall be cancelled. Such notice may set forth any additional information relating to such redemption. Such Notice by Mail shall be given at least 30 days and not more than 60 days prior to the date fixed for redemption to the Holders of Bonds to be redeemed. Failure to duly give notice of redemption by mail to any particular Bondholder, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds for which notice has been properly given.

(b) Any Bonds and portions of Bonds which have been duly selected for redemption and which are deemed to be paid in accordance with Article VII hereof shall cease to bear interest on the specified redemption date.

(c) Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless there shall be a default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Trustee at the redemption price. Upon surrender for any partial redemption of any Bonds, there shall be issued to the Registered Owner a new Bond or Bonds in the amount of the unredeemed principal in an Authorized Denomination. All Bonds which have been redeemed shall be cancelled and destroyed by the Trustee and shall not be reissued.

(d) In addition to the official notice of redemption, if the Bonds are not then held under a book-entry only system (except for Bonds that bear interest at the Bank Interest Rate), further notice shall be given by the Trustee in the name of the Issuer as set out below; provided, however, that neither the failure to give any such notice nor any defect in any notice so given shall affect the sufficiency or validity of any proceedings for the redemption of the Bonds. Each further notice of redemption given hereunder shall contain the information required 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 needed to identify accurately the Bonds being redeemed. Each further notice of redemption shall be sent at least **35** days before the redemption date by certified mail or overnight delivery service to all registered securities depositories then in the business of holding substantial amounts of obligations of the type comprising the Bonds (such depositories now being The Depository Trust Company of New York, New York) and to one or more national information services, chosen in the discretion of the Trustee, that disseminate notice of redemption of obligations such as the Bonds.

(e) The Trustee shall at all reasonable times make available to any interested party complete information as to Bonds which have been redeemed or called for redemption.

**Section 3.04. No Partial Redemption After Default.** Anything in this Indenture to the contrary notwithstanding, if there shall have occurred and be continuing any Event of Default under this Indenture, there shall be no redemption of less than all of the Bonds at the time Outstanding.

**Section 3.05. Payment of Redemption Price.** For the redemption of any of the Bonds, the Issuer shall cause to be deposited with the Trustee, who shall deposit such amount in the Bond Fund an amount of Eligible Funds sufficient to pay the principal of, premium, if any, and interest to become due on such Bonds on the date fixed for such redemption. Any amount in the Bond Fund available on such redemption date for payment of the principal of and accrued interest and premium, if any, on the Bonds to be redeemed shall be credited against any amount required to be caused to be so deposited in the Bond Fund. If the Bonds have been converted to a Fixed Rate without a Credit Facility pursuant to **Section 2.03(b)** hereof, then amounts, which need not be Eligible Funds, shall be deposited with the Trustee to effect such

redemption. To the extent that the Bonds bear interest at the Bank Interest Rate, the redemption price may be paid directly from the Borrower to the Bank, without the need for such moneys to be Eligible Funds.

**Section 3.06. Optional Tenders While Bonds Bear Interest at the Weekly Rate or Monthly Rate.**

(a) Purchase Date. During any Rate Period when the Bonds bear interest at the Weekly Rate or the Monthly Rate, the Registered Owners of Bonds may elect to have their Bonds (or portions thereof in Authorized Denominations; provided, however, that Bonds may not be tendered for purchase in part unless the principal amount not to be tendered for purchase is an Authorized Denomination) purchased at a Purchase Price equal to 100% of the principal amount of such Bonds (or portions), plus accrued interest, if any. Any such Bond may be tendered for purchase on the demand of the Registered Owner thereof at a Purchase Price payable in immediately available funds on any Business Day while Bonds are in the Weekly Rate Period and on the first Business Day of each month while Bonds are in the Monthly Rate Period upon delivery of a written notice of tender, meeting the further requirements of subsection (b) below, to the Tender Agent or if the Bonds are held in a book-entry only system, the Remarketing Agent, at their respective Principal Offices not later than 4:00 p.m., Chicago time, on a Business Day not fewer than seven days prior to the purchase date specified in such notice. Bonds bearing interest at the Bank Interest Rate shall not subject to optional tender at any time.

(b) Notice of Optional Tender. Each notice of optional tender:

(i) shall be delivered to the Tender Agent or the Remarketing Agent, as applicable, at their respective Principal Offices and be in form satisfactory to the Tender Agent and Remarketing Agent;

(ii) shall state in writing (A) the principal amount of the Bond or Bonds and the Bond number or numbers to which the notice relates, (B) that the Registered Owner irrevocably demands purchase of such Bond or Bonds or a specified portion thereof in an Authorized Denomination (provided, however, that Bonds may not be tendered for purchase in part unless the principal amount not to be tendered for purchase is an Authorized Denomination), (C) the date on which such Bond or Bonds or portion is to be purchased, (D) payment instructions with respect to the Purchase Price and (E) that the Bonds will be delivered to the Principal Office of the Tender Agent or Remarketing Agent, as applicable, on the purchase date; and

(iii) shall automatically constitute (A) an irrevocable offer to sell the Bond or Bonds (or portion thereof) to which the notice relates on the purchase date, at a price equal to the principal amount of such Bond or Bonds (or portion thereof) plus any interest thereon accrued and unpaid as of the purchase date, (B) an irrevocable authorization and instruction to the Tender Agent or Remarketing Agent, as applicable, to effect transfer of such Bond or Bonds (or portion thereof) upon payment of such price to the Tender Agent or Remarketing Agent, as applicable, on the purchase date, (C) an irrevocable authorization and instruction to the Tender Agent or Remarketing Agent, as applicable, to effect the exchange of the Bond or Bonds to be purchased in whole or in part for other Bonds in an equal aggregate principal amount so as to facilitate the sale of such Bond or Bonds (or portion thereof to be purchased) and (D) an acknowledgment that upon payment of such Purchase Price to the Tender Agent or Remarketing Agent,

as applicable, on the purchase date, such Registered Owner will have no further rights with respect to such Bond or Bonds (or portion thereof) except for the right of such Registered Owner to receive such Purchase Price upon surrender of such Bond or Bonds to the Tender Agent or Remarketing Agent, as applicable, and that after the purchase date such Registered Owner will hold such undelivered Bond or Bonds as agent for the Tender Agent or Remarketing Agent, as applicable.

The determination of the Tender Agent or Remarketing Agent, as applicable, as to whether a notice of tender has been properly delivered pursuant to the foregoing shall be conclusive and binding upon the Remarketing Agent and the Registered Owner. The Tender Agent or Remarketing Agent, as applicable, may, in its sole discretion, waive irregularities in conforming tenders.

(c) Bonds to be Remarketed. Not later than 11:00 a.m., Chicago time, on the Business Day immediately following the date of receipt of any notice of tender, the Tender Agent shall notify the Trustee and the Remarketing Agent, by telephone promptly confirmed in writing or, in the event the Bonds are held in the book-entry only system, the Remarketing Agent shall notify the Trustee and the Tender Agent by telephone promptly confirmed in writing, of the principal amount of Bonds (or beneficial interests in the Bonds or portions thereof) to be purchased and the date of purchase.

(d) Purchase of Tendered Bonds.

(i) Notices by Remarketing Agent. At or before 3:00 p.m., Chicago time, on the Business Day immediately preceding the date fixed for purchase of tendered Bonds, the Remarketing Agent shall give notice by telephone, telegram, telecopy, or other similar communication to the Trustee, the Liquidity Entity and the Tender Agent (promptly confirmed in writing) of the principal amount of tendered Bonds which have been remarketed by that time and the principal amount of Bonds not remarketed. Such Bonds or beneficial interests in such Bonds which have not been remarketed shall be held by the Tender Agent and registered as provided in Section 3.14 hereof, until remarketed, except as otherwise instructed by the Liquidity Entity. At or before 3:00 p.m., Chicago time, on the Business Day prior to the purchase date to the extent known to the Remarketing Agent, the Remarketing Agent shall give notice to the Trustee and the Tender Agent by telephone (promptly confirmed in writing) of the principal amount of Bonds (or beneficial interests therein) remarketed, and the principal amount of Bonds not remarketed, if the Bonds are no longer held in a book-entry only system, names, addresses and taxpayer identification numbers of the purchasers and the denominations of Bonds to be delivered to each purchaser.

(ii) Remarketing of Tendered Bonds. Pursuant and subject to the Remarketing Agreement, the Remarketing Agent shall offer for sale and use its best effort to find purchasers for all Bonds (or beneficial interests therein) or portions thereof for which notice of optional tender has been received pursuant to Section 3.06(b) above. The Remarketing Agent shall provide notice (promptly confirmed in writing) to the Trustee and the Tender Agent of the amount of remarketing proceeds it has for the payment (and the amount not received) of the Purchase Price for tendered Bonds or beneficial interests therein (in exchange for new registered Bonds) in immediately available funds at or before 8:00 a.m., Chicago time, on the purchase date. The Remarketing Agent shall provide for the payment of the Purchase Price of such tendered Bonds or beneficial interests therein by the purchasers thereof on each purchase date,

or, if the Bonds are no longer held in a book-entry only system, the Remarketing Agent shall provide for such payment to the Tender Agent in immediately available funds at or before 10:00 a.m. Chicago time, on each purchase date, and shall provide the Tender Agent with the applicable Federal Funds wire transfer number as soon as possible after initiating such transfer and the Tender Agent shall make such payment with respect to the tendered Bonds. Notwithstanding the foregoing, the Remarketing Agent shall not sell any Bond (or beneficial interest therein) as to which a notice of conversion of interest rate or notice of redemption has been given by the Trustee unless the Remarketing Agent has advised the party to whom the sale is made of the proposed conversion.

(iii) Sources of Payment—Required Draws on Liquidity Facility. The Purchase Price of tendered Bonds will be paid by the Tender Agent or the Remarketing Agent, as applicable, from the following sources of funds and in the following order of priority:

FIRST, proceeds of the remarketing of Bonds (or beneficial interests therein) to persons other than the Issuer, the Borrower or any affiliate of any of them; and

SECOND, monies drawn under the terms of the Liquidity Facility for payment of such Purchase Price; and

THIRD, monies furnished by the Borrower pursuant to the Loan Agreement.

Prior to 8:30 a.m., Chicago time, on the date fixed for purchase, the Trustee shall make a demand under the Liquidity Facility in accordance with its terms (and shall also give notice of such demand to the Borrower by telephone, telecopy or other similar communication) for the total Purchase Price of tendered Bonds (or beneficial interests therein) as to which the Remarketing Agent does not have funds on hand as indicated in its notice to the Trustee and the Tender Agent and directing, or making, payment of the amount demanded to the Tender Agent or Remarketing Agent, as applicable. Following such demand the Liquidity Facility shall, at or before noon, Chicago time, on the date fixed for purchase honor its obligations with respect to providing an amount sufficient to pay the Purchase Price of all such Bonds (or beneficial interests therein) tendered or purchased on such date. All monies drawn by the Trustee under this Section shall be deposited on or before 12:30 p.m., Chicago time, on the date fixed for purchase with the Tender Agent or Remarketing Agent, as applicable, and shall be deposited by the Tender Agent or Remarketing Agent, as applicable, in the Tender Fund to be used solely for the payment of the Purchase Price of tendered Bonds (or beneficial interests therein) and shall not be commingled with other funds held by the Tender Agent or Remarketing Agent, as applicable, and shall not be invested. No draws shall be made against the Liquidity Facility or the Credit Facility for Purchased Bonds or Borrower Bonds.

(iv) Payments by the Tender Agent. At or before 1:30 p.m., Chicago time, on the date set for purchase of tendered Bonds (or beneficial interests therein) and upon receipt by the Tender Agent or Remarketing Agent, as applicable, of 100% of the aggregate Purchase Price of the tendered Bonds or beneficial interests therein, the Tender Agent or Remarketing Agent, as applicable, shall pay the Purchase Price of such Bonds (or beneficial interests therein) to the Registered Owners or beneficial owners thereof at its Principal Office or, upon request of a Registered Owner or beneficial owner

meeting the requirements set forth in Sections 2.04(a) and 2.04(b)(iv) hereof, by bank wire transfer. Such payments shall be made in immediately available funds. If the Tender Agent or Remarketing Agent, as applicable, receives Eligible Funds in an amount of more than 100% of the aggregate Purchase Price of tendered Bonds (or beneficial interests therein), it shall return any monies drawn on the Liquidity Facility which are not needed for the payment of such Purchase Price to the Liquidity Entity on or before 1:30 p.m. Chicago time on the purchase date. As provided in Section 3.08 hereof, if sufficient funds are not available for the purchase of all tendered Bonds (or beneficial interests therein), no purchase shall be consummated.

(v) **Registration and Delivery of Tendered or Purchased Bonds.** In the event the Bonds are no longer held in a book-entry only system, on the date of purchase, the Tender Agent shall register and deliver (or hold) or cancel all Bonds purchased on any purchase date as follows: (A) Bonds remarketed by the Remarketing Agent for which the Tender Agent shall have received the Purchase Price shall be registered and made available to the Remarketing Agent by 1:15 p.m., Chicago time, in accordance with the instructions of the Remarketing Agent; and (B) Bonds purchased with amounts provided by the Liquidity Entity shall be registered as provided in Section 3.14 hereof.

(vi) **Delivery of Bonds.** In the event the Bonds are no longer held in a book-entry only system, all Bonds to be purchased on any date shall be required to be delivered to the Principal Office of the Tender Agent on the date specified in the optional tender notice delivered pursuant to Section 3.06(a) hereof. Each Bondholder of any Bonds which are to be so tendered as described above in Section 3.06(a) shall be entitled to receive the Purchase Price of such Bonds by delivery of such Bonds to the Tender Agent, provided that, in order to receive payment on the date on which such Bonds are to be purchased, such delivery must be made at any time prior to 1:30 p.m., Chicago time, on the date on which such Bond must be delivered. Owners of such Bonds delivered at any time after 1:30 p.m., Chicago time, on such date shall not be entitled to receive payment until the Business Day next following the date of delivery of the Bonds.

(vii) **Bonds Tendered After Call for Redemption.** Any Bond (or beneficial interests therein) tendered after a call for redemption, but before the applicable redemption date, shall be purchased pursuant to the tender. If such Bond (or beneficial interests therein) has been selected for redemption and is remarketed prior to the redemption date, the replacement Bond (or beneficial interests therein) issued upon such remarketing shall be redeemed on the redemption date.

(viii) **Monies Uninvested.** Monies held by the Tender Agent or Remarketing Agent, as applicable, to pay the Purchase Price of Bonds may not be invested while so held.

The following two paragraphs apply in the event that the Bonds are no longer held in a book-entry only system:

If the Registered Owner of any Bond (or portion thereof) that is subject to purchase pursuant to this Section fails to deliver such Bond to the Tender Agent for purchase on the date specified above, and if the Tender Agent is in receipt of Eligible Funds in an amount equal to the Purchase Price therefor, such Bond (or portion thereof) shall nevertheless be deemed

purchased on the day fixed for purchase thereof and ownership of such Bond (or portion thereof) shall be transferred to the purchaser thereof as provided in subsection (d)(v) above. Any Registered Owner who fails to deliver such Bond for purchase shall have no further rights thereunder except the right to receive the Purchase Price thereof upon presentation and surrender of said Bond to the Tender Agent. The Tender Agent shall, as to any tendered Bonds which have not been delivered to it, promptly notify the Remarketing Agent and the Bond Registrar of such nondelivery, and the Bond Registrar shall place a stop transfer against an appropriate amount of Bonds registered in the name of such Registered Owner(s) on the Bond registration books. The Bond Registrar shall place such stop(s) commencing with the lowest serial number Bond registered in the name of such Registered Owner(s) until stop transfers have been placed against an appropriate amount of Bonds until the appropriate tendered Bonds are delivered to the Tender Agent. Upon such delivery, the Tender Agent shall notify the Bond Registrar, and the Bond Registrar shall make any necessary adjustments to the Bond registration books.

Tendered Bonds must be physically delivered by their owners properly endorsed for transfer. Each Bond must be accompanied by an instrument of transfer satisfactory to the Tender Agent executed in blank by the Registered Owner and with the signature of such Registered Owner guaranteed by a bank, trust company or member firm of the New York Stock Exchange. The Tender Agent may refuse to accept delivery of any Bond for which a proper instrument of transfer has not been provided.

**Section 3.07. Mandatory Tender Upon Rate Conversion Date and Expiration or Substitution of Credit Facility or Liquidity Facility.**

(a) **Mandatory Tender on Rate Conversion Date.** On any Rate Conversion Date pursuant to Section 2.03 hereof, Bonds are subject to mandatory tender for purchase at the Purchase Price.

(b) **Mandatory Tender Upon Expiration or Substitution of Credit Facility or Liquidity Facility.** Bonds (or beneficial interests therein) shall be subject to mandatory tender for purchase as follows:

(i) The Bonds (or beneficial interests therein) are subject to mandatory tender on the third Business Day preceding each Expiration Date if the Borrower has not delivered to the Trustee by the fortieth day prior to the Expiration Date (i) a written copy of an extension of the Expiration Date of the Credit Facility or Liquidity Facility, as the case may be, or (ii) an Alternate Credit Facility or Substitute Liquidity Facility, as the case may be, as described in Section 2.12(b) or (c), as applicable. Such mandatory tender shall be at a Purchase Price equal to the principal amount thereof plus accrued interest, if any. No draw on an Alternate Credit Facility or Substitute Liquidity Facility delivered as provided above shall be made prior to the termination of the Credit Facility or Liquidity Facility which it is to replace.

(ii) The Bonds (or beneficial interests therein) are subject to mandatory tender on each Substitution Date occurring while the Bonds are in a Weekly Rate Period or a Monthly Rate Period (subject to the right of the owners thereof to retain such Bonds as provided in Section 3.07(f) below). Such mandatory tender shall be at a Purchase Price equal to the principal amount thereof plus accrued interest, if any.

(c) [Reserved.]

(d) Notice of Mandatory Tender. At least 30 days prior to a Mandatory Tender Date, the Trustee shall give notice of a Mandatory Tender Date (i) to the Holders and (ii) the Remarketing Agent; provided that failure to receive notice of a mandatory tender, or any defect in that notice, as to any Bond (or any other beneficial interests therein) shall not affect the validity of the proceedings for the mandatory tender of that Bond (or any beneficial interests therein) or any other Bond (or any other beneficial interests therein). All notices to Holders under this Section shall be given by mail. All notices to persons other than Holders pursuant to this Section may be given by overnight delivery service or as otherwise provided in Section 12.04 hereof.

The notice of mandatory tender pursuant to this Section shall state (i) the mandatory tender requirement under this Section 3.07 and that the Holders (or Beneficial Owners) are required, subject to (ii) below, to tender Bonds (or beneficial interests therein) for purchase pursuant to this Section, (ii) notwithstanding the foregoing, upon a mandatory tender on a Substitution Date, the holders shall have the right to retain their Bonds by following the procedures in Section 3.07(f) of this Indenture, which shall be specified, (iii) the Tender Date and the procedures set forth in this Section for making a mandatory tender of Bonds (or beneficial interests therein), (iv) the right of Holders of \$1,000,000 or more in aggregate principal amount of Bonds (or beneficial interests therein) to request payment of the Purchase Price by wire transfer in the continental United States and that, in order to exercise this right, written wire transfer instructions must be given to the Trustee at least one Business Day prior to the Tender Date, (v) if the Bonds are no longer held in the book-entry only system, that no payment of the Purchase Price shall be made to any Holder until it makes physical delivery of its Bonds to the Trustee, (vi) if the Bonds are no longer held in a book-entry only system, that if a Holder does not make physical delivery of its Bonds, such Bonds will be deemed tendered and such Holder will be entitled to no payment (including interest to accrue subsequent to that Tender Date) other than the Purchase Price for such Bonds upon surrender of such Bonds to the Trustee and (vii) that if the conditions to the mandatory tender, if any, cannot or will not be met for any reason on such Tender Date, the Bonds will continue to bear interest based on the same rate determination method as in effect immediately preceding the proposed Tender Date, unless the Credit Facility or Substitute Credit Facility shall have expired or shall have not been delivered, in which case the Bonds (or beneficial interests therein) shall be mandatorily tendered.

(e) Remarketing of Tendered Bonds. In accordance with the terms of the Remarketing Agreement, the Remarketing Agent shall offer for sale and use its best efforts to find purchasers for Bonds (or beneficial interests therein) tendered or deemed tendered under this Section 3.07, except for Bonds tendered pursuant to Section 3.07(b)(i) and except as provided in Section 3.10. In the event of a conversion of interest on the Bonds to the Adjustable Rate, the Bank Interest Rate or to a Fixed Rate, in no event shall the Remarketing Agent sell any such Bond (or beneficial interests therein) to any party, unless the Remarketing Agent has advised such party that after the Rate Conversion Date, the Bonds (or beneficial interests therein) will not be subject to tender at the option of the Registered Owner. The Tender Agent shall hold such funds for the purchase of such tendered Bonds (or beneficial interests therein) pursuant to Section 3.06(d)(iii) hereof. Pending payment of such funds as aforesaid, the Tender Agent shall hold such funds uninvested.

(f) Purchase of Tendered Bonds. The provisions of Section 3.06(c) and (d) shall apply to tenders pursuant to this Section 3.07.



(g) **Waiver of Mandatory Purchase in Connection with Delivery of Alternate Credit Facility or Substitute Liquidity Facility.** Upon and in connection with a mandatory purchase upon replacement of any Credit Facility or Liquidity Facility with an Alternate Credit Facility or Substitute Liquidity Facility as described in Section 3.07(b)(ii), an owner may direct the Tender Agent or Remarketing Agent, as applicable, not to purchase all or a portion (in an Authorized Denomination) of any Bonds held by such owner by delivery to the Tender Agent or the Remarketing Agent, as applicable, at their respective addresses on or before the seventh day preceding the date fixed for such purchase an instrument or instruments in writing executed by such owner (i) specifying the numbers and denominations of Bonds held by such owner, (ii) acknowledging receipt of notice of the matters set forth in Section 2.12 hereof, including the fact that the rating on the Bonds may be reduced or withdrawn and (iii) directing the Tender Agent or Remarketing Agent, as applicable not to purchase such Bonds or portions thereof; provided, however, that an owner who makes such a direction must continue to own such Bonds at least through the date fixed for such purchase.

Any instrument delivered to the Tender Agent or the Remarketing Agent in accordance with this Section shall be irrevocable with respect to the purchase for which such instrument was delivered and shall be binding upon subsequent owners of the Bonds, including Bond issued in exchange therefor or upon the registration of transfer thereof, but such instrument shall have no effect upon any subsequent purchase of Bonds.

**Section 3.08. Inadequate Funds for Tenders.** If the funds available for purchases of Bonds (or beneficial interests therein) pursuant to this Article III are inadequate for the purchase of all Bonds (or beneficial interests therein) tendered on any purchase date, the Tender Agent shall: (a) return all tendered Bonds (or beneficial interests therein) to the Registered Owners or beneficial owners thereof; (b) return all monies received for the purchase of such Bonds (or beneficial interests therein) to the parties providing such monies; and (c) notify the Remarketing Agent, the Credit Entity, the Liquidity Entity, the Borrower and the Trustee of the return of such Bonds (or beneficial interests therein) and monies and the failure to make payment for tendered Bonds (or beneficial interests therein).

