

No. 12-13654-B

In the
**United States Court of Appeals
for the Eleventh Circuit**

ASSURED GUARANTY MUNICIPAL CORP., ET AL.
Appellants/Cross-Appellees

vs.

JEFFERSON COUNTY, ALABAMA
Appellee/Cross-Appellant

**On Direct Appeal from the United States Bankruptcy Court
for the Northern District of Alabama, Southern Division
(Bankruptcy Case No. 11-05736-TBB)**

**BRIEF *AMICUS CURIAE* OF SECURITIES INDUSTRY AND
FINANCIAL MARKETS ASSOCIATION IN SUPPORT OF
APPELLANTS/CROSS-APPELLEES, AFFIRMANCE IN
PART AND REVERSAL IN PART**

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**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

Assured Guaranty Municipal Corp., et al.

vs.

Jefferson County, Alabama

Appeal No. 12-13654-B

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

In accordance with 11th Cir. R. 26.1-1, the undersigned attorney for Securities Industry and Financial Markets Association certifies that, in addition to those entities identified in the Consolidated Brief of Appellants, filed August 27, 2012, the following attorneys, law firm and association may have an interest in the outcome of this case:

1. Cravath, Swaine & Moore LLP
2. Ira D. Hammerman
3. Kevin M. Carroll
4. Leslie M. Norwood
5. Richard Levin
6. Securities Industry and Financial Markets Association

The undersigned attorney further certifies, in accordance with Fed. R. App. P. 26.1 and 11th Cir. R. 26.1-1 through 26.1-3, that Securities Industry and Financial Markets Association has no parent corporation and does not issue stock.

Signed this 31st day of August, 2012.



Richard Levin

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INTEREST OF THE AMICUS

Amicus, Securities Industry and Financial Markets Association (“SIFMA”), brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association.

As part of its more general interests, SIFMA and its members are particularly concerned with the viability of the municipal revenue bond market and its importance to the provision of financing for municipal improvement projects. In times like these, where local governments frequently face financial difficulties, it is critical to their financial stability that they are able to access the revenue bond market to finance essential infrastructure projects and services to their residents to help the municipalities grow and thrive. Their ability to access the market depends in large part on investor confidence, not only on the financial viability of the project to be financed, but also on the remedies available to the investors if the project is

not successful, whether due to economic factors or poor project management.

The issues on appeal in this case are of crucial significance to investor confidence. They strike at an element that is core to risk analysis in the revenue bond industry: the sufficiency, security and proper application of pledged revenues. The market has developed and relied upon specific contractual and statutory mechanisms, such as revenue pledges and state receivership proceedings, to provide confidence to revenue bond investors, which in turn provides access to municipal project financing. Congress has recognized the critical nature of these remedies and has acted to bring federal bankruptcy law into conformity with these traditional mechanisms of municipal finance. SIFMA is keenly interested in ensuring that, consistent with Congressional intent, the traditional revenue bond finance mechanisms and protections operate to preserve market confidence.

By its accompanying motion, SIFMA seeks leave of the Court to file this brief in accordance with Fed. R. App. P. 29(b).

STATEMENT OF THE ISSUES

This brief addresses the following issues before the Court:

- (1) Whether the exception to the automatic stay in section 922(d) of the Bankruptcy Code for “pledged special revenues” includes all revenues against which the Indenture Trustee has been granted a lien under the underlying loan documents, including revenues received by the debtor, the Indenture Trustee or the Receiver before, on or after the date of the filing of the Debtor’s chapter 9 petition.
- (2) (a) Whether chapter 9 of the Bankruptcy Code does not disturb a state law receiver’s control of a debtor’s properties that generate pledged revenues and, if not, (b) whether the Bankruptcy Court should modify the automatic stay to permit the receiver to continue to manage system properties and collect and apply pledged special revenues.