**Section 3.09. Duties of the Tender Agent.** The Tender Agent agrees that it shall:

(a) in the event the Bonds are no longer held in book-entry only form, hold all Bonds delivered to it pursuant to Sections 3.06 or 3.07 hereof in trust solely for the benefit of the respective Bondholders which shall have so delivered such Bonds until monies representing the Purchase Price of such Bonds shall have been delivered to or for the account of or to the order of such Bondholders; and

(b) hold all monies delivered to it pursuant to Sections 3.06 and 3.07 for the purchase of Bonds in trust solely for the benefit of the party which shall have so delivered such monies until the purchase date; and on and after the purchase date, the Tender Agent shall hold all such monies in trust solely for the benefit of the respective owners of the Bonds so purchased until the Tender Agent shall have paid the Purchase Price with respect to such Bonds (or beneficial interests therein) to such owners; provided, that if any monies remain after the payment in full of the Purchase Price of all Bonds (or beneficial interests therein) tendered for purchase pursuant to Sections 3.06 and 3.07 hereof; such monies shall be held in trust for the benefit of the Borrower, to be applied in accordance with Article V hereof.

**Section 3.10. Duties of the Remarketing Agent.** The Remarketing Agent shall perform the duties set out in this Article III and the Remarketing Agreement. Notwithstanding any other provisions herein to the contrary, the Remarketing Agent shall be under no obligation to remarket Bonds if an Event of Default or a Determination of Taxability has occurred and is continuing hereunder, and the Remarketing Agent shall not sell any Bond in such circumstances unless the Remarketing Agent has advised the party to whom the sale is made of the Event of Default. The Remarketing Agent also agrees to comply with the provisions of Section 3.09(b) above if Bonds are held in a book-entry only system. The Remarketing Agent shall have no duties or responsibilities when the Bonds bear interest at the Bank Interest Rate.

**Section 3.11. Untendered Bonds.** Bonds which are not presented for payment on the purchase date due to acceleration or otherwise or due to an optional or mandatory tender, will nonetheless be deemed purchased on such date. Accrued interest payable to the date of purchase of Bonds (or beneficial interests therein) tendered pursuant to Section 3.06 or 3.07, or portions thereof, purchased as provided above will be paid to the Holder as of the Record Date next preceding the date of purchase of such Bonds (or beneficial interests therein) or portions thereof in the same manner as if such Bonds (or beneficial interests therein) or portions thereof were not purchased. Such Bonds (or beneficial interests therein) or such portions thereof will be deemed "Untendered Bonds." Promptly after the date required for purchase, the Tender Agent, or Remarketing Agent, as applicable, will mail a notice to each Holder of an Untendered Bonds, which notice will state that interest on such Untendered Bond ceased to accrue on such date referred to above, and that monies representing the Purchase Price for such Untendered Bond (less any accrued interest paid to such Holder pursuant to the terms of the Bonds) are available against surrender thereof at the Principal Office of the Tender Agent, or Remarketing Agent, as applicable. The Tender Agent, or Remarketing Agent, as applicable, will hold such monies, without liability for interest thereon, in trust in the Tender Fund for the benefit of such Holder, who will thereafter be restricted exclusively to such monies for any claim of whatever nature under the Indenture or on, or with respect to, such Untendered Bond. Any monies so deposited with and held by the Tender Agent, or Remarketing Agent, as applicable, and not so applied to the payment of such Untendered Bonds within two years after such date referred to above will be paid by the Tender Agent, or Remarketing Agent, as applicable, to the Borrower (provided, however, that if the Borrower then owes any amounts to the Credit Entity and/or Liquidity Entity (as certified in writing by either or both of them to the Tender Agent, or Remarketing Agent, as applicable), the Tender Agent, or Remarketing Agent, as applicable, shall pay such monies first to the Credit Entity, then to the Liquidity Entity (in each case to the extent of monies owed to them) and the balance, if any, to the Borrower, and thereafter the former Holders will be entitled to look only to the Borrower for payment and then only to the extent of the amount so repaid.

**Section 3.12. Cancellation.** All Bonds which have been redeemed shall be canceled and destroyed by the Trustee as provided in Section 5.03 hereof.

**Section 3.13. Bonds Redeemed in Part.** Any Bond which is to be redeemed only in part shall be surrendered (with due endorsement by, or a written instrument of transfer in form satisfactory to the Issuer and the Trustee duly executed in blank by, the Holder thereof or his attorney duly authorized in writing) and the Issuer shall execute and the Trustee shall authenticate and deliver to the Holder of such Bond, without service charge, a new Bond or Bonds, of any Authorized Denomination or Denominations as requested by such Holder, and in an aggregate principal amount equal to the unredeemed portion of the principal of the Bonds surrendered.

#### **Section 3.14. Holding and Purchase of Purchased Bonds.**

(a) Purchased Bonds (or beneficial interests therein) purchased pursuant to Section 3.06 or Section 3.07 hereof with monies provided under the Liquidity Facility shall be registered in the name of the Borrower or, at the option of the Liquidity Entity, in the name of the Liquidity Entity or its designee, shall be held by the Trustee in trust for the benefit of the Liquidity Entity, and shall not be transferred or exchanged by the Trustee until the Trustee has received from the Liquidity Entity notice by telephone (promptly confirmed in writing) or in writing or by telecopy, that the Liquidity Entity has been reimbursed (either by the Borrower or pursuant to a remarketing of the Bonds (or beneficial interests therein) by the Remarketing Agent) for the amounts disbursed under the Liquidity Facility to pay the Purchase Price of such Bonds (or beneficial interests therein), and that, unless the Bonds are thereafter to bear interest at the Bank Interest Rate, if not already reinstated, the commitment of the Liquidity Facility to purchase such Bonds (or beneficial interests therein) has been reinstated in the amount of the aggregate principal amount of such Bonds (or beneficial interests therein) plus the amount originally provided by the Liquidity Facility to pay the portion of the Purchase Price equal to the accrued interest, if any, on such Bonds (or beneficial interests therein). In such event, the Trustee shall then release such Bonds (or beneficial interests therein), and register the transfer of such Bonds (or beneficial interests therein) in the name or names of the Borrower or the new Registered Owners thereof as shall be provided by the Remarketing Agent by notice, as the case may be. Unless otherwise directed in writing by the Liquidity Entity, proceeds of the remarketing of such Purchased Bonds (or beneficial interests therein) shall be paid to the Liquidity Entity.

(b) Purchased Bonds (or beneficial interests therein) purchased pursuant to Section 3.06 or 3.07 hereof with proceeds of a drawing under the Credit Facility shall be registered in the name of the Borrower, or, at the option of the Credit Entity, in the name of the Credit Entity or its designee, shall be held by the Trustee in trust for the benefit of the Credit Entity and shall not be transferred or exchanged by the Trustee until the Trustee has received from the Credit Entity notice by telephone (promptly confirmed in writing) or in writing or by telecopy, that the Credit Entity has been reimbursed (either by the Borrower or pursuant to a remarketing of the Bonds (or beneficial interests therein) by the Remarketing Agent) for the drawing or portion of the drawing made under the Credit Facility to pay the Purchase Price of such Bonds (or beneficial interests therein), and that, unless the Bonds are thereafter to bear interest at the Bank Interest Rate, the Credit Facility has been reinstated in the amount of the aggregate principal amount of such Bonds (or beneficial interests therein) plus the amount originally drawn under the Credit Facility, if not already reinstated, to pay the portion of the Purchase Price equal to the accrued interest, if any, on such Bonds (or beneficial interests therein); and in such event, the Trustee shall then release such Bonds (or beneficial interests therein), and register the transfer of such Bonds in the name or names of the new Registered Owners thereof as shall be provided by the Remarketing Agent by notice. Unless otherwise directed in writing by the Credit Entity, proceeds of the remarketing of such Purchased Bonds (or beneficial interests therein) shall be paid to the Credit Entity.

**Section 3.15. Tender Fund.** In connection with the tender of any Bonds (or beneficial interests therein) hereunder, it shall be the duty of the Tender Agent or, if the Bonds are held in a book-entry only system, the Remarketing Agent, to hold the monies received by the Tender Agent or Remarketing Agent pursuant to Section 3.06 or 3.07 in accordance with the provisions of this Article, without liability for interest thereon, for the benefit of the former Holder of any

Untendered Bond, who shall thereafter be restricted exclusively to such monies for any claim of whatever nature on its part under this Indenture on, or with respect to, such Untendered Bond. Such monies shall be held in a separate and segregated fund by the Tender Agent or Remarketing Agent designated the "Tender Fund" and shall not be invested, and the Tender Agent or Remarketing Agent shall not be liable to the Issuer or the Borrower for any interest thereon, and any monies shall be held and applied as provided in Section 3.11 hereof.

The Trustee agrees that it will not furnish to the Tender Agent or Remarketing Agent any of the funds that are placed in the Tender Fund created under this Indenture and that no such funds shall be furnished by the Borrower or the Issuer, except as specifically authorized by this Indenture, and nothing herein shall be construed to permit the Tender Agent or the Remarketing Agent to accept funds of the Issuer or of the Borrower for the purpose of purchasing Tendered Bonds, except as specifically authorized by this Indenture. Neither the Borrower nor the Issuer shall have any interest in, or ability to withdraw funds from, the Tender Fund, and monies in the Tender Fund shall be used in accordance with this Indenture solely for the payment of the Purchase Price of Bonds tendered or deemed tendered to the Tender Agent, Remarketing Agent or Trustee for purchase.

**Section 3.16. Book-Entry Only System; Redemptions; Tender of Bonds.** The Issuer and Trustee acknowledge and agree that, while the Bonds are in the book-entry only system, references in this Article III regarding Bonds should be read, where applicable, to include beneficial interests therein and Bondholders or Registered Owners should be read to include Participants and/or Beneficial Owners, but (a) all rights of ownership must be exercised through DTC and the book-entry only system and (b) all notices that are to be given to Bondholders or Registered Owners will be given only to DTC, all pursuant to the terms and conditions of the Representation Letter. Bonds bearing interest at the Bank Interest Rate shall not be registered in the book-entry only system.

#### **ARTICLE IV.**

##### **GENERAL COVENANTS**

**Section 4.01. Payment of Principal and Interest.** The Issuer covenants that it will promptly pay the principal of, premium, if any, and interest on every Bond issued under this Indenture at the place, on the dates and in the manner, provided herein and in each said Bond according to the true intent and meaning thereof, but solely from the revenues and receipts and other amounts pledged for payment of the Bonds which are from time to time held by the Trustee in the Bond Fund (or, in the case of Bonds bearing interest at the Bank Interest Rate, from funds received by the Bank directly from payments from the Borrower). The principal of and interest and premium, if any, on the Bonds are payable solely from the revenues and receipts and other amounts due pursuant to the Loan Agreement (except to the extent paid out of monies attributable to the proceeds derived from the sale of the Bonds or to income from the temporary investment thereof) and from draws on the Credit Facility (and with respect to the Purchase Price of tendered Bonds, the Liquidity Facility) and nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer or the Borrower.

The Bonds are limited obligations of the Issuer, payable solely from revenues and receipts to be paid by the Borrower under the Loan Agreement and the Note and amounts credited to such payment under the terms of this Indenture, including amounts paid by the Credit Entity pursuant to the Credit Facility, and are secured under this Indenture by an

assignment to the Trustee of the Loan Agreement and the Note and all revenues and receipts payable by the Borrower thereunder.

Neither the Issuer, the State nor any other political subdivision of the State shall in any event be liable for the payment of the principal of, redemption premium, if any, or interest on any of the Bonds or for the performance of any pledge, obligation, or agreement undertaken by the Issuer except to the extent that monies pledged herein are sufficient therefor.

No officer, agent or employee of the Issuer shall be individually or personally liable for any payment on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

**Section 4.02. Performance of Covenants; Issuer.** The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining hereto. The Issuer covenants that it is duly authorized under the Constitution and laws of the State including particularly and without limitation, the Bond Ordinance, to issue the Bonds authorized hereby and to execute this Indenture, and to pledge its right in the revenues and receipts due pursuant to the Loan Agreement and the Note (other than Unassigned Rights), and other amounts pledged hereunder and to assign its rights in the Loan Agreement (other than the Unassigned Rights), that all action on its part for the execution and delivery of this Indenture has been duly and effectively taken, and that the Bonds in the hands of the owners thereof are and will be valid and enforceable limited obligations of the Issuer according to the terms thereof and hereof.

**Section 4.03. Instruments of Further Assurance.** The Issuer agrees that the Trustee (or the Bank in the case of Bonds bearing interest at the Bank Interest Rate) may defend its rights to the payments and other amounts due under the Loan Agreement and the Note for the benefit of the owners of the Bonds against the claims and demands of all persons whomsoever. The Issuer covenants that it will do, execute, acknowledge and deliver, such further acts, instruments and transfers as the Trustee (or the Bank, as applicable) may reasonably require for the better assuring, transferring, pledging, assigning and confirming unto the Trustee all and singular the rights assigned and the amounts pledged to the payment of the principal of, premium, if any, and interest on the Bonds. The Issuer covenants and agrees that, except as herein provided, it will not sell, convey, assign, pledge, encumber or otherwise dispose of any part of the revenues and receipts payable under the Loan Agreement, or its rights thereunder.

**Section 4.04. Recording and Filing.** The Trustee will take all actions, solely at the request and at the expense of the Borrower, necessary to facilitate the filing and recording by the Borrower of all continuations of financing statement related to this Indenture, the Loan Agreement, and all supplements thereto, in such manner and in such places as may from time to time be required by law in order to preserve and protect fully the security of the owners of the Bonds and the rights of the Trustee hereunder.

**Section 4.05. Inspection of Project Books.** Any books and records which may be in Issuer's possession relating to the Project and the payments and other amounts due pursuant to the Loan Agreement shall at all reasonable times be open to inspection by such accountants or other agencies as the Trustee, the Bank or the Borrower may from time to time designate.

**Section 4.06. List of Bondholders.** The Trustee will keep on file a list of names and addresses of the owners of all Bonds as from time to time registered on the registration books of

the Issuer maintained by the Trustee as Bond Registrar, together with the principal amount and numbers of such Bonds. The Trustee shall be under no responsibility with regard to the accuracy of said lists other than to accurately record the information furnished it. At reasonable times and under reasonable requirements established by the Trustee, said list may be inspected and copied by the Credit Entity, the Liquidity Entity, the Borrower or by owners (or a designated representative thereof) of 15% or more in principal amount of Bonds, such ownership and the authority of such designated representative to be evidenced to the satisfaction of the Trustee.

**Section 4.07. Exemption.** The Issuer covenants that it will at all times do and perform all acts and things necessary or desirable in order to assure that the interest on the Bonds will remain excludable from gross income for the purpose of computing federal income taxes under applicable law.

**Section 4.08. Arbitrage.** The Issuer shall not use any of the monies held by the Trustee under this Indenture in any manner which would result in the Bonds being classified as "arbitrage bonds" within the meaning of Section 148 of the Code.

**Section 4.09. Lack of Agreement Between Issuer and Borrower for Purchase of Bonds.** The Issuer hereby covenants and agrees that it shall not enter into any arrangement, formal or informal, with the Borrower (or any related person, as defined in Section 147 of the Code) pursuant to which the Borrower shall purchase the Bonds in an amount related to the amount of the Loan.

**Section 4.10. Notices to Rating Agency.** The Trustee shall notify each Rating Agency then rating the Bonds prior to the occurrence of any of the following events: (a) any change in the Trustee, Tender Agent, Remarketing Agent or any other fiduciary or agent serving under the Indenture, (b) any material amendment or supplement to the Indenture, the Loan Agreement, the Liquidity Facility, the Credit Facility, the Liquidity Facility Agreement or the Credit Facility Agreement, (c) the expiration, termination, extension or substitution of the Liquidity Facility or the Credit Facility, (d) the discharge of this Indenture pursuant to Article VII hereof, including, without limitation, upon payment in full of all Bonds, (e) the occurrence of any Rate Conversion Date, (f) any redemption of the Bonds, in whole or in part, or (g) any acceleration of the Bonds upon the occurrence of an Event of Default under this Indenture.

## **ARTICLE V.**

### **FUNDS AND APPLICATION OF REVENUES AND OTHER MATTERS**

**Section 5.01. Establishment of Funds and Accounts.** The following special funds and accounts shall be established and maintained pursuant to the provisions of this Indenture:

**(a) Bond Fund**

**(i) Credit Account**

**(ii) General Account**

**(b) Project Fund**

**(c) Rebate Fund**

## Section 5.02. Bond Fund.

(a) There is hereby created and established a "Bond Fund," which shall be held by the Trustee and which shall be used for the purpose of paying the principal and redemption price of and interest on the Bonds and of retiring such Bonds at or prior to maturity at the times and in the manner provided herein. All monies deposited in the Bond Fund shall be disbursed and applied by the Trustee at the times and in the manner provided in this Indenture.

(b) There are hereby created and established in the Bond Fund two accounts herein called the "Credit Account" and the "General Account." There shall be deposited into the respective accounts of the Bond Fund:

(i) To the Credit Account, all payments received pursuant to a draw on a Credit Facility to pay principal of, premium, if any (if premium is covered by the Credit Facility), and interest on the Bonds (other than Purchased Bonds); and

(ii) To the General Account, any amounts other than draws on a Credit Facility received by the Trustee for the payment of principal of, premium, if any, and interest on the Bonds, including proceeds to be used for capitalized interest, if any, and transfers from the Project Fund pursuant to Section 5.07.

(c) The Bond Fund shall be drawn upon for the purpose of paying the principal and redemption price of and interest on the Bonds with Eligible Funds. Payments from the Bond Fund shall be made first from the Credit Account and, if such amounts are not sufficient to pay the principal, premium (if the terms of the Credit Facility permit the payment of such) and interest then due on the Bonds, thereafter from the General Account. No monies from any source other than the proceeds of a draw on a Credit Facility shall be deposited into the Credit Account. Monies set aside from time to time with the Trustee and Paying Agent for the payment of such principal, redemption price and interest shall be held in trust for the Holders of the Bonds in respect of which the same shall have been so set aside. Until so set aside for the payment of principal, redemption price or interest as aforesaid, all monies in the Bond Fund shall be held in trust for the benefit of the Holders of all Bonds at the time outstanding equally and ratably and without any preference or distinction as between Bonds.

While a Credit Facility or Liquidity Facility is in effect, any amounts held in the General Account shall be payable first to the Credit Entity (to the extent of amounts certified in writing to the Trustee by the Credit Entity as being owed to it under the Credit Facility Agreement) second to the Liquidity Entity (to the extent of amounts certified in writing to the Trustee by the Liquidity Entity as being owed to it under the Liquidity Facility Agreement) and third to the Reimbursement Bank (to the extent of amounts certified in writing to the Trustee by the Reimbursement Bank as being owed to it under the Credit Facility Agreement).

(d) In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if Eligible Funds sufficient to pay such Bond shall have been deposited in the Bond Fund, all liability of the Issuer to the owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such monies, without liability for interest thereon, for the benefit of the owner of such Bond who shall thereafter be restricted exclusively to such monies, for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond. Such monies shall be held in a separate and segregated fund and shall not be invested.

Any monies so deposited with and held by the Trustee not so applied to the payment of Bonds for at least two years after the date on which the same shall have become due shall then be paid by the Trustee to the Borrower upon the written direction of the Authorized Borrower Representative, provided, however, that if the Borrower then owes any amounts to the Credit Entity and/or Liquidity Entity (as certified in writing by either or both of them to the Trustee), the Trustee shall pay such monies first to the Credit Entity, then to the Liquidity Entity (in each case to the extent of monies owed to them) and the balance, if any, to the Borrower. Thereafter Bondholders shall be entitled to look only to the Borrower for payment, the Borrower shall not be liable for any interest thereon and shall not be regarded as a trustee of such monies, and the Trustee shall have no further responsibilities with respect to such monies.

The obligation of the Trustee under this Section to pay any such funds to the Borrower shall be subject, however, to any provisions of law applicable to the Trustee or to such funds providing other requirements for disposition of unclaimed property.

(e) Whenever the assets of the Bond Fund shall be sufficient in the aggregate to provide Eligible Funds to pay, redeem or retire all Bonds then outstanding, including such interest thereon as may thereafter become due and payable to maturity or date of redemption, no further payments need be made into the Bond Fund.

(f) Any requirement that Eligible Funds be used or deposited hereunder shall not be effective if the Bonds have been converted to a Fixed Rate without a Credit Facility pursuant to Section 2.03(b) hereof, or when the Bonds bear interest at the Bank Interest Rate. In addition, while Bonds bear interest at the Bank Interest Rate, payments with respect to principal, premium, if any, and interest on the Bonds, may be made directly from the Borrower to the Bank upon written notice of such arrangement provided to the Trustee; provided, however, that in such cases, the Trustee receives prompt notice of any failure by the Borrower to make such payments to the Bank.

**Section 5.03. Disposition of Bonds Upon Payment.** All Bonds paid and redeemed by the Trustee (or the Bank, as applicable) under the provisions of this Indenture, either at or before maturity, shall be canceled when such payment or redemption is made, and such Bonds, unless then held by the Trustee, shall be delivered to the Trustee. All canceled Bonds shall from time to time be cremated or otherwise destroyed by the Trustee. The Trustee shall execute a certificate of cremation or other destruction describing the Bonds so cremated or otherwise destroyed and the executed certificate shall be retained by the Trustee. Upon the date of final maturity or redemption of all Bonds and provisions for the full payment thereof, the Trustee shall destroy any inventory of unissued certificates.

**Section 5.04. The Trustee's Maintenance of Records on Payment of Bonds.** In connection with the payment, redemption or purchase of all Bonds under the provisions of this Indenture, the Trustee shall keep or cause to be kept accurate records of the source of the monies used to pay, redeem or purchase such Bonds.

**Section 5.05. Project Fund.**

(a) There is hereby created and established a "Project Fund," which shall be held by the Trustee and disbursed by the Trustee at the request of the Borrower and with the consent of the Reimbursement Bank for payment of Costs of the Project in accordance with Section 3.03 of the Loan Agreement.



(b) If an Event of Default occurs under this Indenture, and the Trustee declares the principal of all Bonds and the interest accrued thereon to be due and payable at the direction of the Reimbursement Bank, no monies may be paid out of the Project Fund by the Trustee during the continuance of such an Event of Default, except that monies on deposit in the Project Fund may be transferred into the General Account of the Bond Fund as and when necessary for the purpose of (i) paying the Bonds as due as a result of such Event of Default or (ii) reimbursing the Credit Entity for any advances under the Credit Facility to pay the Bonds as due as a result of such Event of Default or (iii) reimbursing the Reimbursement Bank for any amounts it has paid to the Credit Entity for reimbursing draws made on the Credit Facility to pay the Bonds; provided, however, that if such an Event of Default shall be waived and such declaration shall be rescinded by the Trustee or the owners of the Bonds pursuant to the terms of this Indenture, the full amount of any such monies in the Project Fund may again be disbursed by the Trustee in accordance with the provisions of Section 3.03 of the Loan Agreement.

(c) The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom, and after the Project has been completed and a Completion Certificate filed as provided in Section 3.03 of the Loan Agreement, the Trustee shall file an accounting thereof with the Issuer, the Borrower and, at the request of the Credit Entity, the Credit Entity.

**Section 5.06. Application of Bond Proceeds.** The Trustee is hereby authorized to receive the proceeds of the Bonds for and on behalf of the Issuer and to give receipt therefor. The proceeds of the Bonds paid to the Trustee shall be deposited by the Trustee into the Project Fund.

**Section 5.07. Completion of the Project.** The completion of the Project and the payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the Completion Certificate required by the provisions of Section 3.03 of the Loan Agreement. Upon the earlier to occur of (a) the date which is three years after the Closing Date or (b) the date of receipt by the Trustee of the Completion Certificate, any balance remaining in the Project Fund (other than any amount retained by the Trustee for costs not then due and payable or the liability for which the Borrower is contesting or disputing) shall be deposited in the General Account of the Bond Fund and applied to the redemption of the Bonds pursuant to Section 3.01 hereof, or to reimburse the Credit Entity or for the Reimbursement Bank for draws used to pay such redemptions.

**Section 5.08. Rebate Fund.**

(a) There is hereby created by the Issuer and ordered maintained as a separate deposit account in the custody of the Trustee so long as any Bonds are Outstanding and are subject to a requirement of the Code that arbitrage profits be rebated to the United States of America, a trust fund to be designated as the "Rebate Fund." The Rebate Fund shall be administered in accordance with the terms and provisions of this Section 5.08 and the Tax Compliance Agreement. Except as provided herein and in the Tax Compliance Agreement, neither the Issuer, the Borrower nor any Holder shall have any rights in or claim to monies on deposit in the Rebate Fund.

(b) The Trustee (i) shall make deposits and disbursements from the Rebate Fund in accordance with the Tax Compliance Agreement, (ii) shall invest the amounts held in the Rebate Fund in Permitted Investments in accordance with the written instructions of

the Borrower, and (iii) shall deposit income from such investments immediately upon receipt thereof in the Rebate Fund. The Trustee shall make information relating to the receipt, investment, disbursement, allocation and application of money in the Funds and Accounts under this Indenture available to the Borrower and any rebate consultant selected by the Borrower (the "Rebate Consultant").

(c) The Trustee shall remit part or all of the balances in the Rebate Fund to the United States Treasury in accordance with the Tax Compliance Agreement and any directions provided to the Trustee by the Rebate Consultant. The Trustee shall have no obligation to rebate any amounts required to be rebated pursuant to this Section 5.08, other than from monies held in the Rebate Fund. Any balances remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any required rebate as specified by the Rebate Consultant, shall be remitted to the Borrower.

(d) The Issuer agrees to cooperate with the Borrower and the Trustee in the filing of any reporting forms required pursuant to Section 148 of the Code.

## ARTICLE VI.

### INVESTMENT OF FUNDS AND CREDIT FACILITY DRAWS

**Section 6.01. Investment of Funds and Accounts Held by the Trustee.** All monies held in the Bond Fund and the Project Fund shall be invested by the Trustee at the written direction (or oral direction confirmed in writing) of the Borrower in Investment Obligations, as provided in the Tax Compliance Agreement. Any monies held in the Bond Fund may be invested only in Investment Obligations rated no lower than the then-current rating on the Bonds or if the Bonds are not then rated, the then-current rating of the Credit Entity. Any monies drawn under the Liquidity Facility and the Credit Facility shall be held uninvested; provided, that monies from the Credit Facility drawn to pay interest prior to an Interest Payment Date while the Bonds bear interest at the Weekly Rate or Monthly Rate may be invested in Federal Obligations maturing on or before the next Interest Payment Date. It is expressly agreed that any Investment Obligation may be purchased by the Trustee notwithstanding that an affiliate of the Trustee has underwritten, privately placed or made a market for, any such Investment Obligation, or may in the future underwrite, privately place or make a market for any such Investment Obligation. Interest earnings on investments of amounts held in any Fund or Account shall be retained in such Fund or Account and used for the purposes of such Fund or Account.

**Section 6.02. Valuation.** In computing the amount in any fund or account held by the Trustee under the provisions of this Indenture, obligations purchased as an investment of monies therein shall be valued at the cost or market price thereof, whichever is lower, exclusive of accrued interest.

**Section 6.03. Sale of Investments.** The Trustee shall sell at the best price reasonably obtainable, or present for redemption, any obligation purchased by it as an investment whenever it shall be necessary in order to provide monies to meet any payment or transfer from the fund or account for which such investment was made. The Trustee shall provide the Borrower and the Credit Entity with a written statement, as of the last day of each month, listing all of the Investment Obligations, if any, held for the credit of each fund or account in its custody

under the provisions of this Indenture and supplements hereto as of the end of the preceding quarter.

**Section 6.04. Liability of the Trustee and Issuer for Investments.** The Borrower shall authorize, direct and confirm in writing all investments by the Trustee. The Trustee shall not be liable or responsible for the making of, or failure to make, any investment authorized by the provisions of this Article, in the manner provided in this Article, or for any loss resulting from any such investment so made, nor shall the Issuer have any liability in connection therewith.

**Section 6.05. Draws on the Credit Facility.** During the term of a Credit Facility, the Trustee shall accept and hold the Credit Facility, and shall draw monies under the Credit Facility in accordance with the terms thereof (a) in an amount equal to the amounts needed to pay principal of and interest on the Bonds (except Purchased Bonds and Borrower Bonds) when due (on an Interest Payment Date, upon acceleration, at a maturity, or otherwise); and (b) to pay the redemption price (including premium, if any, if covered by the Credit Facility) of Bonds on the applicable redemption date pursuant to Article III of this Indenture (except Purchased Bonds and Borrower Bonds).

In the event a confirming or standby Credit Facility is provided, the Trustee is directed to immediately draw on such Credit Facility upon failure of the Credit Entity whose Credit Facility is being so supported to honor a draw on such Credit Facility so that funds are received from the confirming or standby Credit Entity in time for the Trustee to make payments to Bondholders by 1:30 p.m., Chicago time on the date such payments are due to the Bondholders.

## ARTICLE VII.

### DISCHARGE OF LIEN

**Section 7.01. Defeasance.** If the Issuer shall pay or cause to be paid, or there shall otherwise be paid or provision for payment made, to the owners of the Bonds, the principal and interest due or to become due thereon at the times and in the manner stipulated therein, and if the Issuer shall pay or cause to be paid to the Trustee (or the Bank if Bonds are in the Bank Interest Rate Period and payments are being made directly from the Borrower to the Bank) all monies due or to become due according to the provisions hereof, and the Borrower shall pay or cause to be paid to the Credit Entity, the Liquidity Entity and the Reimbursement Bank all sums of money due or to become due according to the provisions of the Credit Facility Agreement and Liquidity Facility Agreement, respectively, then the estate and rights granted by this Indenture shall cease, determine and be void, whereupon the Trustee shall cancel and discharge the lien of this Indenture, and execute and deliver to the Issuer such instruments in writing as shall be requisite to release such lien, and reconvey, release, assign and deliver unto the Issuer any and all the estate, right, title and interest in and to any and all rights or property conveyed, assigned or pledged to the Trustee by this Indenture or otherwise subject to the lien of this Indenture, except cash or Federal Obligations held by the Trustee (or the Bank, as applicable) for the payment of the principal of, and premium, if any, and interest on the Bonds. Upon the release of the lien of this Indenture as provided in this Section 7.01, the Trustee will execute a notice of termination with respect to the Liquidity Facility and the Credit Facility and return the Liquidity Facility and the Credit Facility, respectively, to the Liquidity Entity and the Credit Entity.

Any Bond shall be deemed to be paid within the meaning of this Article and for all purposes of this Indenture when (a) payment of the principal of and premium, if any, on such Bond, plus interest thereon to the due date thereof, either (i) shall have been made or caused to

be made in accordance with the terms thereof or (ii) shall have been provided for by irrevocably depositing with the Trustee (or the Bank, as applicable), or held by a Depository on behalf of the Trustee pursuant to an investment agreement, in trust and irrevocably set aside exclusively for such payment, (A) Eligible Funds sufficient to make such payment without investment and/or (B) Federal Obligations, not subject to redemption prior to maturity, purchased with Eligible Funds, which Federal Obligations, maturing in such amount and at such times as verified by a verification agent (at the Borrower's expense) will ensure the availability of sufficient monies to make such payment and pay any Purchase Price to the owners of the Bonds, without reinvestment and (b) all necessary and proper fees, compensation and expenses of the Trustee and the Issuer pertaining to the Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee. At such times as a Bond shall be deemed to be paid hereunder, as aforesaid, it shall no longer be secured by or entitled to the benefits of this Indenture and the supplements hereto, except for the purposes of any such payment from such monies or Federal Obligations.

The Issuer hereby covenants that it will make no deposit hereunder and make no use of any such deposit which would cause the Bonds to be treated as arbitrage bonds within the meaning of Section 148(a) of the Code. Before accepting or using any such deposit, the Trustee may request an opinion of Bond Counsel as to whether such use or acceptance would cause the Bonds to be so treated and may conclusively rely on such opinion with regard thereto.

Notwithstanding any provision of any other Article of this Indenture which may be contrary to the provisions of this Article, all monies or Federal Obligations set aside and held in trust pursuant to the provisions of this Article for the payment of Bonds (including interest thereon) shall be applied to and used solely for the payment of the particular Bonds (including interest thereon) with respect to which such monies and Federal Obligations have been so set aside in trust.

The above notwithstanding, prior to any defeasance becoming effective under this Article VII, there must have been delivered to the Issuer and to the Trustee (a) an opinion of counsel experienced in federal tax matters and bankruptcy matters, addressed to the Issuer, the Trustee and the Credit Entity, to the effect that (i) interest on any Bonds being discharged by such defeasance will not become subject to federal income taxation by reason of such defeasance and (ii) payments of principal of, Purchase Price of, and interest on the Bonds from the proceeds of any such deposit to effectuate defeasance shall not constitute voidable preferences under Section 547 of the Bankruptcy Code in a case commenced under the Bankruptcy Code by or against the Issuer; (b) an opinion or certification from a nationally recognized firm of certified public accountants stating that any deposit made pursuant to this Section is sufficient to defease the Bonds in accordance with the terms hereof, and (c) if the Bonds do not bear interest at the Fixed Rate, written evidence from the Rating Agency then maintaining a rating on the Bonds, if any, that as a result of such defeasance the rating on the Bonds will not be reduced or withdrawn.

## ARTICLE VIII.

### REMEDIES OF TRUSTEE AND BONDHOLDERS UPON DEFAULT

**Section 8.01. Events of Default.** Each of the following events is hereby defined as and shall constitute an "Event of Default" with respect to the Bonds issued under this Indenture:

(a) Default in the due and punctual payment of interest on any Bonds, including without limitation the failure by the Credit Entity to honor a properly presented and conforming drawing under the Credit Facility;

(b) Default in the due and punctual payment of the principal of or premium on any Bond, whether at maturity or otherwise, including without limitation the failure by the Credit Entity to honor a properly presented and conforming drawing under the Credit Facility;

(c) Default in the payment of the Purchase Price of any Bond tendered or deemed tendered for purchase by the owner thereof in accordance with this indenture;

(d) Default in the performance or observance of any other of the covenants, promises, stipulations, agreements or conditions on the part of the Issuer contained in this Indenture for the benefit of the Bonds, and failure to remedy the same after notice thereof pursuant to Section 8.09 hereof;

(e) The occurrence of an Event of Default under the Loan Agreement or the Note;

(f) Receipt by the Trustee within the time period set forth in the Credit Facility or Liquidity Facility of written notice from the Credit Entity or Liquidity Entity that the interest component of the Credit Facility or the Liquidity Facility will not be reinstated following a drawing thereunder to pay interest on the Bonds or the interest component of the Purchase Price and directing the Trustee to accelerate the Bonds; and

(g) Receipt by the Trustee of written notice by the Reimbursement Bank, the Credit Entity, the Bank, or Liquidity Entity of an Event of Default under the Credit Facility Agreement or Liquidity Facility Agreement, respectively, and directing the Trustee to accelerate the Bonds.

If an Event of Default with respect to any of the Bonds at the time outstanding occurs and is continuing, then and in each and every such case, unless the principal of all Bonds has already become due and payable, the Trustee, by written notice to the Issuer and the Borrower (and if a Credit Facility is in then effect and the Credit Entity has not failed to honor a properly presented and conforming drawing thereunder, with the prior written approval of the Credit Entity), will declare the principal amount of all the Bonds to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, notwithstanding anything in this Indenture or in the Bonds to the contrary. Anything to the contrary herein notwithstanding without the prior consent of any other party, the Trustee will immediately, and in all events prior to the expiration of the Credit Facility, declare the principal amount of all the Bonds to be due and payable immediately if the Event of Default occurs under (f) or (g) above. The Trustee will immediately draw on the Credit Facility pursuant to its terms and upon such declaration, interest on the Bonds shall cease to accrue. The foregoing provisions are, however, subject to the condition that if, at any time after the principal amount of the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Issuer shall pay or shall deposit with the Trustee, but only from the sources herein described, a sum sufficient to pay all matured installments of interest upon the Bonds and the principal of and premium, if any, on any and all Bonds which shall have become due otherwise than by acceleration (with interest on overdue installments of interest, to the extent that payment of such

interest is enforceable under applicable law, and on such principal and premium, if any, at the rate of interest borne by the Bonds, to the date of such payment or deposit) and the reasonable expenses of the Trustee (including reasonable attorney's fees), and any and all defaults under this Indenture other than the nonpayment of principal of or premium, if any, or accrued interest on Bonds which shall have become due by acceleration, shall have been remedied, then and in every such case the Holders of a majority in aggregate principal amount of the Bonds then outstanding, by written notice to the Issuer and to the Trustee, may waive all defaults with respect to the Bonds and rescind and annul such declaration and its consequences, provided the Credit Entity has consented in writing to such rescission and annulment and the Credit Facility is in full force and effect, and has been reinstated in full, but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

**Section 8.02. Enforcement of Remedies.** Upon the happening and continuance of any Event of Default with respect to the Bonds, the Trustee, in its own name and as trustee of an express trust, on behalf of and for the benefit and protection of the Holders of all Bonds, may proceed to protect and enforce its rights and any rights of Issuer by such suits, actions or proceedings in equity or at law, either for the specific performance of any covenant or contract contained herein or in the Loan Agreement or in aid or execution of any power herein granted or for any proper, legal or equitable remedy as the Trustee shall deem most effectual to protect and enforce the rights aforesaid.

If an Event of Default shall have occurred with respect to the Bonds, and if requested in writing so to do by the owners of not less than 25% in aggregate principal amount of Bonds then outstanding, the Trustee shall be obligated to exercise one or more of the rights and powers conferred by this Article, as the Trustee, being advised by counsel, deems most expedient in the interests of the Holders.

Notwithstanding the foregoing provisions, if a Credit Facility shall then be in effect with respect to the Bonds, the Trustee may not, without the prior written consent of the Credit Entity, exercise any right or remedy hereunder with respect to the affected Bonds or under the Loan Agreement to accelerate the indebtedness thereunder so long as (a) the Credit Entity obligated under the Credit Facility then in effect with respect to such Bonds is not in default thereunder and is making the required payments with respect to principal of and interest on such Bonds and Purchase Price payments in accordance with such Credit Facility or (b) the Credit Entity is the owner of all such affected Bonds or all such Bonds are Purchased Bonds, provided that this restriction will not limit the right of the Trustee to apply monies on deposit under this Indenture to the payment of principal of, premium, if any, and interest on, the Bonds or the right of the Trustee or any Bondholder to make a claim for payment under a Credit Facility or take any other action to enforce the payment and performance of the Borrower's obligations under the Loan Agreement.

For Bonds bearing interest at the Bank Interest Rate, the Bank, upon written notice to the Trustee, shall have the right to control remedies and to waive defaults. In such case, the Trustee's responsibilities as described in this Section 8.02 shall cease until such time as the Bank directs in writing to the Trustee to rescind the enforcement of remedies.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Holders of the Bonds) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the

Trustee or to the Holders of the Bonds hereunder or now or hereafter existing at law or in equity or by statute.

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

No waiver of any default or Event of Default hereunder, whether by the Trustee or by the Holders of the Bonds to which such default or Event of Default relates shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

**Section 8.03. Right of Credit Entity or Bank to Direct Proceedings.** Anything in this Indenture to the contrary notwithstanding, the Credit Entity (or the Bank in the case of Bonds bearing interest at the Bank Interest Rate) shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, together with indemnity satisfactory to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture with respect to a default or Event of Default, or for the appointment of a receiver or any other proceedings hereunder, provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture; provided, that if there is at the time no Credit Entity or the Credit Entity has failed to honor a properly presented and conforming drawing under the Credit Facility, as applicable, the Holders of the majority in aggregate principal amount of the Bonds then outstanding, shall have the rights, subject to the conditions, described in this Section.

**Section 8.04. Priority of Payments After Default.** All monies received from draws on the Credit Facility or held pursuant to Section 7.01 of this Indenture will be applied exclusively to the payment of principal of, premium (if the Credit Facility provides for the payment of such), if any, and interest on the Bonds (other than Purchased Bonds or Borrower Bonds). All monies received from draws on the Liquidity Facility will be applied exclusively to the payment of the purchase price of Bonds which have been tendered and not remarketed. All other monies received by the Trustee pursuant to any right given or action taken under the provisions of this Article will be applied by the Trustee after payment of the costs and expenses of the proceedings resulting in the collection of such monies (including reasonable attorneys' fees) and of the charges, expenses and liabilities incurred and advances made by the Trustee, as follows:

(a) Unless the principal of all the Bonds shall have become or been declared due and payable:

**FIRST:** To the payment to the persons entitled thereto of all installments of interest then due on the Bonds (other than Borrower Bonds and Purchased Bonds) in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment, then to the payment thereof, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference;

**SECOND:** To the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds matured for the payment of which monies are held pursuant to the provisions of this Indenture and other

than Borrower Bonds and Purchased Bonds), and in the order of their due dates, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, then to the payment thereof ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege;

THIRD: To be held for the payment to the persons entitled thereto as the same shall become due of the principal of and interest on the Bonds (other than Borrower Bonds and Purchased Bonds) which may thereafter become due at maturity and, if the amount available shall not be sufficient to pay in full such Bonds due on any particular date, together with interest then due and owing thereon, payment on such Bonds shall be made ratably according to the amount of principal due on such date to the persons entitled thereto without any discrimination or privilege;

FOURTH: To the payment to the persons entitled thereto of Purchased Bonds, ratably without any discrimination or preference;

FIFTH: To the payment on behalf of the Borrower of all of the Borrower's obligations under the Credit Facility Agreement as shall be certified in writing by the Credit Entity and the Reimbursement Bank to the Trustee;

SIXTH: To the payment on behalf of the Borrower of all of the Borrower's obligations under the Liquidity Facility Agreement, as shall be certified in writing by the Liquidity Entity to the Trustee;

SEVENTH: To the payment of interest then due on the Borrower Bonds which are not Purchased Bonds;

EIGHTH: To the payment of the unpaid principal then due on Borrower Bonds which are not Purchased Bonds; and

NINTH: To be held for the payment of principal and interest which shall become due on Borrower Bonds which are not Purchased Bonds.

(b) If the principal of all the Bonds has become or been declared due and payable then, first, to the payment of the principal and interest then due and unpaid upon the Bonds (other than Borrower Bonds which are not Purchased Bonds) without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment, or of any such Bond over any other such Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference, and thereafter to the payment on behalf of the Borrower of all of the Borrower's obligations under the Credit Facility Agreement and Liquidity Facility Agreement, and thereafter to the payment of Borrower Bonds which are not Purchased Bonds.

(c) If the principal of all the Bonds has been declared due and payable, and if such declarations are thereafter rescinded and annulled under the provisions of this Article then, subject to the provisions of (b) above, in the event that the principal of all the Bonds later becomes due or is declared due and payable, the monies shall be applied in accordance with the provisions of (b) above.

Whenever monies are to be applied pursuant to the provisions of this Section, such monies will be applied at such times, and from time to time, as the Trustee shall determine,



having due regard to the amount of such monies available for application and the likelihood of additional monies becoming available for such application in the future. Whenever the Trustee applies such funds, it will fix the date (which shall be an Interest Payment Date unless it deems another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates will cease to accrue. The Trustee may give such notice as it deems appropriate of the deposit with it of any such monies and of the fixing of any such date, and is not required to make payment to the Holder until such Bond is presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all principal of and interest on all Bonds have been paid under the provisions of this Section, and all amounts owed pursuant to any Credit Facility Agreement and Liquidity Facility Agreement that is then in effect has been paid, any balance remaining in the Bond Fund held for the benefit of the Bonds shall be paid to the Borrower.

**Section 8.05. Remedies Vested in the Trustee.** All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as the Trustee without the necessity of joining as plaintiffs or defendants any owner of the Bonds, and any recovery of judgment shall be for the equal and ratable benefit of the Holders of the outstanding Bonds.

**Section 8.06. Rights and Remedies of Bondholders.** No Holder will have any right to institute any suit, action or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless (a) a default with respect to the Bonds held by such owner has occurred of which the Trustee has been notified as provided in Section 9.01(h) hereof, or of which by said subsection it is deemed to have notice, (b) such default shall have become an Event of Default and the Holders of not less than 25% in aggregate principal amount of Bonds then outstanding shall have made written notice to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in their own name or names, (c) they have offered to the Trustee indemnity as provided in Section 9.01(i) hereof and (d) the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name, and such notification, request and offer of indemnity are hereby declared in every case, at the option of the Trustee, to be a condition precedent to the execution of the powers under this Indenture or for any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal and ratable benefit of the owners of all Bonds then outstanding. However, nothing contained in this Indenture shall affect or impair the right of any Bondholders to enforce the payment of the principal of and interest on each of the Bonds issued hereunder to the respective owners thereof at the time and place, from the source and in the manner expressed in the Bonds.