SUMMARY OF THE ARGUMENT

Congress amended the municipal bankruptcy law in 1988 to protect municipalities’ access to the municipal revenue bond market at reasonable rates. In 1987, municipalities issued approximately \$60 billion in revenue bonds out of approximately \$94 billion in total municipal bonds. The revenue bond market has grown to over \$280 billion issued, or roughly two-thirds of total municipal bond issuances, in 2010, with approximately \$2.4 trillion of revenue bonds now outstanding. The amendments were de-

signed to ensure that important traditional municipal revenue bond financing principles, such as the use of a revenue pledge to secure the bonds and the use of state receiverships as an enforcement mechanism, would survive an issuer's bankruptcy filing. A decision that undercuts Congress's purpose in enacting the amendments could have seriously detrimental effects on the revenue bond market and on municipalities' access to revenue bond financing, contrary to Congress's intent. Therefore, this Court should affirm the Bankruptcy Court's ruling that protects a revenue pledge after bankruptcy and reverse its ruling that ousts a receiver of a municipal project financed by revenue bonds and denies relief from the stay to permit continued collection and application to the bonds of pledged revenues.

BACKGROUND

A. Municipal Revenue Bonds.

Municipal revenue bonds, such as the County's revenue warrants in this case, provide essential financing to state and local governments. Secured solely by and repaid solely from the revenues generated from the project or enterprise that they finance, revenue bonds give a municipality the ability to finance infrastructure improvement and other important

enterprises without saddling its taxpayers with a general obligation backed by the full faith and credit of the issuing municipality and satisfied out of the municipality's general fund. *See* Charles Buschman & Robert J. Gibbons, *The Legal Framework for Revenue Bonds*, in 2 *The Municipal Bond Handbook* 98, 99 (Sylvan G. Feldstein et al. eds., 1983). Revenue bonds also provide financing for projects where general obligation debt may be unavailable due to debt limits, prohibitions on encumbering municipal property or other restrictions imposed on general obligation financing. *See id.*; Frank J. Fabozzi, *Fixed Income Securities* 126 (2d ed. 2002); 1 *Handbook of Finance* 253 (Frank J. Fabozzi ed., 2008).

Because revenue bonds are typically not secured by the underlying assets of the improvement project or enterprise, measures to preserve the value of the pledged revenues and to ensure their continued application to the revenue bond obligations provide the principal security for revenue bond investors. Typically, investors rely on a "flow of funds" structure designed to protect the revenues, as set forth in the trust indenture or bond resolution. *See Handbook of Finance, supra*, at 253; Public Securities Association, *Fundamentals of Municipal Bonds* 131-33 (4th ed. 1980). The flow of funds requires all revenues from the project to be maintained in a series of

funds that are held in trust by the indenture trustee who oversees their use to service the debt obligations and approves their withdrawal for other authorized uses, such as maintenance and repair. *See, e.g.,* Nat'l Ass'n of Bond Lawyers, Model Trust Indenture §§ 4.01-4.09, 5.01 (last accessed July 27, 2012) [hereinafter "NABL Model Trust Indenture"];¹ *see also Handbook of Finance, supra*, at 253; Public Securities Association, *supra*, at 131-33. The revenues in these funds are pledged as security for the revenue bonds, allowing the bond indenture trustee to take possession of the revenues in the event of a default. *See, e.g.,* NABL Model Trust Indenture § 2.02. This structure ensures that revenues generated from the project are allocated according to the underlying agreements and used to meet debt payment obligations before they may be applied to other expenditures or returned to the municipality's general funds.

While the flow of funds structure and pledge of revenues in the contractual documents preserve the revenues once they are collected, investors also rely on other contractual remedies and state law enforcement mechanisms to ensure the collection of revenues remains sufficient to fund the

¹ A true and complete copy of the NABL Model Trust Indenture is attached hereto as Addendum I.

debt payment obligations, including to protect the enterprise itself and the underlying economic decisions that affect the revenues, such as setting rates. To ensure the sufficiency of revenues, bondholders traditionally rely upon the appointment under state law of a receiver to assume the operation of the revenue-producing facility. The receiver may set rates that are appropriate, consistent with the need to maintain and operate the system and pay those costs along with debt service. Almost every state provides for receivership under state law as a remedy to enforce a municipality's obligations under revenue bonds. *See* James E. Spiotto et al., Chapman & Cutler LLP, *Municipalities in Distress? How States and Investors Deal with Local Government Financial Emergencies* 43-44 (2012); *see also id.* at app. B (listing 46 states that allow for receivership proceedings in the event of a default.). In addition, revenue bond indentures may specifically provide for the appointment of a receiver to control the revenue generating enterprise, as is the case with the revenue warrants issued by Jefferson County in this case. *See id.* at 43; Trust Indenture between Jefferson County, Alabama and AmSouth Bank of Alabama dated February 1, 1997 § 13.2(c), R. at Vol. III, Doc. 257 Ex. M. 10-0005 at 89-90 [hereinafter, "Jefferson County Indenture"].