**Section 8.07. Termination of Proceedings.** In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceeding shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee and the Holders of

the Bonds to which such proceeding related shall be restored to their former positions and rights hereunder, respectively, with regard to the property subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 8.08. Waivers of Events of Default.** The Trustee may at its discretion waive any Event of Default hereunder and its consequences, and shall do so upon the written request of the owners of (a) more than two-thirds in aggregate principal amount of all the Bonds then outstanding in respect to which default in the payment of principal or interest, or both, exists or (b) more than 50% in aggregate principal amount of all the Bonds then outstanding in the case of any other Event of Default, provided, however, that there shall not be waived (i) any Event of Default in the payment of the principal of any outstanding Bonds at the date of maturity or (ii) any default in the payment when due of the interest on any such Bonds unless, prior to such waiver or rescission, all arrears of interest or all arrears of payments of principal or both, when due, as the case may be, with interest on overdue principal at the rate borne by the Bonds, and all expenses of the 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 proceedings taken by the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee, and the owners of the Bonds 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 thereon. Notwithstanding anything herein to the contrary, if there is a Credit Facility and/or a Liquidity Facility in effect with respect to the Bonds, the Trustee shall not waive any Event of Default with respect to the Bonds without the prior written consent of the Credit Entity and/or the Liquidity Entity, as applicable, and, with respect to an Event of Default under Sections 8.01(f) and 8.01(g), a written notice of reinstatement of the Credit Facility and Liquidity Facility, respectively, and a written notice waiving such Event of Default under the Credit Facility Agreement and the Liquidity Facility Agreement must be provided to the Trustee. Notwithstanding anything herein to the contrary, the Trustee shall not waive any Event of Default under Section 8.01(g) arising from an Event of Default under the Credit Facility Agreement or the Liquidity Facility Agreement without the prior written consent of the Credit Entity or the Liquidity Entity, as applicable, and a written notice of rescission of such Event of Default under the Credit Facility Agreement or the Liquidity Facility Agreement.

**Section 8.09. Notice of Defaults Under Section 8.01(d); Opportunity of Issuer and Borrower to Cure Such Defaults.** Anything herein to the contrary notwithstanding, no default under Section 8.01(d) hereof shall constitute an Event of Default until actual notice of such default by registered or certified mail (postage prepaid) or telecopy shall be given to the Issuer (with a copy to the Borrower) by the Trustee, the Credit Entity or by the owners of not less than 25% in aggregate principal amount of all Bonds outstanding, if said default can be corrected, and the Issuer, or the Borrower on behalf of the Issuer shall have had 60 days after receipt of such notice to correct said default or cause said default to be corrected, and shall not have corrected said default or caused said default to be corrected within the applicable period, provided, however, if said default be such that it can be corrected but not within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer or the Borrower on behalf of the Issuer, within the applicable period and diligently pursued until the default is corrected.

## ARTICLE IX.

### TRUSTEE

**Section 9.01. Acceptance of the Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are expressly set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived), subject to subsection (1) hereof, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall not be answerable for the conduct of the same except for failure to select such agents in accordance with the standard specified above, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorneys (who may be the attorney or attorneys for the Issuer or the Borrower), approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital herein, or in the Bonds (other than the certificate of authentication), or for the validity of the execution by the Issuer of the Bonds or this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby and by indentures supplemental hereto.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may become the owner of Bonds secured hereby with the same rights which it would have if not the Trustee.

(e) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it in good faith to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed by an Authorized Issuer Representative or Authorized Borrower Representative as sufficient evidence of the facts therein contained and prior to the

occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may, at its discretion, secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the City Clerk of the Issuer under its seal to the effect that an ordinance in the form therein set forth has been adopted by the Issuer as conclusive evidence that such ordinance has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its gross negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except an Event of Default under Section 8.01(a), (b), (c), (f) or (g) hereunder, unless the Trustee shall be specifically notified in writing of such default by the Issuer, the Credit Entity, the Liquidity Entity or by the owners of at least 25% in aggregate principal amount of the Bonds then outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the Principal Office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid. Notwithstanding the foregoing, to the extent that Bonds bear interest at the Bank Interest Rate, the Trustee will not be required to take notice of payment defaults to the extent that payments on the Bonds are being made directly from the Borrower to the Bank, unless the Trustee has been provided with actual written notice of such payment default.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right fully to inspect any and all of the property herein or in indentures supplemental hereto conveyed, including all books, papers and records of Issuer pertaining to the revenues and receipts under the Loan Agreement and the Note, any arrangements for the servicing of the Loan and the Bonds, and to take such memoranda from and make copies thereof and in regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information or action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee. No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against risk or liability is not reasonably assured to it.

(l) Before taking any action hereunder, other than a drawing on a Credit Facility, the payment of principal of, interest or premium on the Bonds and other than an acceleration of the Bonds, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default by reason of any action so taken.

(m) All monies received by the Trustee or any Paying Agent will, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required herein or by law. Neither the Trustee nor any Paying Agent will be under any liability for interest on any monies received hereunder except such as may be agreed upon.

(n) The Trustee has the right and power to disclaim any interest which, in the Trustee's sole discretion, will or may cause the Trustee to be considered an "owner" or "operator" of property held subject to this Indenture, under the provisions of any Environmental Law as amended from time to time, or which shall otherwise cause the Trustee to incur liability under any Environmental Law, or any other federal, State or local law, rule or regulation. In the event of a default, the Trustee may, in its sole discretion, after being indemnified by the Bondholders, inspect, review and monitor, or require the inspection, review and monitoring of any and all property subject to this Indenture for the purpose of determining compliance with any law, rule or regulation affecting such property. All expenses of such inspection, review and monitoring shall be paid by the Bondholders.

**Section 9.02. Fees, Charges and Expenses of the Trustee.** The Trustee shall be entitled to its reasonable fees, charges and expenses for serving hereunder including those of its agents, counsel, servicer, Paying Agent and co-trustee. Such fees, charges and expenses shall be paid by the Borrower in accordance with this Indenture and the Loan Agreement. Upon an Event of Default, but only upon an Event of Default, the Trustee shall have a first lien with right of payment prior to payment on account of principal of and interest on any Bond upon the Trust Estate (other than monies received from draws on the Credit Facility or the Liquidity Facility or held pursuant to Section 7.01) for the charges and expenses incurred by it as described in Section 8.04.

**Section 9.03. Notice to Bondholders if Default Occurs.** If a default occurs of which the Trustee is by Section 9.01(h) hereof required to take notice or if notice of default be given as in Section 9.01(h) hereof provided, then the Trustee shall promptly give written notice thereof by registered or certified mail to the Credit Entity, the Liquidity Entity, the Issuer and the Borrower and by first-class mail to the owners of all Bonds then outstanding, shown by the list required by Section 4.06 hereof to be kept at the Principal Office of the Trustee.

**Section 9.04. Intervention by the Trustee.** In any judicial proceeding concerning the issuance or the payment of the Bonds to which the Issuer or the Borrower is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of owners of the Bonds, the Trustee may, to the extent permitted by the court, intervene on behalf of owners of the Bonds and shall do so, to the extent permitted by the court, if provided with indemnity satisfactory to the Trustee and requested in writing by the owners of at least 25% of the aggregate principal amount of the Bonds then outstanding.

**Section 9.05. Successor to the Trustee.** Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its 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, ipso facto shall be and become successor to the Trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretion, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding. Any such successor trustee shall give notice thereof to the Issuer, the Borrower, the Credit Entity, the Liquidity Entity and each Rating Agency then rating the Bonds.

**Section 9.06. Resignation by the Trustee.** The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 30 days' written notice by registered or certified mail to the Issuer, the Remarketing Agent, the Credit Entity, the Liquidity Entity, the Tender Agent and the Borrower and by first-class mail (postage prepaid) to the owner of each Bond shown by the list required by the terms of Section 4.06 hereof to be kept at the Principal Office of the Trustee. Such resignation shall not take effect until the appointment of a successor Trustee by the Borrower, the owners of the Bonds or by the Issuer as provided in Section 9.08 hereof. If a successor Trustee has not been appointed and has not accepted such appointment by the end of such 30-day period, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee, and the costs, expenses and reasonable attorneys' fees which are incurred by the Trustee in connection with such a proceeding shall be paid by the Borrower.

**Section 9.07. Removal of the Trustee.** The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee, the Issuer, the Credit Entity, the Liquidity Entity and the Borrower, and signed by the owners of a majority in aggregate principal amount of the Bonds then outstanding. The Borrower may remove the Trustee at any time with the consent of the Credit Entity, except during the existence of an Event of Default as defined in Section 8.01 hereof or the occurrence of any other event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, for such cause as shall be determined in the sole discretion of the Borrower by filing with the Trustee, the Issuer, the Credit Entity and the Liquidity Entity an instrument signed by an Authorized Borrower Representative. Any removal shall not take effect until the appointment of a successor Trustee by the Borrower, the owners of the Bonds or by the Issuer as provided in Section 9.08 hereof.

**Section 9.08. Appointment of Successor Trustee by the Bondholders; Temporary Trustee.** In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of action hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the Borrower so long as no event of default is existing hereunder or under the Loan Agreement, and if such event of default is existing then by the owners of a majority in aggregate principal amount of the Bonds then outstanding, by an instrument or concurrent instruments in writing signed by such owners, or by their attorneys in fact duly authorized and a copy of which shall be delivered personally or sent by registered mail to the Issuer and the Borrower. Nevertheless, in case of such vacancy, the Issuer, at the direction of the Borrower, shall promptly appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the owners of the Bonds in the manner above provided. If such vacancy shall continue for 30 days, the Trustee or any owner of Bonds may apply to any court of competent jurisdiction to appoint a successor Trustee and any such

temporary Trustee so appointed by the Borrower or court shall immediately and without further act be superseded by the Trustee so appointed by such owners. Notice of the appointment of a successor Trustee shall be given in the same manner as provided by Section 9.06 hereof with respect to the resignation of a Trustee. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing and shall have net assets of not less than \$30,000,000, or shall be wholly owned by a parent holding company with net assets of not less than \$30,000,000. Notwithstanding anything herein to the contrary, if there is a Credit Facility in effect with respect to the Bonds, the Credit Entity shall have the right to approve any successor Trustee in its sole discretion.

**Section 9.09. Concerning Any Successor Trustee.** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer, the Credit Entity and the Borrower an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estate, properties, rights, powers, trusts, duties and obligations of its predecessor, but such predecessor shall, nevertheless, execute and deliver an instrument transferring to such successor Trustee all the estate, properties, rights, powers and trusts of such predecessor hereunder, including the rights of the Trustee under the Credit Facility and the Liquidity Facility, except any rights to payment due or indemnification rights, and every predecessor Trustee shall deliver all securities and monies held by it as the Trustee hereunder to its or his successor upon payment of all amounts due to the predecessor Trustee. Should any instrument in writing from Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed or recorded by the successor Trustee in each recording office where this Indenture shall have been filed or recorded.

**Section 9.10. Designation and Succession of Paying Agents.** The Trustee is hereby appointed as Paying Agent hereunder. Any bank or trust company with or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Indenture. If the position of Paying Agent shall become vacant for any reason, the Borrower shall, within 30 days thereafter, appoint a bank or trust company located in the same city as such Paying Agent to fill such vacancy, provided, however, that if the Borrower shall fail to appoint such Paying Agent within said period, the Trustee shall make such appointment. The Paying Agent may resign upon notice to the Trustee and the Borrower. Other paying agents or fiscal agents may be appointed pursuant to Article IX hereof by the Borrower or the Issuer and approved by the Trustee if in its discretion additional paying agents or fiscal agents are deemed advisable. In each case the Paying Agent must be approved by the Credit Entity in its sole discretion. The Trustee hereby covenants and agrees to cause the necessary arrangements to be made for the making available of funds hereunder for the payment of the Bonds from the Bond Fund.

The Paying Agents shall enjoy the same protective provisions in the performance of their duties hereunder as are specified in Section 9.01 hereof with respect to the Trustee insofar as such provisions may be applicable.

Notice of the appointment of additional paying agents or fiscal agents shall be given in the same manner as provided by Section 9.08 hereof with respect to the appointment of a successor Trustee.

**Section 9.11. Appointment of Co-Trustee.** It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as the Trustee in such jurisdiction. It is recognized that, in case of litigation under this Indenture, the Loan Agreement, and, in particular, in case of the enforcement thereof on default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties in trust as herein or in indentures supplemental hereto granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or Co-Trustee. The following provisions of this Section are adapted to these ends. In each case, each separate or Co-Trustee must be approved by the Borrower and the Credit Entity in their sole discretion.

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

Should any instrument in writing from the Issuer be required by the separate or Co-Trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. In case any separate or Co-Trustee, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or Co-Trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such separate or Co-Trustee.

**Section 9.12. Remarketing Agent.** The Issuer hereby appoints \_\_\_\_\_ as the Remarketing Agent for the Bonds. The Remarketing Agent has designated its Principal Office to the Trustee, the Credit Entity, the Liquidity Entity, the Tender Agent, the Borrower and the Paying Agent and has signified its acceptance of the duties and obligations imposed upon it hereunder and pursuant to the Remarketing Agreement by execution of the Remarketing Agreement. Under the Remarketing Agreement, the Remarketing Agent has agreed (a) to compute the interest rates pursuant to and in accordance with the provisions hereof and give such notices thereof as are provided herein; and (b) to keep such books and records as shall be consistent with prudent industry practice, and to make such books and records available for inspection by the Trustee and the Borrower at all reasonable times.

The Remarketing Agent shall be a recognized municipal bond dealer, shall have a "net capital" of greater than or equal to \$10,000,000 and shall be authorized by law to perform all the duties imposed upon it by this Indenture and 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 to the Issuer, the Credit Entity, the Liquidity Entity,



the Borrower and the Trustee. The Remarketing Agent may be removed and be replaced at any time by the Borrower, by an instrument signed by the Borrower and filed with the Remarketing Agent, the Paying Agent, the Tender Agent, the Credit Entity, the Liquidity Entity and the Trustee and provided by first-class mail to all Bondholders not less than 30 days prior to the effective date of such removal and/or replacement, but only with the prior written consent of the Liquidity Entity and the Credit Entity. In the event no such successor Remarketing Agent is appointed, the Trustee shall assume the duties of the Remarketing Agent.

In the event of a resignation or discharge of the Remarketing Agent, the Borrower shall promptly appoint a successor Remarketing Agent reasonably acceptable to the Issuer, the Credit Entity and Liquidity Entity. If the Borrower fails to appoint a successor Remarketing Agent within 30 days after receipt of notice of resignation, then the Liquidity Entity may make such appointment. The resignation or discharge of the Remarketing Agent shall not be effective until a successor Remarketing Agent has been appointed.

During such period of time that the Bonds bear interest at the Bank Interest Rate, the Remarketing Agent shall have no duties or responsibilities with respect to the Bonds.

#### Section 9.13. Tender Agent.

(a) The Tender Agent shall be Amalgamated Bank of Chicago. The Tender Agent and any successor Tender Agent shall accept its duties hereunder by a written certificate or tender agent agreement delivered to the Trustee and the Borrower, which certificate or agreement shall designate the Principal Office of the Tender Agent.

(b) The Tender Agent may at any time resign by giving 30 days' notice to the Issuer, the Trustee, the Borrower, the Credit Entity, the Liquidity Entity and the Remarketing Agent. In no event, however, shall any resignation of the Tender Agent take effect until a successor Tender Agent shall have been appointed.

(c) The Tender Agent may be removed at any time by an instrument in writing delivered to the Trustee and the Tender Agent by the Borrower, with the prior written approval of the Credit Entity. In no event, however, shall any removal of the Tender Agent take effect until a successor Tender Agent shall have been appointed.

(d) If the Tender Agent shall resign or be removed or otherwise become incapable of acting, a successor may be appointed by the Borrower with the prior written approval of the Credit Entity. Any such successor shall be acceptable to the Trustee. Written notice of such appointment shall immediately be given by the Borrower to the Trustee, and the Issuer and the Trustee shall cause written notice of such appointment to be given to the Bondholders. If no successor to a Tender Agent has accepted appointment in the manner provided above within 30 days after the Tender Agent has given notice of its resignation as provided above, the Trustee shall serve as interim Tender Agent or shall appoint an agent to act in its stead.

(e) The Tender Agent shall be subject to all of the rights, immunities, privileges and obligations afforded to the Trustee pursuant to Article IX hereof.

(f) The Tender Agent shall have no duties or responsibilities during such time as the Bonds bear interest at the Bank Interest Rate.

## ARTICLE X.

### SUPPLEMENTAL INDENTURES

**Section 10.01. Supplemental Indentures Not Requiring Consent of Registered Owners.** The Issuer, by its duly authorized officers and without further action of its City Council, and the Trustee may, with the prior written consent of the Credit Entity but without consent of, or notice to, any of the Registered Owners, enter into an indenture or indentures supplemental to this Indenture for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture;
- (b) To grant or to confer upon the Trustee for the benefit of the Registered Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Registered Owners or the Trustee;
- (c) To subject to this Indenture additional revenues, properties or collateral;
- (d) To modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States of America, and, if they so determine, to add to this Indenture or any indenture supplemental hereto such other terms, conditions and provisions as may be permitted by said laws;
- (e) To evidence the appointment of a separate Trustee or a Co-Trustee or the succession of a new Trustee, Tender Agent, Remarketing Agent or Paying Agent hereunder;
- (f) To modify, amend or supplement this Indenture or any indenture supplemental hereto to provide for any modifications on any **Mandatory Tender Date**;
- (g) To modify, amend or supplement this Indenture with regard to obtaining or maintaining a rating on the Bonds based on a Credit Facility, Alternate Credit Facility, Liquidity Facility or Substitute Liquidity Facility, or in connection with the provision of an Alternate Credit Facility or Substitute Liquidity Facility; or
- (h) To make any other change that, in the judgment of the Trustee, does not materially adversely affect the rights of any Owners of the Bonds.

**Section 10.02. Supplemental Indentures Requiring Consent of Registered Owners.** Exclusive of supplemental indentures covered by Section 10.01 hereof, with the prior written consent of the Credit Entity, and subject to the terms and provisions contained in this Section and not otherwise, the owners of not less than a majority in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying; altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture, provided, however, that nothing in this Section or in Section 10.01

hereof shall permit, or be construed as permitting, without the consent of the owners of all outstanding Bonds, (a) a reduction in the principal amount of any Bond or the rate of interest thereon, (b) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, (c) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indentures, (d) the creation of any lien ranking prior to or on a parity with the lien of the Indenture on the Trust Estate or any part thereof, (e) deprivation of the owner of any Bond then outstanding of the lien created on the Trust Estate, (f) an extension of the maturity of the principal of or any interest payment on the Bonds, (g) eliminate or materially adversely change the Bondholder's right to optionally tender its Bonds, or (h) reduce the Purchase Price for any Bond.

If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be given by first-class mail to the owner of each Bond affected shown by the lists required by the terms of Section 4.06 hereof to be kept at the office of the Trustee. Such notices shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the Principal Office of the Trustee for inspection by all Bondholders. If, within 60 days or such longer period as shall be prescribed by the Issuer or the Trustee following such notices, the owners of not less than a majority in aggregate principal amount of the Bonds outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

**Section 10.03. Supplemental Indentures Requiring Consent of Borrower, Credit Entity and Liquidity Entity.** Anything in this Indenture or in any supplemental indenture to the contrary notwithstanding, so long as the Borrower is not in default under the Loan Agreement, and so long as the Credit Entity and Liquidity Entity have not failed to honor a properly presented and conforming drawing under the Credit Facility and Liquidity Facility, respectively, a supplemental indenture under this Article may not become effective unless and until the Borrower, the Credit Entity and the Liquidity Entity consent to the execution and delivery of such supplemental indenture.

## **ARTICLE XI.**

### **AMENDMENT OF DOCUMENTS**

**Section 11.01. Amendments, etc., to Loan Agreement Not Requiring Bondholder Consent.** The Issuer, by its duly authorized officers and without further action of its City Council, the Trustee and the Borrower may, without the consent of or notice to the Registered Owners, consent to any amendment, change or modification of the Loan Agreement as may be required (a) by the provisions of the Loan Agreement and this Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission, (c) so as to more precisely identify the Project described in the Loan Agreement or indentures supplemental hereto or substitute or add additional improvements or equipment to the Project or additional rights or interests in property acquired in accordance with the provisions of the Loan Agreement, (d) in connection with any

amendment to this Indenture pursuant to Section 10.01 hereof or (e) in connection with any other change therein which, in the judgment of the Trustee, is not to the prejudice of the Trustee or the Registered Owners of any Bonds; provided, that the consent of the Credit Entity and the Liquidity Entity shall be obtained for such amendments to the Loan Agreement (so long as the Credit Entity and Liquidity Entity have not failed to honor a properly presented and conforming drawing under the Credit Facility and Liquidity Facility, respectively).

**Section 11.02. Amendments, etc., to Documents Requiring Bondholder Consent.** Except for the amendments, changes or modifications as provided in Section 11.01 hereof, neither the Issuer, the Borrower nor the Trustee shall consent to any other amendment, change or modification of the Loan Agreement without mailing of notice and the written approval or consent of the owners of not less than a majority in aggregate principal amount of the Bonds at the time outstanding given as in this Section provided; however, that if such amendment, change, or modification shall be to reduce or extend the due date for the amounts due from the Borrower with respect to debt service under the Note, such consent must be given by 100% of the Holders of Bonds and provided further, however, that no amendment may be made without the consent of the Credit Entity and Liquidity Entity (so long as the Credit Entity and Liquidity Entity have not failed to honor a properly presented and conforming drawing under the Credit Facility and Liquidity Facility, respectively). If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification of the Loan Agreement, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided by Section 10.02 hereof with respect to supplemental indentures. Such notice 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 Principal Office of the Trustee for inspection by all Registered Owners of Bonds affected by such amendment, change or modification.

## ARTICLE XII.

### MISCELLANEOUS

**Section 12.01. Consents, etc., of Registered Owners.** Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Registered Owners may be in any number of concurrent documents and may be executed by such Registered Owners in person or by an agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument, namely:

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

(b) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by

the registration books of the Issuer maintained by the Trustee pursuant to Section 4.06 hereof.

**Section 12.02. Limitation of Rights.** With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person or company other than the parties hereto, the Tender Agent, the Remarketing Agent, the Credit Entity, the Liquidity Entity, the Borrower and the owners of the Bonds, any legal or equitable right, remedy or claim under or with respect to this Indenture or any covenants, conditions and provisions herein contained, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Tender Agent, the Remarketing Agent, the Borrower, the Credit Entity, the Liquidity Entity and the owners of the Bonds as herein provided.

**Section 12.03. Severability.** If any provision of this Indenture shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatsoever, provided, however, that no finding of illegality or unenforceability shall require payment by the Issuer of any funds from any source other than Revenues.

**Section 12.04. Notices.** Except as otherwise specifically provided herein, any notice, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, or sent by telecopy (with a hard copy to follow), or by commercial overnight delivery service, charges prepaid, addressed as follows:

if to the Issuer:

Department of Finance  
Room 600  
33 North LaSalle Street  
Chicago, IL 60603  
Attention: City Comptroller  
Telephone: (312) 744-3361  
Facsimile: (312) 744-0014

with a copy to:

Office of the Corporation Counsel  
Room 600  
City Hall  
121 North LaSalle Street  
Chicago, IL 60602  
Telephone: (312) 744-0200  
Facsimile: (312) 744-8538

And

Department of Housing and Economic Development  
Room 1006  
City Hall  
121 North LaSalle Street  
Chicago, IL 60602  
Attention: Deputy Commissioner  
Telephone: (312) 744-9475  
Facsimile: (312) 742-0264

if to the Borrower:

J and A, LLC  
4100 West Ferdinand Street  
Chicago, IL 60624  
Attention: Mr. Jerry Siegel  
Telephone: (773) 533-7397  
Facsimile: (773) 558-7555

if to the Trustee:

Amalgamated Bank of Chicago  
One W. Monroe Street, 3rd Floor  
Chicago, Illinois 60603  
Attention: April Lepic  
Telephone: (312) 822-3151  
Facsimile: (312) 267-8786

if to the Tender Agent:

Amalgamated Bank of Chicago  
One W. Monroe Street, 3rd Floor  
Chicago, Illinois 60603  
Attention: April Lepic  
Telephone: (312) 822-3151  
Facsimile: (312) 267-8786

if to the Remarketing Agent:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

if to the Bank:

First Bank and Trust  
1250 N. Arlington Heights Road, Suite 175  
Itasca, IL 60143  
Attention: Brogan Ptacin  
Telephone: (630) 250-3541  
Facsimile: (630) 250-3526

with a copy to:

and if to Rating Agency:

N/A

A duplicate copy of each notice required to be given hereunder by the Trustee to either the Issuer or the Borrower shall also be given to the other and to the Credit Entity, Liquidity Entity and each Rating Agency. Each addressee listed above may designate any further or different

addresses to which subsequent notices, certificates or other communications shall be sent by giving written notice to each other addressee listed above.

**Section 12.05. Payments Due on Saturdays, Sundays and Holidays.** In any case where the date of payment or performance hereunder shall not be a Business Day, then payment or performance 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 originally due and in the case of payment no interest shall accme for the period after such date.

**Section 12.06. Counterparts.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 12.07. Applicable Provisions of Law.** This Indenture shall be governed by and construed in accordance with the laws of the State without regards to conflict of law principles.

**Section 12.08. Rules of Interpretation.** Unless expressly indicated otherwise, references to Sections or Articles are to be construed as references to Sections or Articles of this instrmnt as originally executed. Use of the words "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to the Indenture and not solely to the particular portion in which any such word is used.

**Section 12.09. Captions.** The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Indenture.

**Section 12.10. References to Credit Entity and Liquidity Entity Ineffective During Certain Periods.** During any period of time which (a) no Credit Facility is in effect and no amounts remain unreimbursed to the Credit Entity under the Credit Facility Agreement or (b) the Credit Entity has not honored a properly presented and conforming drawing under the Credit Facility, references in this Indenture to the Credit Entity shall be ineffective. During any period of time in which (i) no Liquidity Facility is in effect and no amounts remain unreimbursed to the Liquidity Facility under the Liquidity Facility Agreement or (ii) the Liquidity Entity has not honored a properly presented and conforming drawing under the Liquidity Facility, references in this Indenture to the Liquidity Facility shall be ineffective.

**Section 12.11. Third Party Beneficiary.** The Issuer and the Trustee acknowledge that so long as the Credit Facility is in effect or any amount remains payable under the Credit Facility Agreement, the Credit Entity is an express third party beneficiary of the provisions of this Indenture, with the power to enforce the provisions hereof.

**Section 12.12. Consent and Directions in Writing; Authorized Representatives.** Any consent from, certification of or direction by the Liquidity Entity or the Credit Entity to be provided to the Trustee hereunder shall be in writing. Any consent, certification, request or direction by or from the Borrower or the Issuer shall be in writing and in each case shall be executed by an Authorized Borrower Representative or an Authorized Issuer Representative, respectively.

**Section 12.13. No Personal Liability.** No covenant or agreement contained in the Bonds or in this Indenture or any agreement or instrument in connection therewith or herewith shall be deemed to be the covenant or agreement of any present or future officer, agent,

employee or attorney or the Issuer in his individual capacity, and no such person, including any such person executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.



IN WITNESS WHEREOF, the Issuer has caused these presents to be signed in its name and behalf by its Chief Financial Officer, and to evidence its acceptance of the Tmsts hereby created, the Trustee has caused these presents to be signed and sealed in its name and behalf by its duly authorized officers, as of the date first above written.

(SEAL)

CITY OF CHICAGO

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Clerk

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chief Financial Officer

AMALGAMATED BANK OF CHICAGO,  
as Tmstee

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

[SEAL]

Attest:

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

J and A, LLC,  
an Illinois limited liability company

By: \_\_\_\_\_  
Name: Jerry I. Siegel  
Title: Manager

[SEAL]

Attest:

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

EXHIBIT A  
FORM OF BONDS  
UNITED STATES OF AMERICA  
STATE OF ILLINOIS

REGISTERED NO. R-1

CITY OF CHICAGO  
ENTERPRISE ZONE REVENUE BOND  
(J & A, LLC PROJECT), SERIES 2002

DATED DATE: Date of Issuance

CUSIP: 16752T AA 0

REGISTERED OWNER: \_\_\_\_\_

MATURITY DATE: December 1, 2032

INTEREST RATE DETERMINATION  
METHOD: Weekly

PRINCIPAL AMOUNT: \_\_\_\_\_ MILLION  
\_\_\_\_\_ HUNDRED \_\_\_\_\_ THOUSAND  
DOLLARS (\$ \_\_\_\_\_)

FOR VALUE RECEIVED, the City of Chicago (the "Issuer"), a municipality and home rule unit of local government, duly organized and validly existing under the Constitution and laws of the State of Illinois (the "State"), promises to pay to the Registered Owner named above, or registered assigns, but solely from the sources and in the manner hereinafter referred to, (a) the principal amount stated above on, unless called for earlier redemptiory or acceleration, the Maturity Date stated above and (b) the interest hereon from the dated date stated above at the rate established pursuant to the applicable interest rate determination method on each Interest Payment Date until the principal of this Bond is paid. The principal of and premium, if any, and interest on this Bond are payable in lawful money of the United States of America. The term "Interest Payment Date" means (a) in the case of the Weekly Rate, Bank Interest Rate and the Monthly Rate, (i) the first Business Day of each month, commencing on the first Business Day of January 2003, (ii) each Rate Conversion Date and (iii) the Maturity Date; and (b) in the case of the Adjustable Rate and the Fixed Rate, each June 1 and December 1, commencing with the first such June 1 or December 1 occurring after the Rate Conversion Date for the Adjustable Rate or Fixed Rate and each Rate Conversion Date. Principal of and premium, if any, on this Bond shall be payable when due to the Registered Owner upon presentation and surrender of this Bond at the principal corporate trust office of the Trustee, Amalgamated Bank of Chicago, an Illinois banking corporation located at One West Monroe Street, Chicago, Illinois 60603, Attention: Corporate Trust Department (together with any successor Trustee appointed pursuant to the hereinafter defined Indenture, the "Trustee"). Interest on this Bond shall be paid to the Registered Owner hereof whose name appears on the registration books kept by the Trustee as of the close of business on the applicable Regular or Special Record Date (as such record dates are defined below) (a) by check or draft mailed by first class mail on the Interest Payment Date to such Registered Owner at the address appearing in the registration books of the Trustee or (b) by wire transfer to such Registered Owner to an account in the continental United States if such Registered Owner is an owner of an aggregate principal amount of Bonds greater than or equal to \$1,000,000 and if such Registered Owner shall have given the Trustee in writing the wire transfer address of such Registered Owner not less than one day prior to the Record Date for that Interest Payment

Date; provided, however, that interest payable at the maturity of this Bond shall be paid only upon presentation and surrender of this Bond. A Registered Owner of an aggregate principal amount of Bonds greater than or equal to \$1,000,000 shall also have the right to have payment of the principal and premium on its Bonds to be made by wire transfer in accordance with and by following the procedures set forth in, the preceding sentence, provided such Registered Owner shall still be required to present and surrender its Bonds as provided above before any payment of principal or premium (whether by wire transfer or otherwise) shall be made. The term "Record Date" or "Regular Record Date" means (a) with respect to any Interest Payment Date when the Weekly Rate or the Monthly Rate is in effect, the Business Day next preceding that Interest Payment Date and (b) with respect to any Interest Payment Date when the Adjustable Rate or the Fixed Rate is in effect, the fifteenth day of the calendar month next preceding the month of the Interest Payment Date. If sufficient funds for the payment of interest becoming due on any Interest Payment Date are not on deposit with the Trustee on that date, the Trustee may establish a special interest payment date on which such overdue interest shall be paid and a special record date (the "Special Record Date") relating thereto.

Notwithstanding the foregoing, when the Bonds bear interest at the Bank Interest Rate, payments of principal of, premium, if any, and interest on the Bonds may be made directly by the Borrower to the Bank (as such term is defined in the Indenture) upon written notice of such arrangement being given to the Trustee. During any such time, notice of such payments (or failure to make such payments) shall be given to the Trustee.

The Bonds are issued pursuant to and in full compliance with the Constitution and laws of the State, particularly Section 6(a) of Article VII of the 1970 Constitution of the State and pursuant to an Ordinance of the Issuer adopted on July 31, 2002 as amended by an Ordinance of the Issuer adopted on November 6, 2002 and an Ordinance of the Issuer adopted on \_\_\_\_\_, 2011 (collectively, the "Bond Ordinance"), and an Amended and Restated Trust Indenture (the "Indenture") dated as of April 1, 2011, between the Issuer and the Trustee. THIS BOND AND INTEREST DUE HEREON SHALL NOT BE A GENERAL OBLIGATION, DEBT OR A LIABILITY OF EITHER THE ISSUER OR THE STATE AND DO NOT CONSTITUTE NOR GIVE RISE TO ANY PECUNIARY LIABILITY OR CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE ISSUER OR THE STATE, BUT SHALL BE A LIMITED OBLIGATION OF THE ISSUER PAYABLE SOLELY FROM AND SECURED BY THE "REVENUES" (AS DEFINED IN THE INDENTURE), FOR THE EQUAL AND RATABLY BENEFIT OF THE OWNERS, FROM TIME TO TIME, OF THE BONDS.

A director, officer, official, member, agent or employee of the Issuer shall not have any liability for any obligations of the Issuer or the Borrower under the Bonds, the Indenture or the Loan Agreement, or for any claim based on such obligations or their creation. The owner of this Bond by accepting this Bond waives and releases all such liability. The waiver and release are part of the consideration for the issuance of this Bond.

It is certified and recited that all acts and conditions necessary to be done or performed by the Issuer or to have happened precedent to and in the issuing of the Bonds in order to make them the legal, valid and binding limited obligation of the Issuer enforceable in accordance with their terms, and precedent to and in the execution and delivery of the Indenture and the hereinafter defined Loan Agreement, have been performed and have happened in regular and due form as required by law.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture until it shall have been authenticated by the manual

execution by the Trustee or the Tender Agent of the certificate of authentication endorsed hereon.

ALL CAPITALIZED TERMS USED BUT NOT DEFINED HEREIN SHALL HAVE THE RESPECTIVE MEANINGS ASSIGNED TO SUCH TERMS BY THE INDENTURE.

1. Structure of and Security for Bonds. This Bond is one of a duly authorized issue of Enterprise Zone Revenue Bonds (J & A, LLC Project), Series 2002 (the "Bonds") issued by the Issuer pursuant to the Indenture, aggregating in principal amount \$\_\_\_\_\_ and issued for the purpose of financing a portion of the costs of acquiring, constructing, improving and equipping a warehouse, office and storage facility located in an enterprise zone in the City of Chicago, to be owned and operated by the Borrower (as hereafter defined), and certain expenses incurred in connection with the issuance of the Bonds.

Each Bond is issued under and is to be secured and entitled to the protection given by the Indenture. The Indenture is on file in the offices of the Issuer and the Trustee, and reference is hereby made to the Indenture for a more complete description of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer, the Trustee and the Registered Owners of the Bonds, and the terms and conditions upon which this and all of the other Bonds are issued and secured, to all of the provisions of which Indenture each Registered Owner, by the acceptance hereof, assents.

Pursuant to the Amended and Restated Loan Agreement dated as of April 1, 2011 (the "Loan Agreement"), between the Issuer and J and A, LLC, an Illinois limited liability company (the "Borrower"), the Borrower is obligated to make loan payments to the Trustee (or directly to the Bank for Bonds bearing interest at the Bank Interest Rate) in the amounts and at the times corresponding to Bond Service Charges on and the tender purchase price (the "Purchase Price") of the Bonds. By the Indenture, the Issuer has assigned its right, title and interest in and to the Loan Agreement (except for the Issuer's "Unassigned Rights" as defined in the Indenture) to the Trustee as security for the payment of the Bond Service Charges and the Purchase Price. When originally issued, the Borrower caused a financial institution (the "Credit Entity") to issue to the Trustee an irrevocable, direct-pay letter of credit (the "Letter of Credit") in an initial stated amount equal to the principal amount of the Bonds, plus up to 45 days' interest on the Bonds at a maximum rate of 10% per annum. The Letter of Credit initially served as both the Credit Facility and Liquidity Facility under the Indenture, and the Credit Entity served as the initial Credit Entity and Liquidity Entity under the Indenture. The Indenture requires that the Trustee will use the Letter of Credit to pay (a) principal of and interest on the Bonds when due on Interest Payment Dates, stated maturity dates, redemption dates and any accelerated maturity date and (b) the Purchase Price of Bonds on each Tender Date, as provided in the Indenture.

When the Bonds bear interest at a Bank Interest Rate, the Bonds are not secured by a Letter of Credit and are payable solely from amounts paid to the Bank by the Borrower pursuant to the Loan Agreement and any further security agreement entered into by the Borrower and the Bank. The Initial Bank Interest Rate Period expires on March 31, 2016.

The Bonds have been issued pursuant to and in compliance with the Bond Ordinance, the Constitution and laws of the State of Illinois. The Bonds are limited obligations of the Issuer, and the Bond Service Charges thereon and the Purchase Price thereof shall be payable equally and ratably solely from the Revenues derived from the Loan Agreement, any Credit Facility and Liquidity Facility then in effect and as otherwise provided in the Indenture and the Loan Agreement.

2. Interest. The Bonds currently bear interest at the Bank Interest Rate, but may be converted to the Weekly Rate, Monthly Rate, the Adjustable Rate or the Fixed Rate, as provided in the Indenture. The Bonds could also be converted to another Bank Interest Rate following the expiration of the Initial Bank Interest Rate Period. The Bank Interest Rate, the Weekly Rate, the Monthly Rate and the Adjustable Rate may not exceed the lesser of 15% or the rate per annum specified in the then applicable Credit Facility or Liquidity Facility as the maximum interest rate per annum to be used in determining the amount of monies available for the payment of interest on the Bonds. Interest shall be paid in arrears on the Interest Payment Dates for the Bonds which are specified for each Rate Period in the Indenture.

During any Rate Period when the Bonds bear interest at the Bank Interest Rate, interest on the Bonds shall be computed on the basis of a 360-day year based on the actual number of days elapsed. During any Rate Period when the Bonds bear interest at the Weekly Rate or the Monthly Rate, interest on the Bonds shall be computed on the basis of a 365-day year (366 during any calendar or fiscal year containing a February 29) for the actual number of days elapsed during such Rate Period. During any Rate Period when the Bonds bear interest at the Adjustable Rate or during any period when the Bonds bear interest at the Fixed Rate, interest on the Bonds shall be computed on the basis of a 360-day year, consisting of twelve 30-day months. All determinations of any Weekly Rate, any Monthly Rate, any Adjustable Rate or a Fixed Rate shall be rounded to the nearest 0.01%. The Remarketing Agent and, in certain limited instances as provided in the Indenture, the Trustee, shall determine the Weekly Rate, the Monthly Rate, the Adjustable Rate and the Fixed Rate, but it shall be the duty of the Trustee to calculate the amount of interest payable for any period on the Bonds and due and owing to each Holder.

During any Rate Period when the Bonds bear interest at the Weekly Rate or the Monthly Rate or at the conclusion of any Rate Period when the Bonds bear interest at the Bank Interest Rate or the Adjustable Rate, the Borrower has the option (i) to select a new interest rate determination method for the Bonds (i.e., from the Weekly Rate to the Monthly Rate, Bank Interest Rate, the Adjustable Rate or the Fixed Rate; from the Monthly Rate to the Weekly Rate, the Bank Interest Rate, the Adjustable Rate or the Fixed Rate; from the Bank Interest Rate to the Weekly Rate, the Monthly Rate the Adjustable Rate or the Fixed Rate; or from the Adjustable Rate to the Weekly Rate, the Monthly Rate, the Bank Interest Rate or the Fixed Rate) or (ii) where the Bonds have, during the current Rate Period, been bearing interest at the Bank Interest Rate or the Adjustable Rate, to select a Bank Interest Rate or an Adjustable Rate with a Rate Period of the same or different length from the length of the current Rate Period; provided that, from and after such time as the Bonds bear interest at the Fixed Rate, the Borrower shall no longer have the option to select a different interest rate determination method for the Bonds. The Borrower may exercise this option as set forth in the Indenture. The redetermination of the method by which interest borne by the Bonds is to be calculated is a circumstance compelling a mandatory tender of Bonds.

For all Weekly and Monthly Rate Periods, the Weekly or Monthly Rate, as applicable, shall be the lowest interest rate which, in the sole and exclusive judgment of the Remarketing Agent (having due regard for prevailing financial conditions and the yields at which comparable securities are then being sold), would equal (but not exceed) the interest rate necessary to enable the Remarketing Agent to sell the Bonds (exclusive of accrued interest, if any) on the Rate Adjustment Date at a price equal to 100% of the principal amount thereof. For the Bank Interest Rate, the applicable rate shall be that

rate determined by the Bank and the Borrower pursuant to the terms and parameters set forth in the Indenture.

For all Adjustable Rate Periods and conversion to a Fixed Rate, the Adjustable Rate or the Fixed Rate, as applicable, shall be that interest rate which, if borne by Bonds, would, in the sole and exclusive judgment of the Remarketing Agent (having due regard for the length of the proposed Rate Period or the Fixed Rate, as applicable, prevailing financial conditions and the yields at which comparable securities are then being sold), equal (but not exceed) the lowest interest rate necessary to enable the Remarketing Agent to sell all of the Bonds (exclusive of accrued interest, if any) on the Rate Conversion Date at a price equal to 100% of the principal amount thereof.

Reference is made to Article II of the Indenture for additional provisions as to the interest rate determination method and the interest rate applicable to the Bonds.

3. **Redemption.** During any Rate Period when the Bonds bear interest at the Weekly Rate, Bank Interest Rate or the Monthly Rate, the Bonds are subject to optional redemption by the Issuer, exercised at the written direction of the Borrower delivered to the Issuer, the Trustee, and, except when the Bonds bear interest at the Bank Interest Rate, the Credit Entity and the Liquidity Entity, together with the written consent of the Credit Entity, at least 45 days prior to the proposed redemption date, in whole on any Business Day or in part on any Interest Payment Date at a redemption price of 100% of the principal amount redeemed, plus accrued interest, if any, thereon to the redemption date.

During any Rate Period when the Bonds bear interest at the Adjustable Rate or at the Fixed Rate, the Bonds are subject to optional redemption by the Issuer, exercised at the written direction of the Borrower delivered to the Issuer, the Trustee, the Credit Entity and the Liquidity Entity, together with the written consent of the Credit Entity, at least 45 days prior to the proposed redemption date, in whole on any Business Day or in part on any Interest Payment Date at the redemption prices (expressed as a percentage of the principal amount of the Bonds to be redeemed), plus accrued interest, if any, thereof to the redemption date as follows:

Length of Adjustable Rate Period, or Following Conversion to a Fixed Rate, Years Remaining from Rate Conversion <u>Date until the Maturity</u> <u>Date</u>	<u>Commencement of</u> <u>Redemption Period</u>	<u>Redemption Price</u>
More than ten years	Tenth anniversary of Rate Conversion Date	102%, declining by 1% on each succeeding anniversary of the tenth anniversary of the Rate Conversion Date until reaching 100%, and 100% thereafter
More than seven, but not more than ten years	Fifth anniversary of Rate Conversion Date	102%, declining by 1% on each succeeding anniversary of the fifth anniversary of the Rate Conversion Date until reaching 100%, and 100% thereafter

Length of Adjustable Rate Period,  
or Following Conversion to a Fixed  
Rate, Years Remaining from Rate  
Conversion Date until the Maturity

Date  
More than four, but not more than  
seven years

Commencement of  
Redemption Period

Third anniversary of  
Rate Conversion Date

Redemption Price

102%, declining by 1% on  
each succeeding anniversary  
of the third anniversary of the  
Rate Conversion Date until  
reaching 100%, and 100%  
thereafter

Four years or less

Non-callable

The foregoing notwithstanding, (a) if the Bonds bear interest at the Adjustable Rate and if any anniversary of the Rate Conversion Date falls on a date which is other than the first Business Day of a month, such anniversary shall be deemed to occur on the first Business Day of the month in which such anniversary falls and (b) if the Bonds bear interest at the Fixed Rate and if any anniversary of the Rate Conversion Date falls on a date which is other than the first calendar day of a month, such anniversary shall be deemed to occur on the first calendar day of the month in which such anniversary falls.

The Bonds are subject to mandatory redemption, in the maximum principal amount of Authorized Denominations permitted, from the balance of monies transferred to the Bond Fund as described in (ii) below, and not otherwise necessary for the payment of principal of, premium, if any, or interest on the Bonds within the next 12 months. Such redemption shall occur on the first Interest Payment Date upon which proper notice of redemption can be given following (i) delivery by the Borrower of the Completion Certificate pursuant to the Loan Agreement and (ii) the transfer of excess monies, if any, from the Project Fund to the Bond Fund pursuant to the Loan Agreement. Such Bonds shall be redeemed at a redemption price equal to the principal amount thereof without premium, plus accrued interest to the redemption date.

The Bonds are subject to mandatory redemption in whole on the earliest date after the required notice of redemption can be given following a Determination of Taxability but not less than 35 days following the Trustee's receipt of notice of such occurrence at a redemption price equal to the principal amount thereof, without premium, plus accrued interest to the redemption date. All of the Bonds outstanding on the redemption date selected shall be redeemed on that date, except the Bonds maturing prior to that date, but after the selection thereof, shall be retired on their maturity date at the same price as if they had been called for redemption on the redemption date.

During an Adjustable Rate Period or after interest on the Bond has been converted to a Fixed Rate, at the option of the Borrower, with the consent of the Credit Entity, the Bonds shall be subject to redemption in whole and not in part prior to maturity, at a redemption price of 100% of the principal amount to be redeemed plus accrued interest to the date fixed for redemption, upon the damage, destruction, condemnation of the Project, or the occurrence of certain events which render the continued operation of the Project uneconomic or impose unreasonable burdens or excessive liabilities on the Borrower, or the obligations of Borrower under the Loan Agreement become void, unenforceable or impracticable to perform in any material respect, all as more fully provided in the Indenture.