Together, these enforcement mechanisms provide important assurances to revenue bond investors that the underlying project revenues will be sufficient, remain intact and be applied properly to the payment obligations to which they are pledged. In turn, investor confidence in the revenue bond market provides municipalities, including those which face difficult financial conditions, access to critical project financing.

B. The Municipal Revenue Bond Market.

In 1987, shortly before Congress considered the Municipal Bankruptcy Amendments of 1988, Pub. L. 100-597, 102 Stat. 3029 (1988), (the “1988 Amendments”), that are at issue in this case, revenue bonds accounted for approximately \$60 billion (63%) of the nearly \$94 billion total municipal bonds issued that year. S. Rep. No. 100-506, 100th Cong., 2d Sess., at 4 (1988) [hereinafter, “1988 Senate Report”].

Not surprisingly, the municipal bond market has grown significantly larger since then, and it continues to occupy a major place in the overall U.S. fixed income securities market. At the height of the municipal bond market, in 2010, 13,560 U.S. municipalities issued approximately \$433 billion in municipal bond obligations, comprising nearly 7% of the dollar

amount of the overall U.S. bond market issuance for the year. See SIFMA, *Issuance in the U.S. Bond Markets* (last updated August 13, 2012), <http://www.sifma.org/uploadedFiles/Research/Statistics/StatisticsFiles/CM-US-Bond-Market-Outstanding-SIFMA.xls>. Revenue bond issuances accounted for more than \$283 billion, or roughly two-thirds, of the municipal bond market, issued in 2010. See SIFMA, *US Municipal Bond Issuance* (last updated August 13, 2012), <http://www.sifma.org/uploadedFiles/Research/Statistics/StatisticsFiles/Municipal-US-Municipal-Issuance-SIFMA.xls>.

Today, there are approximately \$2.4 trillion in outstanding revenue bonds. Bloomberg Professional, Muni Search (MSRC), (last accessed June 30, 2012). The municipal bond market consists of approximately 51,000 active issuers, U.S. Gov't Accountability Office, GAO-12-698, *Municipal Securities: Options for Improving Continuing Disclosure 1* (2012), <http://gao.gov/assets/600/592669.pdf>, out of nearly 90,000 total state and local government entities, U.S. Census Bureau, G09-ALFIN, *State and Local Government Finances Summary: 2009 1* (Oct. 2011), http://www2.census.gov/govs/estimate/09_summary_report.pdf.

Revenue bonds provide financing for a wide range of municipal projects in a variety of sectors, including education, utilities, transportation, hospitals and economic development. Within the Eleventh Circuit, recent projects include the construction of additional student housing and other capital improvements at universities in Alabama, improvements to turnpike, bus, utility, health care, water and parking systems in Florida, and construction or improvement of power generating facilities, water and sewer systems, a hospital, a city hall, a police department, a public works facility and other various economic development projects in Georgia.² These and thousands of similar projects provide important services to the citizens of state and local governments across the country. By providing financing for these projects—often where no viable alternative exists—revenue bonds serve a critical role in the vitality of American municipalities.

² Examples obtained via the Municipal Securities Rulemaking Board's Electronic Municipal Market Access database, available at <http://emma.msrb.org/Search/Search.aspx?hlt=search>.

ARGUMENT

In 1988, Congress amended chapter 9 of the Bankruptcy Code with the express purpose to protect municipal revenue bond financing by preserving state law rights and enforcement mechanisms that the Bankruptcy Code would otherwise override. Consistent with that purpose and with the statutory language, this Court should interpret the federal statutes in this case to protect a revenue bond pledge during a municipal bankruptcy case and defer to the continuing authority of state receivership law to provide bondholders access to the pledged revenues.

I. Congress's Purpose in Enacting the 1988 Amendments Was To Protect the Revenue Bond Market.

The Bankruptcy Reform Act of 1978, Pub. L. 95-598, 92 Stat. 2549 (1978), for the first time, imported into municipal bankruptcy a business bankruptcy provision that was designed to deal with commercial finance practices. *See* 1988 Senate Report, *supra*, at 4. The Act provided that section 552 of the Bankruptcy Code would apply in a municipal bankruptcy case. Pub. L. 95-598, 92 Stat. 2549, 2621 (1978), enacting 11 U.S.C. § 901(a) (1980). Section 552 cuts off at the bankruptcy petition date an “after-acquired

property clause,” that is, a prepetition pledge of property the debtor acquires after the date of the grant of the security interest, except for a security interest in after-acquired “proceeds, products, offspring, or profits” of property to which the security interest had attached before bankruptcy. 11 U.S.C. § 552(b).