The Trustee shall provide notice by mail to the Registered Owner of redemptions at least 30 days and not more than 60 days prior to the date fixed for redemption as provided in the Indenture. Failure to duly give notice of redemption by mail to any particular bondholder, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds for which notice has been properly given. Reference is made to Article III of the Indenture for the provisions applicable to the redemption of the Bonds, including the selection of Bonds to be redeemed.

4. Optional and Mandatory Tender. During any Rate Period when the Bonds bear interest at the Weekly Rate or the Monthly Rate, any Bond may be tendered for purchase at the option of the Registered Owner thereof upon seven days written notice as provided in the Indenture, on any Business Day during the Weekly Rate Period and on the first Business Day of the month during the Monthly Rate Period. On any Rate Conversion Date, Bonds are subject to mandatory tender for purchase at a purchase price equal to the principal amount thereof plus accrued interest, if any. The Bonds are subject to mandatory tender on the third Business Day preceding the date specified in the Liquidity Facility or Credit Facility as the expiration date of said Liquidity Facility or Credit Facility (the "Expiration Date") if the Borrower has not delivered to the Trustee by the fortieth day prior to the Expiration Date a written copy of an extension of the Expiration Date of the Credit Facility or Liquidity Facility, as the case may be, or an Alternate Credit Facility or Substitute Liquidity Facility, as the case may be. The Bonds are subject to mandatory tender on the effective date of the substitution of an Alternate Credit Facility or a Substitute Liquidity Facility (the "Substitution Date") occurring while the Bonds are in a Weekly Rate Period or a Monthly Rate Period, subject to the right of the Registered Owner to retain all or a portion of its Bonds in Authorized Denominations as provided in the Indenture. Such mandatory tenders shall be at a purchase price equal to the principal amount thereof plus accrued interest, if any. The Trustee shall give a notice of any such mandatory tender to each Registered Owner by the thirtieth day prior to the Mandatory Tender Date, which shall state the Tender Date and payment instructions with respect to the purchase price.

The failure to receive notice of a mandatory tender or any defect in that notice as to any Bond shall not affect the validity of the proceeding for the mandatory tender for that Bond or any other Bond.

5. Transfer and Exchange of Bonds. The Bonds may be exchanged, at the option of their Owners, for other Bonds 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 or rates and maturing on the same date or dates as, the Bonds being exchanged. The exchange shall be made upon representation and surrender of the Bonds being exchanged at the principal corporate trust office of the Trustee together with an assignment duly executed by the Registered Owner or its duly authorized attorney in any form which shall be satisfactory to the Trustee. The Issuer or the Trustee shall not be required to issue, register or exchange any Bond during the period beginning with the Record Date and ending on the next Interest Payment Date, nor during the period beginning 15 days before the mailing of notice of redemption of Bonds and ending on the redemption date, except Bonds for which a notice of optional tender has been received by the Trustee when the Bonds bear interest at the Weekly Rate or Monthly Rate. 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 the Indenture, as Bonds surrendered upon transfer or exchange.

6. Amendments to Loan Agreement and Indenture. Without obtaining the consent of the Owners of the Bonds, the Issuer and the Trustee may consent to any



amendment, change or modification of the Loan Agreement or the Indenture as may be required among other reasons, to cure any ambiguity, inconsistency or formal defect or omission in the Loan Agreement or the Indenture, or to permit any other change therein which, in the judgment of the Trustee, is not to the prejudice of the owners of the Bonds. Other amendments to the Indenture and the Loan Agreement may be made by obtaining the consent of the Holders of not less than a majority in aggregate principal amount of the Bonds at the time outstanding, provided that certain amendments require the consent of all registered owners of the Bonds. Reference is made to Articles X and XI of the Indenture of the provisions permitting amendments of the Loan Agreement and the Indenture.

7. Default and Enforcement of Remedies. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. The Registered Owner of this Bond shall have no right to enforce the provisions of the Indenture or the Loan Agreement or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture or the Loan Agreement, or to institute, appear in or defend any suit or other proceedings with respect thereof, except as provided in the Indenture.

8. Limited Obligation. This Bond is a limited obligation of the Issuer and is payable solely out of the Revenues and other receipts, funds or monies derived from the Revenues derived from the Loan Agreement, any Credit Facility and Liquidity Facility then in effect and as otherwise provided in the Indenture and the Loan Agreement.

THE OBLIGATION OF THE ISSUER TO PAY PRINCIPAL OF THIS BOND; ANY INTEREST HEREON, THE PURCHASE PRICE AND REDEMPTION PREMIUMS WITH RESPECT HERETO DO NOT AND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OR AN OBLIGATION OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE PURVIEW OF ANY CONSTITUTIONAL LIMITATION OR STATUTORY PROVISION, OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF ANY OF THEM, BUT SHALL BE PAYABLE SOLELY FROM THE REVENUES AND RECEIPTS DERIVED FROM THE LOAN AGREEMENT, THE NOTE AND THE CREDIT FACILITY. NO OWNER OF THE BONDS SHALL HAVE THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF TO PAY ANY PRINCIPAL INSTALLMENT OF, REDEMPTION PREMIUM, IF ANY, OR INTEREST ON THE BONDS.

No recourse shall be had for the payment of 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 Indenture or the Loan Agreement against any past, present or future member, official, officer, agent or employee of the Issuer, or any member, official, officer, employee, director or trustee of any successor as such, either directly or through the Issuer or any successor, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such member, officer, official, employee, director, agent or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the Indenture or the Loan Agreement and the issuance of the Bonds.

9. Miscellaneous. This Bond is issued with the intent that the laws of the State of Illinois will govern for all purposes.

**IN WITNESS OF THE ABOVE**, the City of Chicago has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk and its corporate seal to be affixed hereon, all as of the date set forth above.

**CITY OF CHICAGO**

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

(SEAL)

Attest:

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

**CERTIFICATE OF AUTHENTICATION.**

This Bond is one of the Bonds described  
in the within-mentioned Indenture

Date of Registration and Authentication:

AMALGAMATED BANK OF CHICAGO, as  
Trustee

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

## FORM OF ASSIGNMENT

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 (Cuss) (Minor) Under Uniform Gifts to Minors Act (State)	—	Custodian
TEN COM	—	as tenants in common
TEN ENT	—	as tenants by the entireties
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.

For VALUE RECEIVED, the undersigned sells, assigns and transfers unto  
(Name and Address of Assignee)

the City of Chicago Enterprise Zone Revenue Bond (J & A, LLC Project), Series 2002 (the "Bond"), numbered \_\_\_\_\_, and does hereby irrevocably constitute and appoint \_\_\_\_\_ to transfer the Bond on the books kept for registration thereof with full power of substitution in the premises.

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

\_\_\_\_\_  
NOTICE: The signature of this Assignment must correspond with the name as it appears upon the face of the Bond in every particular, without alteration or enlargement or any change whatever.

NOTICE: Signature(s) must be guaranteed by a member of the New York Stock Exchange or a commercial bank or trust company.

Taxpayer I.D. No.

**EXHIBIT B**  
**BLANKET LETTER OF REPRESENTATIONS**  
**(See Attached)**

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Midway Moving & Storage, Inc.

Check ONE of the following three boxes:

Indicate whether the Disclosing Party submitting this EDS is:

1. ☒ the Applicant

OR

2. ☐ a legal entity holding a direct or indirect interest in the Applicant. State the legal name of the Applicant in which the Disclosing Party holds an interest: \_\_\_\_\_

OR

3. ☐ a legal entity with a right of control (see Section II.B.1.) State the legal name of the entity in which the Disclosing Party holds a right of control: \_\_\_\_\_

B. Business address of the Disclosing Party: 4100 West Ferdinand Street  
Chicago, IL 60624

C. Telephone: [REDACTED] Fax: [REDACTED] Email: jalegel@midwaymoving.com

D. Name of contact person: Jerry I. Siegel

E. Federal Employer Identification No. (if you have one): [REDACTED]

F. Brief description of contract, transaction or other undertaking (referred to below as the "Matter") to which this EDS pertains. (Include project number and location of property, if applicable):

Amendment ot J and A, LLC Empowerment Zone Bonds

G. Which City agency or department is requesting this EDS? Dept. of Housing and Economic Development

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person   | <input type="checkbox"/> Limited liability company       |
| <input type="checkbox"/> Publicly registered business corporation       | <input type="checkbox"/> Limited liability partnership   |
| <input checked="" type="checkbox"/> Privately held business corporation | <input type="checkbox"/> Joint venture                   |
| <input type="checkbox"/> Sole proprietorship                            | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                            | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust  | <input type="checkbox"/> Other (please specify)          |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Illinois

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

☐ Yes ☐ No ☒ N/A

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles of all executive officers and all directors of the entity.

NOTE: For not-for-profit corporations, also list below all members, if any, which are legal entities. If there are no such members, write "no members." For trusts, estates or other similar entities, list below the legal titleholder(s).

If the entity is a general partnership, limited partnership, limited liability company, limited liability partnership or joint venture, list below the name and title of each general partner, managing member, manager or any other person or entity that controls the day-to-day management of the Disclosing Party.

NOTE: Each legal entity listed below must submit an EDS on its own behalf.

Name

Title

Jerry I. Siegel

President and CEO

2. Please provide the following information concerning each person or entity having a direct or indirect beneficial interest (including ownership) in excess of 7.5% of the Disclosing Party. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture,

interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None." NOTE: Pursuant to Section 2-154-030 of the Municipal Code of Chicago ("Municipal Code"), the City may require any such additional information from any applicant which is reasonably intended to achieve full disclosure.

Name	Business Address	Percentage Interest in the Disclosing Party
NONE		

### SECTION III -- BUSINESS RELATIONSHIPS WITH CITY ELECTED OFFICIALS

Has the Disclosing Party had a "business relationship," as defined in Chapter 2-156 of the Municipal Code, with any City elected official in the 12 months before the date this EDS is signed?

☐ Yes

☒ No

If yes, please identify below the name(s) of such City elected official(s) and describe such relationship(s):

NA

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist, accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll.

"Lobbyist" means any person or entity who undertakes to influence any legislative or administrative action on behalf of any person or entity other than: (1) a not-for-profit entity, on an unpaid basis, or (2) himself. "Lobbyist" also means any person or entity any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.



Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
--	------------------	--	---

NA

(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under Municipal Code Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes      ☒ No      ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes      ☐ No

### B. FURTHER CERTIFICATIONS

1. Pursuant to Municipal Code Chapter 1-23, Article I ("Article I")(which the Applicant should consult for defined terms (e.g., "doing business") and legal requirements), if the Disclosing Party submitting this EDS is the Applicant and is doing business with the City, then the Disclosing Party certifies as follows: (i) neither the Applicant nor any controlling person is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any sister agency; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If Article I applies to the Applicant, the permanent compliance timeframe in Article I supersedes some five-year compliance timeframes in certifications 2 and 3 below.

2. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II.B.1. of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, within a five-year period preceding the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in clause B.2.b. of this Section V;
- d. have not, within a five-year period preceding the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, within a five-year period preceding the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

3. The certifications in subparts 3, 4 and 5 concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity. Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity); with respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor nor any Agents have, during the five years before the date this EDS is signed, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the five years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in a. or b. above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions of Municipal Code Section 2-92-610 (Living Wage Ordinance):

4. Neither the Disclosing Party, Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

5. Neither the Disclosing Party nor any Affiliated Entity is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the Bureau of Industry and Security of the U.S. Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

6. The Disclosing Party understands and shall comply with the applicable requirements of Chapters 2-55 (Legislative Inspector General), 2-56 (Inspector General) and 2-156 (Governmental Ethics) of the Municipal Code.

7. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

NA

---

---

---

---

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in Section 2-32-455(b) of the Municipal Code.

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in Chapter 2-32 of the Municipal Code. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in Chapter 2-32 of the Municipal Code. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in Section 2-32-455(b) of the Municipal Code) is a predatory lender within the meaning of Chapter 2-32 of the Municipal Code, explain here (attach additional pages if necessary):

NA

---

---

---

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING INTEREST IN CITY BUSINESS

Any words or terms that are defined in Chapter 2-156 of the Municipal Code have the same meanings when used in this Part D.

1. In accordance with Section 2-156-110 of the Municipal Code: Does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes ☒ No

NOTE: If you checked "Yes" to Item D.1., proceed to Items D.2. and D.3. If you checked "No" to Item D.1., proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D.1., provide the names and business addresses of the City officials or employees having such interest and identify the nature of such interest:

Name	Business Address	Nature of Interest
NA		

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

#### E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either 1. or 2. below. If the Disclosing Party checks 2., the Disclosing Party must disclose below or in an attachment to this EDS all information required by paragraph 2. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

☒ 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

☐ 2. The Disclosing Party verifies that, as a result of conducting the search in step 1 above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

---

---

---

---

## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995 who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

---

---

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995 have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in Paragraph A.1. above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A.1. and A.2. above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities".

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A.1. through A.4. above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

## **B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have ybu filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question 1. or 2. above, please provide an explanation:

---

## **SECTION VII – ACKNOWLEDGMENTS, CONTRACT INCORPORATION, COMPLIANCE, PENALTIES, DISCLOSURE**

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics and Campaign Financing Ordinances, Chapters 2-156 and 2-164 of the Municipal Code, impose certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of these ordinances and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N.

Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with the applicable ordinances.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other transactions with the City. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided on this EDS and any attachments to this EDS may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to Article I of Chapter 1-23 of the Municipal Code (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by Chapter 1-23 and Section 2-154-020 of the Municipal Code.

The Disclosing Party represents and warrants that:

F.1. The Disclosing Party is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, nor are the Disclosing Party or its Affiliated Entities delinquent in paying any fine, fee, tax or other charge owed to the City. This includes, but is not limited to, all water charges, sewer charges, license fees, parking tickets, property taxes or sales taxes.

F.2 If the Disclosing Party is the Applicant, the Disclosing Party and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed by the U.S. E.P.A. on the federal Excluded Parties List System ("EPLS") maintained by the U. S. General Services Administration.

F.3 If the Disclosing Party is the Applicant, the Disclosing Party will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in F.1. and F.2. above and will not, without the prior written consent of the City, use any such contractor/subcontractor that does not provide such certifications or that the Disclosing Party has reason to believe has not provided or cannot provide truthful certifications.



NOTE: If the Disclosing Party cannot certify as to any of the items in F.1., F.2. or F.3. above, an explanatory statement must be attached to this EDS.

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS and Appendix A (if applicable) on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS and Appendix A (if applicable) are true, accurate and complete as of the date furnished to the City.

**Midway Moving & Storage, Inc.**

(Print or type name of Disclosing Party)

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

(Sign here)

**Jerry I. Siegel**

(Print or type name of person signing)

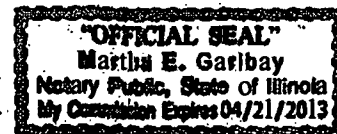
**President & CEO**

(Print or type title of person signing)

Signed and sworn to before me on (date) February 9, 2011,  
at Cook County, Illinois (state).

Martha E. Garibay Notary Public.

Commission expires: 4/21/2013



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5 percent. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under Municipal Code Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5 percent ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

---

---

---

(DO NOT SUBMIT THIS PAGE WITH YOUR EDS. The purpose of this page is for you to recertify your EDS prior to submission to City Council or on the date of closing. If unable to recertify truthfully, the Disclosing Party must complete a new EDS with correct or corrected information)

### RECERTIFICATION

Generally, for use with City Council matters. Not for City procurements unless requested.

This recertification is being submitted in connection with Amendment of J and A, LLC Empowerment [identify the Matter]. Under penalty of perjury, the person signing below: (1) warrants that Zone Bonds he/she is authorized to execute this EDS recertification on behalf of the Disclosing Party, (2) warrants that all certifications and statements contained in the Disclosing Party's original EDS are true, accurate and complete as of the date furnished to the City and continue to be true, accurate and complete as of the date of this recertification, and (3) reaffirms its acknowledgments.

Midway Moving and Storage, Inc.

Date: 3/18/11

(Print or type legal name of Disclosing Party)

By:

(sign here)

Print or type name of signatory:

Jerry I. Siegel

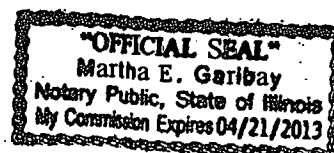
Title of signatory:

President and CEO

Signed and sworn to before me on [date] 3/18/11, by Jerry Siegel, at Cook County, Illinois [state].

Martha E. Garibay Notary Public.

Commission expires: 4/21/2013



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

**A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:**

J and A, LLC

**Check ONE of the following three boxes:**

**Indicate whether the Disclosing Party submitting this EDS is:**

1. ☒ the Applicant

**OR**

2. ☐ a legal entity holding a direct or indirect interest in the Applicant. State the legal name of the Applicant in which the Disclosing Party holds an interest: \_\_\_\_\_

**OR**

3. ☐ a legal entity with a right of control (see Section II.B.1.) State the legal name of the entity in which the Disclosing Party holds a right of control: \_\_\_\_\_

**B. Business address of the Disclosing Party:** 4100 West Ferdinand Street  
Chicago, IL 60624

**C. Telephone:** [REDACTED] **Fax:** [REDACTED] **Email:** jaiegei@midwaymoving.com

**D. Name of contact person:** Jerry I. Siegel

**E. Federal Employer Identification No. (if you have one):** [REDACTED]

**F. Brief description of contract, transaction or other undertaking (referred to below as the "Matter") to which this EDS pertains. (Include project number and location of property, if applicable):**

Amendment of J and A, LLC Empowerment Zone Bodds

**G. Which City agency or department is requesting this EDS?** Dept. of Housing & Economic Development

**If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:**

**Specification #** \_\_\_\_\_ **and Contract #** \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |   |
|---|---|
| <input type="checkbox"/> Person                                   | <input checked="" type="checkbox"/> Limited liability company |
| <input type="checkbox"/> Publicly registered business corporation | <input type="checkbox"/> Limited liability partnership        |
| <input type="checkbox"/> Privately held business corporation      | <input type="checkbox"/> Joint venture                        |
| <input type="checkbox"/> Sole proprietorship                      | <input type="checkbox"/> Not-for-profit corporation           |
| <input type="checkbox"/> General partnership                      | (Is the not-for-profit corporation also a 501(c)(3))?         |
| <input type="checkbox"/> Limited partnership                      | <input type="checkbox"/> Yes <input type="checkbox"/> No      |
| <input type="checkbox"/> Trust                                    | <input type="checkbox"/> Other (please specify)               |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Illinois

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

☐ Yes ☐ No ☒ N/A

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles of all executive officers and all directors of the entity.

NOTE: For not-for-profit corporations, also list below all members, if any, which are legal entities. If there are no such members, write "no members." For trusts, estates or other similar entities, list below the legal titleholder(s).

If the entity is a general partnership, limited partnership, limited liability company, limited liability partnership or joint venture, list below the name and title of each general partner, managing member, manager or any other person or entity that controls the day-to-day management of the Disclosing Party. NOTE: Each legal entity listed below must submit an EDS on its own behalf

Name

Title

Jerry I. Siegel

President/CEO/Manager

2. Please provide the following information concerning each person or entity having a direct or indirect beneficial interest (including ownership) in excess of 7.5% of the Disclosing Party. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture,

interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None." NOTE: Pursuant to Section 2-154-030 of the Municipal Code of Chicago ("Municipal Code"), the City may require any such additional information from any applicant which is reasonably intended to achieve full disclosure.

Name	Business Address	Percentage Interest in the Disclosing Party
------	------------------	---

NONE

### SECTION III -- BUSINESS RELATIONSHIPS WITH CITY ELECTED OFFICIALS

Has the Disclosing Party had a "business relationship," as defined in Chapter 2-156 of the Municipal Code, with any City elected official in the 12 months before the date this EDS is signed?

☐ Yes

☒ No

If yes, please identify below the name(s) of such City elected official(s) and describe such relationship(s):

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist, accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll.

"Lobbyist" means any person or entity who undertakes to influence any legislative or administrative action on behalf of any person or entity other than: (1) a not-for-profit entity, on an unpaid basis, or (2) himself. "Lobbyist" also means any person or entity any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
Retained-Daley & George	20 S. Clark, Suite 400 - Counsel Chicago, IL 60603		\$ 25,000 Estimated
Retained-Total Capital Solutions	29 Iowa St. - Adlsor Oak Park, IL 60302		\$ 12,500 Estimated

(Add sheets if necessary)

☐ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V – CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under Municipal Code Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes      ☒ No      ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes      ☐ No

### B. FURTHER CERTIFICATIONS

1. Pursuant to Municipal Code Chapter 1-23, Article I ("Article I")(which the Applicant should consult for defined terms (e.g., "doing business") and legal requirements), if the Disclosing Party submitting this EDS is the Applicant and is doing business with the City, then the Disclosing Party certifies as follows: (i) neither the Applicant nor any controlling person is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any sister agency; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If Article I applies to the Applicant, the permanent compliance timeframe in Article I supersedes some five-year compliance timeframes in certifications 2 and 3 below.

2. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II.B.1. of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, within a five-year period preceding the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in clause B.2.b. of this Section V;
- d. have not, within a five-year period preceding the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, within a five-year period preceding the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

3. The certifications in subparts 3, 4 and 5 concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity. Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity); with respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").



Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor nor any Agents have, during the five years before the date this EDS is signed, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the five years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in a. or b. above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions of Municipal Code Section 2-92-610 (Living Wage Ordinance).

4. Neither the Disclosing Party, Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

5. Neither the Disclosing Party nor any Affiliated Entity is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the Bureau of Industry and Security of the U.S. Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List; the Entity List and the Debarred List.

6. The Disclosing Party understands and shall comply with the applicable requirements of Chapters 2-55 (Legislative Inspector General), 2-56 (Inspector General) and 2-156 (Governmental Ethics) of the Municipal Code.

7. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

NA

---

---

---

---

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in Section 2-32-455(b) of the Municipal Code.

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in Chapter 2-32 of the Municipal Code. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in Chapter 2-32 of the Municipal Code. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in Section 2-32-455(b) of the Municipal Code) is a predatory lender within the meaning of Chapter 2-32 of the Municipal Code, explain here (attach additional pages if necessary):

NA

---

---

---

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING INTEREST IN CITY BUSINESS

Any words or terms that are defined in Chapter 2-156 of the Municipal Code have the same meanings when used in this Part D.

1. In accordance with Section 2-156-110 of the Municipal Code: Does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes ☒ No

NOTE: If you checked "Yes" to Item D.1., proceed to Item D.2. and D.3. If you checked "No" to Item D.1., proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D.1., provide the names and business addresses of the City officials or employees having such interest and identify the nature of such interest:

Name

Business Address

Nature of Interest

---

---

---

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

#### E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either 1. or 2. below. If the Disclosing Party checks 2., the Disclosing Party must disclose below or in an attachment to this EDS all information required by paragraph 2. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

☒ 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records:

☐ 2. The Disclosing Party verifies that, as a result of conducting the search in step 1 above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

---

---

---

---

## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE:** If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995 who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

---

---

---

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995 have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in Paragraph A.1. above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A.1. and A.2. above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities".

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A.1. through A.4. above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

## **B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question 1. or 2. above, please provide an explanation:

---

---

## **SECTION VII — ACKNOWLEDGMENTS, CONTRACT INCORPORATION, COMPLIANCE, PENALTIES, DISCLOSURE**

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics and Campaign Financing Ordinances, Chapters 2-156 and 2-164 of the Municipal Code, impose certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of these ordinances and a training program is available online at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N.

Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with the applicable ordinances.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other transactions with the City. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided on this EDS and any attachments to this EDS may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to Article I of Chapter 1-23 of the Municipal Code (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by Chapter 1-23 and Section 2-154-020 of the Municipal Code.

The Disclosing Party represents and warrants that:

F.1. The Disclosing Party is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, nor are the Disclosing Party or its Affiliated Entities delinquent in paying any fine, fee, tax or other charge owed to the City. This includes, but is not limited to, all water charges, sewer charges, license fees, parking tickets, property taxes or sales taxes.

F.2. If the Disclosing Party is the Applicant, the Disclosing Party and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed by the U.S. E.P.A. on the federal Excluded Parties List System ("EPLS") maintained by the U. S. General Services Administration.

F.3. If the Disclosing Party is the Applicant, the Disclosing Party will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in F.1. and F.2. above and will not, without the prior written consent of the City, use any such contractor/subcontractor that does not provide such certifications or that the Disclosing Party has reason to believe has not provided or cannot provide truthful certifications.

NOTE: If the Disclosing Party cannot certify as to any of the items in F.1., F.2. or F.3. above, an explanatory statement must be attached to this EDS.

### CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS and Appendix A (if applicable) on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS and Appendix A (if applicable) are true, accurate and complete as of the date furnished to the City.

J and A, LLC

(Print or type name of Disclosing Party)

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

(Sign here)

Jerry I. Siegel

(Print or type name of person signing)

President and CEO

(Print or type title of person signing)

Signed and sworn to before me on (date) February 9, 2011,  
at Cook County, Illinois (state).

Martina E. Garbay Notary Public.

Commission expires: 4/21/2013



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5 percent. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under Municipal Code Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5 percent ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

---

---

---



(DO NOT SUBMIT THIS PAGE WITH YOUR EDS. The purpose of this page is for you to recertify your EDS prior to submission to City Council or on the date of closing. If unable to recertify truthfully, the Disclosing Party must complete a new EDS with correct or corrected information)

### RECERTIFICATION

Generally, for use with City Council matters. Not for City procurements unless requested.

This recertification is being submitted in connection with Amendment of J and A, LLC Empowerment [identify the Matter]. Under penalty of perjury, the person signing below: (1) warrants that Zone Bonds he/she is authorized to execute this EDS recertification on behalf of the Disclosing Party, (2) warrants that all certifications and statements contained in the Disclosing Party's original EDS are true, accurate and complete as of the date furnished to the City and continue to be true, accurate and complete as of the date of this recertification, and (3) reaffirms its acknowledgments.

J and A, LLC  
(Print or type legal name of Disclosing Party)

Date: 3/18/11

By:

(sign here)

Print or type name of signatory:

Jerry I. Siegel

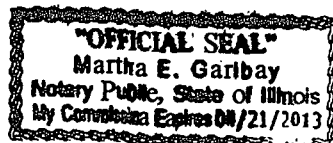
Title of signatory:

President, CEO and Manager

Signed and sworn to before me on [date] 3/18/2011, by  
Jerry Siegel, at Cook County, Illinois [state].

Martha E. Garbay Notary Public.

Commission expires: \_\_\_\_\_



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Peck, Shaffer & Williams LLP

Check ONE of the following three boxes:

Indicate whether the Disclosing Party submitting this EDS is:

1. ☒ the Applicant

OR

2. ☐ a legal entity holding a direct or indirect interest in the Applicant. State the legal name of the Applicant in which the Disclosing Party holds an interest: \_\_\_\_\_

OR

3. ☐ a legal entity with a right of control (see Section II.B.1.) State the legal name of the entity in which the Disclosing Party holds a right of control: \_\_\_\_\_

B. Business address of the Disclosing Party: 30 N. LaSalle St., Suite 2010  
Chicago, IL 60602

C. Telephone: [REDACTED] Fax: [REDACTED] Email: tsmith@peckshaffer.com

D. Name of contact person: Thomas C. Smith

E. Federal Employer Identification No. (if you have one): [REDACTED]

F. Brief description of contract, transaction or other undertaking (referred to below as the "Matter") to which this EDS pertains. (Include project number and location of property, if applicable):

City of Chicago, Enterprise Zone Eevenue Bonds (J&A, LLC Project),  
Series 2002-Amendments

G. Which City agency or department is requesting this EDS? Housing and Economic Development

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |   |
|---|---|
| <input type="checkbox"/> Person                                   | <input type="checkbox"/> Limited liability company                |
| <input type="checkbox"/> Publicly registered business corporation | <input checked="" type="checkbox"/> Limited liability partnership |
| <input type="checkbox"/> Privately held business corporation      | <input type="checkbox"/> Joint venture                            |
| <input type="checkbox"/> Sole proprietorship                      | <input type="checkbox"/> Not-for-profit corporation               |
| <input type="checkbox"/> General partnership                      | (Is the not-for-profit corporation also a 501(c)(3))?             |
| <input type="checkbox"/> Limited partnership                      | <input type="checkbox"/> Yes <input type="checkbox"/> No          |
| <input type="checkbox"/> Trust                                    | <input type="checkbox"/> Other (please specify)                   |
- 

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Ohio

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

☒ Yes ☐ No ☐ N/A

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles of all executive officers and all directors of the entity.

NOTE: For not-for-profit corporations, also list below all members, if any, which are legal entities. If there are no such members, write "no members." For trusts, estates or other similar entities, list below the legal titleholder(s).

If the entity is a general partnership, limited partnership, limited liability company, limited liability partnership or joint venture, list below the name and title of each general partner, managing member, manager or any other person or entity that controls the day-to-day management of the Disclosing Party.

NOTE: Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
<u>See Addendum A</u>	
<hr/>	
<hr/>	
<hr/>	

2. Please provide the following information concerning each person or entity having a direct or indirect beneficial interest (including ownership) in excess of 7.5% of the Disclosing Party. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture,

interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None." **NOTE:** Pursuant to Section 2-154-030 of the Municipal Code of Chicago ("Municipal Code"), the City may require any such additional information from any applicant which is reasonably intended to achieve full disclosure.

Name	Business Address	Percentage Interest in the Disclosing Party
None		

### SECTION III -- BUSINESS RELATIONSHIPS WITH CITY ELECTED OFFICIALS

Has the Disclosing Party had a "business relationship," as defined in Chapter 2-156 of the Municipal Code, with any City elected official in the 12 months before the date this EDS is signed?

☐ Yes

☒ No

If yes, please identify below the name(s) of such City elected official(s) and describe such relationship(s):

---

---

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist, accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll.

"Lobbyist" means any person or entity who undertakes to influence any legislative or administrative action on behalf of any person or entity other than: (1) a not-for-profit entity, on an unpaid basis, or (2) himself. "Lobbyist" also means any person or entity any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.

(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under Municipal Code Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes      ☐ No      ☒ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes      ☐ No

### B. FURTHER CERTIFICATIONS

1. Pursuant to Municipal Code Chapter 1-23, Article I ("Article I")(which the Applicant should consult for defined terms (e.g., "doing business") and legal requirements), if the Disclosing Party submitting this EDS is the Applicant and is doing business with the City, then the Disclosing Party certifies as follows: (i) neither the Applicant nor any controlling person is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any sister agency; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If Article I applies to the Applicant, the permanent compliance timeframe in Article I supersedes some five-year compliance timeframes in certifications 2 and 3 below.

2. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II.B.1. of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, within a five-year period preceding the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in clause B.2.b. of this Section V;
- d. have not, within a five-year period preceding the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, within a five-year period preceding the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

3. The certifications in subparts 3, 4 and 5 concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity. Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity); with respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor nor any Agents have, during the five years before the date this EDS is signed, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the five years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in a. or b. above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions of Municipal Code Section 2-92-610 (Living Wage Ordinance).

4. Neither the Disclosing Party, Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

5. Neither the Disclosing Party nor any Affiliated Entity is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the Bureau of Industry and Security of the U.S. Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

6. The Disclosing Party understands and shall comply with the applicable requirements of Chapters 2-55 (Legislative Inspector General), 2-56 (Inspector General) and 2-156 (Governmental Ethics) of the Municipal Code.

7. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

None

---

---

---

---

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in Section 2-32-455(b) of the Municipal Code.

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in Chapter 2-32 of the Municipal Code. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in Chapter 2-32 of the Municipal Code. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in Section 2-32-455(b) of the Municipal Code) is a predatory lender within the meaning of Chapter 2-32 of the Municipal Code, explain here (attach additional pages if necessary):

---

---

---

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING INTEREST IN CITY BUSINESS

Any words or terms that are defined in Chapter 2-156 of the Municipal Code have the same meanings when used in this Part D.

1. In accordance with Section 2-156-110 of the Municipal Code: Does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes ☒ No

NOTE: If you checked "Yes" to Item D.1., proceed to Items D.2. and D.3. If you checked "No" to Item D.1., proceed to Part E.



2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D.1., provide the names and business addresses of the City officials or employees having such interest and identify the nature of such interest:

Name	Business Address	Nature of Interest

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

#### E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either 1. or 2. below. If the Disclosing Party checks 2., the Disclosing Party must disclose below or in an attachment to this EDS all information required by paragraph 2. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

  X   1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

       2. The Disclosing Party verifies that, as a result of conducting the search in step 1 above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

---

---

---

---

## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE:** If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995 who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

---

---

---

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995 have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in Paragraph A.1. above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A.1. and A.2. above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities".

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A.1. through A.4. above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

## B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question 1. or 2. above, please provide an explanation:

---

---

## SECTION VII – ACKNOWLEDGMENTS, CONTRACT INCORPORATION, COMPLIANCE, PENALTIES, DISCLOSURE

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics and Campaign Financing Ordinances, Chapters 2-156 and 2-164 of the Municipal Code, impose certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of these ordinances and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N.

Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with the applicable ordinances.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other transactions with the City. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided on this EDS and any attachments to this EDS may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to Article I of Chapter 1-23 of the Municipal Code (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by Chapter 1-23 and Section 2-154-020 of the Municipal Code.

The Disclosing Party represents and warrants that:

F.1. The Disclosing Party is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, nor are the Disclosing Party or its Affiliated Entities delinquent in paying any fine, fee, tax or other charge owed to the City. This includes, but is not limited to, all water charges, sewer charges, license fees, parking tickets, property taxes or sales taxes.

F.2 If the Disclosing Party is the Applicant, the Disclosing Party and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed by the U.S. E.P.A. on the federal Excluded Parties List System ("EPLS") maintained by the U. S. General Services Administration.

F.3 If the Disclosing Party is the Applicant, the Disclosing Party will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in F.1. and F.2. above and will not, without the prior written consent of the City, use any such contractor/subcontractor that does not provide such certifications or that the Disclosing Party has reason to believe has not provided or cannot provide truthful certifications.

NOTE: If the Disclosing Party cannot certify as to any of the items in F.1., F.2. or F.3. above, an explanatory statement must be attached to this EDS.

### CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS and Appendix A (if applicable) on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS and Appendix A (if applicable) are true, accurate and complete as of the date furnished to the City.

Peck, Shaffer & Williams LLP  
(Print or type name of Disclosing Party)

By:   
(Sign here)

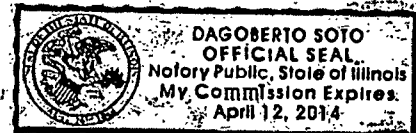
Thomas C. Smith  
(Print or type name of person signing)

Partner  
(Print or type title of person signing)

Signed and sworn to before me on (date) February 17th 2011  
at COOK County, ILLINOIS (state).

 Notary Public.

Commission expires: Apr. 12 2014.



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5 percent. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under Municipal Code Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5 percent ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

---

---

---

Addendum A

Section II B.1.

Name

Title

Dirk M. Bedarff

Chairperson, Management Committee

Edward Cavezza

Member, Management Committee

Thomas D. Freeman

Chief Financial Officer

Mary L. Groves

Member, Management Committee

Brenda A. Wehnier

Member, Management Committee

Thomas A. Wilson

Member, Management Committee

(DO NOT SUBMIT THIS PAGE WITH YOUR EDS. The purpose of this page is for you to recertify your EDS prior to submission to City Council or on the date of closing. If unable to recertify truthfully, the Disclosing Party must complete a new EDS with correct or corrected information)

### RECERTIFICATION

Generally, for use with City Council matters. Not for City procurements unless requested.

This recertification is being submitted in connection with Midway Moring [identify the Matter]. Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS recertification on behalf of the Disclosing Party, (2) warrants that all certifications and statements contained in the Disclosing Party's original EDS are true, accurate and complete as of the date furnished to the City and continue to be true, accurate and complete as of the date of this recertification, and (3) reaffirms its acknowledgments.

Peck, Shaffer & Williams LLP Date: 3/30/11  
(Print or type legal name of Disclosing Party)

By:

Thomas C. Smith  
(sign here)

Print or type name of signatory:

Thomas C. Smith

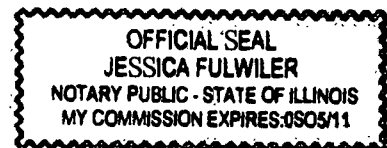
Title of signatory:

Partner

Signed and sworn to before me on [date] 3/30/2011, by  
Jessica Fulwiler at Cook County, IL [state].

Jessica Fulwiler Notary Public.

Commission expires: 5/5/2011





**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Amalgamated Bank of Chicago

Check ONE of the following three boxes:

Indicate whether the Disclosing Party submitting this EDS is:

1. ☒ the Applicant

OR

2. ☐ a legal entity holding a direct or indirect interest in the Applicant. State the legal name of the Applicant in which the Disclosing Party holds an interest: \_\_\_\_\_

OR

3. ☐ a legal entity with a right of control (see Section II.B.1.) State the legal name of the entity in which the Disclosing Party holds a right of control: \_\_\_\_\_

B. Business address of the Disclosing Party:

One West Monroe Street

Chicago, Illinois 60603

C. Telephone: [REDACTED] Fax: [REDACTED] Email: ilandenberger@aboc.com

D. Name of contact person: James T. Landenberger

E. Federal Employer Identification No. (if you have one): [REDACTED]

F. Brief description of contract, transaction or other undertaking (referred to below as the "Matter") to which this EDS pertains. (Include project number and location of property, if applicable):

City of Chicago, Enterprise Zone Revenue Bonds (J&A, LLC Project), Series 2002

G. Which City agency or department is requesting this EDS? Department of Housing and Economic Development

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II – DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person   | <input type="checkbox"/> Limited liability company       |
| <input type="checkbox"/> Publicly registered business corporation       | <input type="checkbox"/> Limited liability partnership   |
| <input checked="" type="checkbox"/> Privately held business corporation | <input type="checkbox"/> Joint venture                   |
| <input type="checkbox"/> Sole proprietorship                            | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                            | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                            | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust  | <input type="checkbox"/> Other (please specify)          |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Illinois

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

☐ Yes ☐ No ☒ N/A

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

I. List below the full names and titles of all executive officers and all directors of the entity.

NOTE: For not-for-profit corporations, also list below all members, if any, which are legal entities. If there are no such members, write "no members." For trusts, estates or other similar entities, list below the legal titleholder(s).

If the entity is a general partnership, limited partnership, limited liability company, limited liability partnership or joint venture, list below the name and title of each general partner, managing member, manager or any other person or entity that controls the day-to-day management of the Disclosing Party.

NOTE: Each legal entity listed below must submit an EDS on its own behalf.

Name

Title

SEE ATTACHED SHEET

2. Please provide the following information concerning each person or entity having a direct or indirect beneficial interest (including ownership) in excess of 7.5% of the Disclosing Party. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture,

interest of a member or manager in a limited liability company; or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None." NOTE: Pursuant to Section 2-154-030 of the Municipal Code of Chicago ("Municipal Code"), the City may require any such additional information from any applicant which is reasonably intended to achieve full disclosure.

Name	Business Address	Percentage Interest in the Disclosing Party
Eugene P. Hevtow	One West Monroe Street	57.50%
	Chicago, Illinois 60603	

### SECTION III -- BUSINESS RELATIONSHIPS WITH CITY ELECTED OFFICIALS

Has the Disclosing Party had a "business relationship," as defined in Chapter 2-156 of the Municipal Code, with any City elected official in the 12 months before the date this EDS is signed?

☐ Yes

☒ No

If yes, please identify below the name(s) of such City elected official(s) and describe such relationship(s):

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist, accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll.

"Lobbyist" means any person or entity who undertakes to influence any legislative or administrative action on behalf of any person or entity other than: (1) a not-for-profit entity; on an unpaid basis, or (2) himself. "Lobbyist" also means any person or entity any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.

(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under Municipal Code Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes      ☒ No      ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes      ☐ No

### B. FURTHER CERTIFICATIONS

I. Pursuant to Municipal Code Chapter 1-23, Article I ("Article I")(which the Applicant should consult for defined terms (e.g., "doing business") and legal requirements), if the Disclosing Party submitting this EDS is the Applicant and is doing business with the City, then the Disclosing Party certifies as follows: (i) neither the Applicant nor any controlling person is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any sister agency; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If Article I applies to the Applicant, the permanent compliance timeframe in Article I supersedes some five-year compliance timeframes in certifications 2 and 3 below.

2. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II.B.1. of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, within a five-year period preceding the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in clause B.2.b. of this Section V;
- d. have not, within a five-year period preceding the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, within a five-year period preceding the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

3. The certifications in subparts 3, 4 and 5 concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity. Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity); with respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor nor any Agents have, during the five years before the date this EDS is signed, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the five years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in a. or b. above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions of Municipal Code Section 2-92-610 (Living Wage Ordinance).

4. Neither the Disclosing Party, Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

5. Neither the Disclosing Party nor any Affiliated Entity is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the Bureau of Industry and Security of the U.S. Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

6. The Disclosing Party understands and shall comply with the applicable requirements of Chapters 2-55 (Legislative Inspector General), 2-56 (Inspector General) and 2-156 (Governmental Ethics) of the Municipal Code.

7. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

N/A

---

---

---

---

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

I. The Disclosing Party certifies that the Disclosing Party (check one)

☒ is                      ☐ is not

a "financial institution" as defined in Section 2-32-455(b) of the Municipal Code.

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in Chapter 2-32 of the Municipal Code. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in Chapter 2-32 of the Municipal Code. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in Section 2-32-455(b) of the Municipal Code) is a predatory lender within the meaning of Chapter 2-32 of the Municipal Code, explain here (attach additional pages if necessary):

---

---

---

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

### D. CERTIFICATION REGARDING INTEREST IN CITY BUSINESS

Any words or terms that are defined in Chapter 2-156 of the Municipal Code have the same meanings when used in this Part D.

1. In accordance with Section 2-156-110 of the Municipal Code: Does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes                      ☒ No

NOTE: If you checked "Yes" to Item D.1., proceed to Items D.2. and D.3. If you checked "No" to Item D.1., proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D.1., provide the names and business addresses of the City officials or employees having such interest and identify the nature of such interest:

Name

Business Address

Nature of Interest

---

---

---

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

#### E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either 1. or 2. below. If the Disclosing Party checks 2., the Disclosing Party must disclose below or in an attachment to this EDS all information required by paragraph 2. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

  x   1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

       2. The Disclosing Party verifies that, as a result of conducting the search in step 1 above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

---

---

---

---



## SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE:** If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995 who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

---

---

---

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995 have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in Paragraph A.1. above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A.1. and A.2. above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities".

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A.1. through A.4. above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

## **B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question 1. or 2. above, please provide an explanation:

---

## **SECTION VII – ACKNOWLEDGMENTS, CONTRACT INCORPORATION, COMPLIANCE, PENALTIES, DISCLOSURE**

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics and Campaign Financing Ordinances, Chapters 2-156 and 2-164 of the Municipal Code, impose certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of these ordinances and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N.

Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with the applicable ordinances.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other transactions with the City. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided on this EDS and any attachments to this EDS may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to Article I of Chapter 1-23 of the Municipal Code (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by Chapter 1-23 and Section 2-154-020 of the Municipal Code.

The Disclosing Party represents and warrants that:

F.1. The Disclosing Party is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, nor are the Disclosing Party or its Affiliated Entities delinquent in paying any fine, fee, tax or other charge owed to the City. This includes, but is not limited to, all water charges, sewer charges, license fees, parking tickets, property taxes or sales taxes.

F.2 If the Disclosing Party is the Applicant, the Disclosing Party and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed by the U.S. E.P.A. on the federal Excluded Parties List System ("EPLS") maintained by the U. S. General Services Administration.

F.3 If the Disclosing Party is the Applicant, the Disclosing Party will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in F.1. and F.2. above and will not, without the prior written consent of the City, use any such contractor/subcontractor that does not provide such certifications or that the Disclosing Party has reason to believe has not provided or cannot provide truthful certifications.

NOTE: If the Disclosing Party cannot certify as to any of the items in F.1., F.2. or F.3. above, an explanatory statement must be attached to this EDS.

### CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS and Appendix A (if applicable) on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS and Appendix A (if applicable) are true, accurate and complete as of the date furnished to the City.

Amalgamated Investments Company  
(Print or type name of Disclosing Party)

By:   
(sign here)

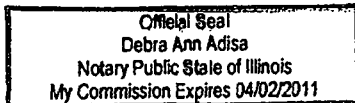
James T. Landenberger  
(Print or type name of person signing)

Secretary  
(Print or type title of person signing)

Signed and sworn to before me on (date) February 4, 2011,  
at Cook County, Illinois (State).

Debra A. Adisa Notary Public.

Commission expires: 04-02-2011.



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5 percent. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under Municipal Code Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5 percent ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

---

---

---

(DO NOT SUBMIT THIS PAGE WITH YOUR EDS. The purpose of this page is for you to recertify your EDS prior to submission to City Council or on the date of closing. If unable to recertify truthfully, the Disclosing Party must complete a new EDS with correct or corrected information)

### RECERTIFICATION

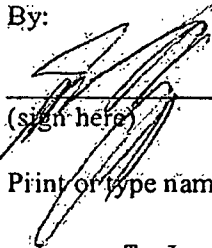
Generally, for use with City Council matters. Not for City procurements unless requested.