After the enactment of the 1978 Act, Congress quickly realized the risk that section 552 could be interpreted to defease, upon the filing of a bankruptcy petition, a lien on revenues that were pledged to secure a municipal debtor’s revenue bonds. *See* 1988 Senate Report, *supra*, at 5. This interpretation of the Bankruptcy Code “would effectively destroy the distinction between general obligation debt and limited revenue obligation debt.” *Id.*; *see id.* at 4 (“[T]he ... application of commercial law concepts to municipal corporations runs afoul of the traditional structure of revenue bond finance.”); H.R. Rep. No. 100-1011, 100th Cong., 2d Sess., at 2 (1988) [hereinafter, “1988 House Report”] (“[S]ome of these general business bankruptcy provisions ... are inconsistent with principles of municipal finance, particularly with respect to public works projects financed by revenue bonds.”). Moreover, revenue bond investors might demand a premium to provide municipal project financing to a local government

because of the risk that their security interests in pledged revenues would terminate upon the municipality's chapter 9 petition filing. *See* 1988 House Report, *supra*, at 5. In short, “[b]ecause the worlds of commercial finance and municipal finance are so diverse, the simple incorporation by reference of the 1978 commercial finance concepts into the municipal bankruptcy arena simply did not work.” 1988 Senate Report, *supra*, at 3.

Congress therefore moved quickly to correct the error. Both the Senate and the House addressed the applicability of section 552 in their versions of a technical corrections bill during the next Congress. But the Houses were unable to resolve their differences, and the bill did not become law. *See* S. Rep. No. 96-305, 96th Cong., 1st Sess., at 11 (1979); H.R. Rep. No. 96-1195, 96th Cong., 2d Sess., at 114 (1980); *cf.* 1988 Senate Report, *supra*, at 5; 1988 House Report, *supra*, at 2. After further study, Congress enacted the 1988 Amendments, to “insure that revenue bondholders receive the benefit of their bargain with the municipal issuer” and thus “protect the future effectiveness of revenue bond financing.” 1988 Senate Report, *supra*, at 12.

As this history shows, Congress's main purpose in enacting the 1988 Amendments was to eliminate the possibility that a bankruptcy petition

would cut off a revenue pledge as of the bankruptcy petition date, because “[t]he post-petition revenues generated by the asset financed would then not be used to repay holders of revenue bonds.” 1988 House Report, *supra*, at 4. The 1988 Amendments “eliminate this problem by making special revenues still subject to a post-petition lien.” *Id.*

Congress acted to reassure the market that revenue bond investors’ security interests in pledged revenues would remain intact and that pledged revenues would continue to be applied to payment obligations during a municipal bankruptcy case, in accordance with the traditional structures of municipal revenue bond finance. Without instilling confidence in the proper functioning of the market, municipalities could lose access to important project financing. *See* 1988 Senate Report, *supra*, at 4; 1988 House Report, *supra*, at 5. Congress was motivated in part by the size of the revenue bond market and the importance of investor confidence in the revenue bond market. *See* 1988 Senate Report, *supra*, at 4. As noted above, that market has grown dramatically, making Congress’s concerns even more salient now. A ruling that cuts off or otherwise impairs the effectiveness of a revenue pledge as of the date of the filing of a bankruptcy petition could, contrary to Congress’s intent, materially and adversely

affect the access of approximately 90,000 municipalities, especially those facing difficult financial conditions, to the \$283 billion revenue bond market. *Cf.* 1988 Senate Report, *supra*, at 4 (expressing concern for municipalities facing significant budget deficits that “most likely will need continued municipal finance, especially for necessary improvements or maintenance to infrastructure”); 1988 House Report, *supra*, at 5 (“Lenders may be reluctant to advance funds for projects, particularly in municipalities that are having some financial difficulties ...”).

II. The 1988 Amendments Protect the Revenue Bond Market by Protecting Revenue Pledges.

The 1988 Amendments added sections 922(d) and 928 to the Bankruptcy Code. Section 922(d) exempts from the automatic stays of sections 922(a) and 362 the “application of pledged revenues ... to payment of indebtedness secured by such revenues.” 11 U.S.C. § 922(d). Section 928(a) provides, as an exception to section 552’s general invalidation of an after-acquired property clause in a security agreement, that, subject to necessary operating expenses of the underlying project or system, “special revenues acquired by the debtor after the commencement of the case shall remain subject to any lien resulting from any security agreement entered into by

the debtor before the commencement of the case.” 11 U.S.C. § 928(a). Together, these amendments preserve a revenue bondholder’s lien on post-petition revenues and permit the application of those revenues to the municipality’s payment obligations under the revenue bonds. Any interpretation of the 1988 Amendments that cuts off at the bankruptcy petition date a lien on revenues the municipality receives after the petition date is flatly inconsistent with Congress’s intent and would disrupt the revenue bond market in just the way the Congress sought to prevent.

For these reasons, in addition to those set forth in the Bankruptcy Court’s opinion and the Appellants’ briefs, this Court should affirm the Bankruptcy Court’s ruling protecting the lien on post-petition revenues.

III. The 1988 Amendments Protect the Revenue Bond Market by Protecting Receiverships as an Enforcement Mechanism.

Preservation of the lien on post-petition pledged revenues as a bare legal right, without a means to effectuate it for the benefit of revenue bond investors, would do only half the job of protecting investors and the market that Congress set out to do in 1988. The other half requires protection of the traditional enforcement mechanism found in revenue bond indentures and state statutes.

As described above, Congress intended to preserve the bargained-for rights of revenue bondholders and enacted specific protections of two essential rights to do so: a revenue bondholder's lien attaches to revenues generated after a chapter 9 petition filing, 11 U.S.C. § 928(a), and chapter 9's automatic stay does not apply to the application of pledged revenues to revenue bond payment obligations, 11 U.S.C. § 922(d). A right requires a remedy. *See CIGNA Corp. v. Amara*, 131 S. Ct. 1866, 1879 (2011) (“[A] maxim of equity states that ‘[e]quity suffers not a right to be without a remedy.’”) (second alteration in original) (quoting R. Francis, *Maxims of Equity* 29 (1st Am. ed. 1823)). As noted above, the traditional revenue bond structure relies on state receivership as a remedy to enforce the payment obligations owed by a municipal issuer to its bondholders. *See Spiotto et al., supra*, at 43. Congress's intent to preserve this remedy is apparent by its express decision that the automatic stay, which typically prevents collection activities, not restrict the application of pledged revenues to bond debt.

Preserving the receivership remedy is consistent with, even required by, the general purpose of the 1988 Amendments to resolve the conflict between commercial bankruptcy law and municipal finance law in favor of

the latter and to protect the status quo of the revenue bond market during a chapter 9 case:³

The purpose of the bill ... is to correct unintended conflicts that currently may exist between municipal law and bankruptcy law. The proposed amendments reflect principles that have long been the premise for municipal finance but that have not been expressly stated in the Bankruptcy Code.

1988 Senate Report, *supra*, at 1. Taken together, the 1988 amendments reflect the deference Congress intended chapter 9 to give to the “traditional structure of revenue bond finance.” *Id.*⁴ This traditional structure includes

³ Settled principles of statutory construction require that the Court consider the legislative purpose behind the 1988 Amendments in determining their effect. See *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371, 108 S. Ct. 626, 630 (1988) (noting that “[s]tatutory construction ... is a holistic endeavor” that requires a statute be interpreted in consideration of its effect on other portions of the law, construing the language of a statute in a manner that “produces a substantive effect that is compatible with the rest of the law.”); *United States v. The Heirs of Boisdoré*, 49 U.S. (8 How.) 113, 122 (1850) (“In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.”); see, e.g., *Brotherhood of Locomotive Engineers v. Atchison, Topeka & Santa Fe R.R. Co.*, 516 U.S. 152, 157-58, 116 S. Ct. 595, 598 (1996) (considering purpose of Hours of Service Act to interpret phrase “on duty” within the text of the statute).