This recertification is being submitted in connection with City of Chicago, Enterprise Zone Revenue Bonds (J&A, LLC Project), Series 2002 [identify the Matter]. Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS recertification on behalf of the Disclosing Party, (2) warrants that all certifications and statements contained in the Disclosing Party's original EDS are true, accurate and complete as of the date furnished to the City and continue to be true, accurate and complete as of the date of this recertification, and (3) reaffirms its acknowledgments.

Amalgamated Investments Company  
(Print or type legal name of Disclosing Party)

Date: March 23, 2011

By:

  
(sign here)

Print or type name of signatory:

James T. Landenberger

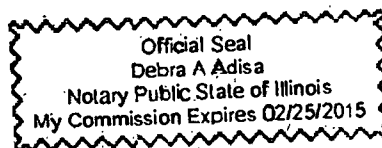
Title of signatory:

Secretary

Signed and sworn to before me on [date] March 23, 2011, by James T. Landenberger, at COOK County, Illinois [state].

Debra A. Adisa Notary Public.

Commission expires: 02/24/2015



**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

Richard F. Levy, or his successors in trust, not individually, but as trustee of the Eugene P. Heytow Trust, dated 3/23/1988, as amended

Check ONE of the following three boxes:

Indicate whether the Disclosing Party submitting this EDS is:

1. ☐ the Applicant  
OR

2. ☒ a legal entity holding a direct or indirect interest in the Applicant. State the legal name of the Applicant in which the Disclosing Party holds an interest: Amalgamated Bank of Chicago  
OR

3. ☐ a legal entity with a right of control (see Section II.B.1.) State the legal name of the entity in which the Disclosing Party holds a right of control: \_\_\_\_\_

B. Business address of the Disclosing Party: Jenner & Block LLP, 353 North Clark Street  
Chicago, Illinois 60654

C. Telephone: [REDACTED] Fax: [REDACTED] Email: rlevy@ienner.com

D. Name of contact person: Richard F. Levy

E. Federal Employer Identification No. (if you have one): [REDACTED]

F. Brief description of contract, transaction or other undertaking (referred to below as the "Matter") to which this EDS pertains. (Include project number and location of property, if applicable):

City of Chicago, Enterprise Zone Revenue Bonds (J&A, LLC Project, Series 2002)

G. Which City agency or department is requesting this EDS? Department of Housing and Economic Development

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # \_\_\_\_\_ and Contract # \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

#### I. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person                                   | <input type="checkbox"/> Limited liability company       |
| <input type="checkbox"/> Publicly registered business corporation | <input type="checkbox"/> Limited liability partnership   |
| <input type="checkbox"/> Privately held business corporation      | <input type="checkbox"/> Joint venture                   |
| <input type="checkbox"/> Sole proprietorship                      | <input type="checkbox"/> Not-for-profit corporation      |
| <input type="checkbox"/> General partnership                      | (Is the not-for-profit corporation also a 501(c)(3))?    |
| <input type="checkbox"/> Limited partnership                      | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Tmst                          | <input type="checkbox"/> Other (please specify)          |

#### 2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Irrevocable trust governed by Nevada law

#### 3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

- ☐ Yes ☐ No ☒ N/A

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles of all executive officers and all directors of the entity.  
**NOTE:** For not-for-profit corporations, also list below all members, if any, which are legal entities. If there are no such members, write "no members." For tmsts, estates or other similar entities, list below the legal titieholder(s).

If the entity is a general partuership, limited partnership, limited liability company, limited liability partnership or joint venture, list below the name and title of each general partner, managing member, manager or any other person or entity that controls the day-to-day management of the Disclosing Party.  
**NOTE:** Each legal entity listed below must submit an EDS on its own behalf

Name

Title

Richard F. Levy

Trustee

2. Please provide the following information concerning each person or entity having a direct or indirect beneficial interest (including ownership) in excess of 7.5% of the Disclosing Party. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture,



interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None." **NOTE:** Pursuant to Section 2-154-030 of the Municipal Code of Chicago ("Municipal Code"), the City may require any such additional information from any applicant which is reasonably intended to achieve full disclosure.

Name	Business Address	Percentage Interest in the Disclosing Party
Andrew Heytow	One West Monroe Street	50%*
	Chicago, Illinois 60603	
Pamela Krugman	300 Gold Hill Road	50%*
	Breckenridge, Colorado 80424	

\*Representing the individual's interest in the Disclosing Party's interest in the Applicant.

### SECTION III -- BUSINESS RELATIONSHIPS WITH CITY ELECTED OFFICIALS

Has the Disclosing Party had a "business relationship," as defined in Chapter 2-156 of the Municipal Code, with any City elected official in the 12 months before the date this EDS is signed?

☐ Yes

☒ No

If yes, please identify below the name(s) of such City elected official(s) and describe such relationship(s):

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist, accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll.

"Lobbyist" means any person or entity who undertakes to influence any legislative or administrative action on behalf of any person or entity other than: (1) a not-for-profit entity, on an unpaid basis, or (2) himself "Lobbyist" also means any person or entity any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
--	------------------	--	---

None

(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under Municipal Code Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes      ☒ No      ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes      ☐ No

### B. FURTHER CERTIFICATIONS

1. Pursuant to Municipal Code Chapter 1-23, Article I ("Article I")(which the Applicant should consult for defined terms (e.g., "doing business") and legal requirements), if the Disclosing Party submitting this EDS is the Applicant and is doing business with the City, then the Disclosing Party certifies as follows: (i) neither the Applicant nor any controlling person is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any sister agency; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If Article I applies to the Applicant, the permanent compliance timeframe in Article I supersedes some five-year compliance timeframes in certifications 2 and 3 below.

2. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II.B.1. of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, within a five-year period preceding the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in clause B.2.b. of this Section V;
- d. have not, within a five-year period preceding the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, within a five-year period preceding the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

3. The certifications in subparts 3, 4 and 5 concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity. Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity); with respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor nor any Agents have, during the five years before the date this EDS is signed, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the five years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in a. or b. above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions of Municipal Code Section 2-92-610 (Living Wage Ordinance).

4. Neither the Disclosing Party, Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

5. Neither the Disclosing Party nor any Affiliated Entity is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the Bureau of Industry and Security of the U.S. Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

6. The Disclosing Party understands and shall comply with the applicable requirements of Chapters 2-55 (Legislative Inspector General), 2-56 (Inspector General) and 2-156 (Governmental Ethics) of the Municipal Code.

7. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

N/A

---

---

---

---

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in Section 2-32-455(b) of the Municipal Code.

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in Chapter 2-32 of the Municipal Code. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in Chapter 2-32 of the Municipal Code. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in Section 2-32-455(b) of the Municipal Code) is a predatory lender within the meaning of Chapter 2-32 of the Municipal Code, explain here (attach additional pages if necessary):

---

---

---

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING INTEREST IN CITY BUSINESS

Any words or terms that are defined in Chapter 2-156 of the Municipal Code have the same meanings when used in this Part D.

1. In accordance with Section 2-156-110 of the Municipal Code: Does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes ☒ No

NOTE: If you checked "Yes" to item D.1., proceed to Items D.2. and D.3. If you checked "No" to Item D.1., proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☐ No

3. If you checked "Yes" to Item D.L, provide the names and business addresses of the City officials or employees having such interest and identify the nature of such interest:

Name

Business Address

Nature of Interest

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

#### E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either 1. or 2. below. If the Disclosing Party checks 2., the Disclosing Party must disclose below or in an attachment to this EDS all information required by paragraph 2. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

  x   1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

       2. The Disclosing Party verifies that, as a result of conducting the search in step 1 above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

## SECTION VI – CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE:** If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995 who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

---

---

---

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that **NO** persons or entities registered under the Lobbying Disclosure Act of 1995 have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in Paragraph A.1. above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A.1. and A.2. above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities".

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A.1. through A.4. above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

## B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations.

Is the Disclosing Party the Applicant?

☐ Yes ☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes ☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes ☐ No

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes ☐ No

If you checked "No" to question 1. or 2. above, please provide an explanation:

---

## SECTION VII – ACKNOWLEDGMENTS, CONTRACT INCORPORATION, COMPLIANCE, PENALTIES, DISCLOSURE

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics and Campaign Financing Ordinances, Chapters 2-156 and 2-164 of the Municipal Code, impose certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of these ordinances and a training program is available online at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N.



Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with the applicable ordinances.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other transactions with the City. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided on this EDS and any attachments to this EDS may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to Article 1 of Chapter 1-23 of the Municipal Code (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by Chapter 1-23 and Section 2-154-020 of the Municipal Code.

The Disclosing Party represents and warrants that:

F.1. The Disclosing Party is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, nor are the Disclosing Party or its Affiliated Entities delinquent in paying any fine, fee, tax or other charge owed to the City. This includes, but is not limited to, all water charges, sewer charges, license fees, parking tickets, property taxes or sales taxes.

F.2. If the Disclosing Party is the Applicant, the Disclosing Party and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed by the U.S. E.P.A. on the federal Excluded Parties List System ("EPLS") maintained by the U. S. General Services Administration.

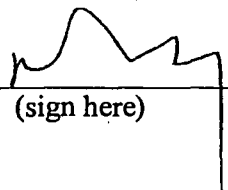
F.3. If the Disclosing Party is the Applicant, the Disclosing Party will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in F.1. and F.2. above and will not, without the prior written consent of the City, use any such contractor/subcontractor that does not provide such certifications or that the Disclosing Party has reason to believe has not provided or cannot provide truthful certifications.

NOTE: If the Disclosing Party cannot certify as to any of the items in F.1., F.2. or F.3. above, an explanatory statement must be attached to this EDS.

CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS and Appendix A (if applicable) on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS and Appendix A (if applicable) are true, accurate and complete as of the date furnished to the City.


Richard F. Levy, or his successors in trust, not individually, but as trustee  
of the Eugene P. Heytow Trust, dated 3/23/1988, as amended  
(Print or type name of Disclosing Party)

By:   
(sign here)

Richard F. Levy  
(Print or type name of person signing)

Trustee  
(Print or type title of person signing)

Signed and sworn to before me on (date) February 3, 2011  
at New York County, New York (state).

 Notary Public.  
Commission expires: June 1, 2012.

NA'EEM CONWAY  
Notary Public, State of New York  
No. 01C06110667  
Qualified in New York County  
Commission Expires June 1, 2012

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5 percent. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under Municipal Code Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5 percent ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

---

---

---

(DO NOT SUBMIT THIS PAGE WITH YOUR EDS. The purpose of this page is for you to recertify your EDS prior to submission to City Council or on the date of closing. If unable to recertify truthfully, the Disclosing Party must complete a new EDS with correct or corrected information)

### RECERTIFICATION

Generally, for use with City Council matters. Not for City procurements unless requested.

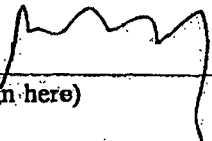
This recertification is being submitted in connection with City of Chicago, Enterprise Zone Revenue Bonds (J&A, LLC Project), Series 2002  
[identify the Matter]. Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS recertification on behalf of the Disclosing Party, (2) warrants that all certifications and statements contained in the Disclosing Party's original EDS are true, accurate and complete as of the date furnished to the City and continue to be true, accurate and complete as of the date of this recertification, and (3) reaffirms its acknowledgments.

Richard F. Levy, as Trustee for  
The Eugene P. Beytow Trust

Date: March 23, 2011

(Print or type legal name of Disclosing Party)

By:

  
(sign here)

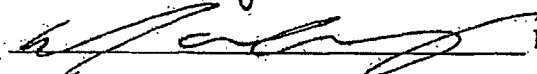
Print or type name of signatory:

Richard F. Levy

Title of signatory:

Trustee for the Eugene P. Beytow Trust

Signed and sworn to before me on [date] March 23, 2011 by  
Richard F. Levy at New York County, New York [state].

 Notary Public.

Commission expires: June 1, 2012

**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT  
AND AFFIDAVIT**

**SECTION I -- GENERAL INFORMATION**

**A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:**

Pugh, Jones, Johnson & Quandt, P.C.

**Check ONE of the following three boxes:**

**Indicate whether the Disclosing Party submitting this EDS is:**

1. ☒ the Applicant

**OR**

2. ☐ a legal entity holding a direct or indirect interest in the Applicant. State the legal name of the Applicant in which the Disclosing Party holds an interest: \_\_\_\_\_

**OR**

3. ☐ a legal entity with a right of control (see Section II.B.1.) State the legal name of the entity in which the Disclosing Party holds a right of control: \_\_\_\_\_

**B. Business address of the Disclosing Party:** 180 N. LaSalle Street, Suite 3400

Chicago, Illinois 60601

**C. Telephone:** (312) 768-7800 **Fax:** (312) 768-7801 **Email:** spugh@pjjq.com

**D. Name of contact person:** Stephen H. Pugh

**E. Federal Employer Identification No. (if you have one):** 36-3783269

**F. Brief description of contract, transaction or other undertaking (referred to below as the "Matter") to which this EDS pertains. (Include project number and location of property, if applicable):**

J&A EZ Bonds

**G. Which City agency or department is requesting this EDS?** Department of Housing and Economic Development

**If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:**

**Specification #** \_\_\_\_\_ **and Contract #** \_\_\_\_\_

## SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

### A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- |   |  |
|---|--|
| <input type="checkbox"/> Person                                   | <input type="checkbox"/> Limited liability company         |
| <input type="checkbox"/> Publicly registered business corporation | <input type="checkbox"/> Limited liability partnership     |
| <input type="checkbox"/> Privately held business corporation      | <input type="checkbox"/> Joint venture                     |
| <input type="checkbox"/> Sole proprietorship                      | <input type="checkbox"/> Not-for-profit corporation        |
| <input type="checkbox"/> General partnership                      | (Is the not-for-profit corporation also a 501(c)(3))?      |
| <input type="checkbox"/> Limited partnership                      | <input type="checkbox"/> Yes <input type="checkbox"/> No   |
| <input type="checkbox"/> Trust                                    | <input checked="" type="checkbox"/> Other (please specify) |
|   | <u>professional corporation</u>                            |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Illinois

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity?

☐ Yes ☐ No ☒ N/A

### B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles of all executive officers and all directors of the entity.

**NOTE:** For not-for-profit corporations, also list below all members, if any, which are legal entities. If there are no such members, write "no members." For trusts, estates or other similar entities, list below the legal titleholder(s).

If the entity is a general partnership, limited partnership, limited liability company, limited liability partnership or joint venture, list below the name and title of each general partner, managing member, manager or any other person or entity that controls the day-to-day management of the Disclosing Party.

**NOTE:** Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
<u>Stephen IL Pugh</u>	<u>President</u>
<u>Walter Jones, Jr.</u>	<u>Vice President</u>
<u>Dennis P.W. Johnson</u>	<u>Secretaty - Treasurer</u>
<u>Eric F. Quandt</u>	<u>Director</u>

2. Please provide the following information concerning each person or entity having a direct or indirect beneficial interest (including ownership) in excess of 7.5% of the Disclosing Party. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture,

interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None." NOTE: Pursuant to Section 2-154-030 of the Municipal Code of Chicago ("Municipal Code"), the City may require any such additional information from any applicant which is reasonably intended to achieve full disclosure.

Name	Business Address	Percentage Interest in the Disclosing Party
Stephen H. Pugh	180 N. LaSalle, #3400, Chicago, 60601	25.7576%
Walter Jones, Jr.	same as above	25.7576%
Dennis P.W. Johnson	same as above	25.7576%
Eric F. Quandt	same as above	21.7172%

### SECTION III -- BUSINESS RELATIONSHIPS WITH CITY ELECTED OFFICIALS

Has the Disclosing Party had a "business relationship," as defined in Chapter 2-156 of the Municipal Code, with any City elected official in the 12 months before the date this EDS is signed?

☐ Yes

☒ No

If yes, please identify below the name(s) of such City elected official(s) and describe such relationship(s):

---

---

### SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist, accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll.

"Lobbyist" means any person or entity who undertakes to influence any legislative or administrative action on behalf of any person or entity other than: (1) a not-for-profit entity, on an unpaid basis, or (2) himself. "Lobbyist" also means any person or entity any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
N/A			

(Add sheets if necessary)

☒ Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

## SECTION V -- CERTIFICATIONS

### A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under Municipal Code Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

☐ Yes      ☒ No      ☐ No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

☐ Yes      ☐ No

### B. FURTHER CERTIFICATIONS

1. Pursuant to Municipal Code Chapter 1-23, Article I ("Article I") (which the Applicant should consult for defined terms (e.g., "doing business") and legal requirements), if the Disclosing Party submitting this EDS is the Applicant and is doing business with the City, then the Disclosing Party certifies as follows: (i) neither the Applicant nor any controlling person is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any sister agency; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If Article I applies to the Applicant, the permanent compliance timeframe in Article I supersedes some five-year compliance timeframes in certifications 2 and 3 below.



2. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II.B.1. of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, within a five-year period preceding the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in clause B.2.b. of this Section V;
- d. have not, within a five-year period preceding the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, within a five-year period preceding the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

3. The certifications in subparts 3, 4 and 5 concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity. Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity); with respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party; any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor nor any Agents have, during the five years before the date this EDS is signed, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the five years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in a. or b. above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions of Municipal Code Section 2-92-610 (Living Wage Ordinance).

4. Neither the Disclosing Party, Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

5. Neither the Disclosing Party nor any Affiliated Entity is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the Bureau of Industry and Security of the U.S. Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

6. The Disclosing Party understands and shall comply with the applicable requirements of Chapters 2-55 (Legislative Inspector General), 2-56 (Inspector General) and 2-156 (Governmental Ethics) of the Municipal Code.

7. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

N/A

---

---

---

---

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

☐ is ☒ is not

a "financial institution" as defined in Section 2-32-455(b) of the Municipal Code.

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in Chapter 2-32 of the Municipal Code. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in Chapter 2-32 of the Municipal Code. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in Section 2-32-455(b) of the Municipal Code) is a predatory lender within the meaning of Chapter 2-32 of the Municipal Code, explain here (attach additional pages if necessary):

---

---

---

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

#### D. CERTIFICATION REGARDING INTEREST IN CITY BUSINESS

Any words or terms that are defined in Chapter 2-156 of the Municipal Code have the same meanings when used in this Part D.

1. In accordance with Section 2-156-110 of the Municipal Code: Does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

☐ Yes ☒ No

NOTE: If you checked "Yes" to Item D.1., proceed to Items D.2. and D.3. If you checked "No" to Item D.1., proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

☐ Yes

☒ No

3. If you checked "Yes" to Item D.1., provide the names and business addresses of the City officials or employees having such interest and identify the nature of such interest:

Name

Business Address

Nature of Interest

N/A

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

#### E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either 1. or 2. below. If the Disclosing Party checks 2., the Disclosing Party must disclose below or in an attachment to this EDS all information required by paragraph 2. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

☒ 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

2. The Disclosing Party verifies that, as a result of conducting the search in step 1 above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

## SECTION VI --- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

**NOTE:** If the Matter Is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

### A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995 who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

N/A

---

---

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995 have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in Paragraph A.1. above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A.1. and A.2. above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities".

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A.1. through A.4. above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

## B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations. N/A

Is the Disclosing Party the Applicant?

☐ Yes

☐ No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

☐ Yes

☐ No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

☐ Yes

☐ No

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

☐ Yes

☐ No

If you checked "No" to question 1. or 2. above, please provide an explanation:

## SECTION VII-- ACKNOWLEDGMENTS, CONTRACT INCORPORATION, COMPLIANCE, PENALTIES, DISCLOSURE

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics and Campaign Financing Ordinances, Chapters 2-156 and 2-164 of the Municipal Code, impose certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of these ordinances and a training program is available on line at [www.cityofchicago.org/Ethics](http://www.cityofchicago.org/Ethics), and may also be obtained from the City's Board of Ethics, 740 N.

Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with the applicable ordinances.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other transactions with the City. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided on this EDS and any attachments to this EDS may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to Article I of Chapter 1-23 of the Municipal Code (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by Chapter 1-23 and Section 2-154-020 of the Municipal Code.

The Disclosing Party represents and warrants that:

F.1. The Disclosing Party is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, nor are the Disclosing Party or its Affiliated Entities delinquent in paying any fine, fee, tax or other charge owed to the City. This includes, but is not limited to, all water charges, sewer charges, license fees, parking tickets, property taxes or sales taxes.

F.2 If the Disclosing Party is the Applicant, the Disclosing Party and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed by the U.S. E.P.A. on the federal Excluded Parties List System ("EPLS") maintained by the U. S. General Services Administration.

F.3 If the Disclosing Party is the Applicant, the Disclosing Party will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in F.1. and F.2. above and will not, without the prior written consent of the City, use any such contractor/subcontractor that does not provide such certifications or that the Disclosing Party has reason to believe has not provided or cannot provide truthful certifications.

NOTE: If the Disclosing Party cannot certify as to any of the items in F.1., F.2. or F.3. above, an explanatory statement must be attached to this EDS.

## CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS and Appendix A (if applicable) on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS and Appendix A (if applicable) are true, accurate and complete as of the date furnished to the City.

Pugh, Jones, Johnson & Quandt, P.C.

(Print or type name of Disclosing Party)

By: Stephen H. Pugh  
(Sign here)

Stephen H. Pugh

(Print or type name of person signing)

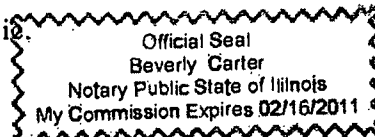
President

(Print or type title of person signing)

Signed and sworn to before me on (date) February 4, 2011,  
at Cook County, Illinois (state).

Beverly Carter Notary Public

Commission expires: 2-16-11





**CITY OF CHICAGO  
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT  
APPENDIX A**

**FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS**

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5 percent. It is not to be completed by any legal entity which has only an Indirect ownership interest in the Applicant.

Under Municipal Code Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5 percent ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

☐ Yes

☒ No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

---

---

---

(DO NOT SUBMIT THIS PAGE WITH YOUR EDS. The purpose of this page is for you to recertify your EDS prior to submission to City Council or on the date of closing. If unable to recertify truthfully, the Disclosing Party must complete a new EDS with correct or corrected information)

### RECERTIFICATION

Generally, for use with City Council matters. Not for City procurements unless requested.

This recertification is being submitted in connection with EZ Facility Bonds J&A LLC 2011 [identify the Matter]. Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS recertification on behalf of the Disclosing Party, (2) warrants that all certifications and statements contained in the Disclosing Party's original EDS are true, accurate and complete as of the date furnished to the City and continue to be true, accurate and complete as of the date of this recertification, and (3) reaffirms its acknowledgments.

Pugh, Jones, Johnson & Quandt, P.C.  
(Print or type legal name of Disclosing Party)

Date: March 18, 2011

By:

Stephen H. Pugh  
(sign here)

Print or type name of signatory:

Stephen H. Pugh

Title of signatory:

President



Signed and sworn to before me on [date] 3/18/11, by  
Mary Ann Rojas, at Cook County, IL [state].

Mary Ann Rojas Notary Public.

Commission expires: 3/11/2012.