⁴ Cf. *SEC v. Joiner*, 320 U.S. 344, 350-51, 64 S. Ct. 120, 123 (1943) (“[C]ourts will construe the details of an act in conformity with its dominating general purpose, will read text in the light of context and will inter-

the state law receivership enforcement mechanism. The law of almost every state provides for a receivership remedy, *see* Spiotto et al., *supra*, at 43 & app. B, and revenue bond lenders rely on this state law remedy in structuring “their bargain with the municipal issuer,” *cf.* 1988 Senate Report, *supra*, at 12. Therefore, where Congress intended to preserve the status quo of the municipal bond market by enacting the 1988 Amendments, it in-

pret the text so far as the meaning of the words fairly permits so as to carry out in particular cases the generally expressed legislative policy.”). While courts often rely on the “plain meaning rule,” that rule and other canons of statutory construction must defer to a law’s underlying purpose, which the canons exist to decipher, “when [their] application would be tantamount to a formalistic disregard of congressional intent.” *Rice v. Rehner*, 463 U.S. 713, 732, 103 S. Ct. 3291, 3302-03 (1983); *Perry v. Commerce Loan Co.*, 383 U.S. 392, 400, 86 S. Ct. 852, 857 (1966) (“[E]ven when the plain meaning did not produce absurd results but merely an unreasonable one plainly at variance with the policy of the legislation as a whole this Court has followed that purpose, rather than the literal words.”) (internal quotation marks omitted); *Holy Trinity Church v. United States*, 143 U.S. 457, 459, 12 S. Ct. 511, 512 (1892) (“It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit nor within the intention of its makers.”); *see also* *FCC v. NextWave Personal Commc’ns, Inc.*, 537 U.S. 293, 311, 123 S. Ct. 832, 844 (2003) (Breyer, J., dissenting) (“It is dangerous ... to rely exclusively upon the literal meaning of a statute’s words divorced from consideration of the statute’s purpose.”). Thus, “[n]o vehicles in the park” should not be interpreted to apply to baby strollers or tanks used in a war memorial, *NextWave*, 537 U.S. at 311, 123 S. Ct. at 844 (Breyer, J., dissenting), and a prohibition on obstructing U.S. mail delivery does not bar a police officer from arresting a U.S. letter carrier for murder, *United States v. Kirby*, 74 U.S. (7 Wall.) 482, 487 (1868).

tended to preserve not only the security of pledged revenues, but also the continuing authority of state receivership law as a means to enforce that pledge.

The legislative history reflects the practical reasons for this purpose. Congress placed specific importance on the ability of municipalities, particularly those in financial distress, to access municipal revenue bond finance for critical infrastructure projects. 1988 Senate Report, *supra*, at 4. Congress recognized that as the traditional revenue bond finance structures are compromised by the conflict with commercial finance-based bankruptcy statutes, municipal bond investors may become reluctant to provide financing without the traditional structures upon which they had come to rely, and access to project financing could be closed or become too costly for many municipalities. *See* 1988 House Report, *supra*, at 5. By maintaining the traditional revenue bond finance status quo, Congress hoped to “protect the future effectiveness of revenue bond financing.” 1988 Senate Report, *supra*, at 12. If a state receivership is terminated upon a chapter 9 filing, revenue bond investors would lose an important mechanism on which they rely to effectuate the express protection Congress provided in protecting the revenue pledge. Without revenue bond lenders’ ability not

only to maintain a legal right to the revenues of the enterprise securing their bonds, but also to implement key economic controls, such as rate setting, to ensure the sufficiency of those pledged revenues, revenue bond lenders would face significantly enhanced risk in providing project financing to municipalities. The increased risk could materially reduce the revenue bond market's willingness to lend, thereby resulting in restricted access by municipalities to the revenue bond market to finance critical infrastructure and other municipal projects, a result at odds with the "dominating general purpose" of the 1988 Amendments. *See SEC v. Joiner*, 320 U.S. 344, 350-51, 64 S. Ct. 120, 123 (1943) ("[C]ourts will construe the details of an act in conformity with its dominating general purpose, will read text in the light of context and will interpret the text so far as the meaning of the words fairly permits so as to carry out in particular cases the generally expressed legislative policy.").

In this case, the revenue warrant lenders relied on the receivership remedy that the indenture governing the warrants and state law provided. *See* Jefferson County Indenture § 13.2(c), R. at Vol. III, Doc. 257 at 90; Ala. Code § 6-6-620 (1975). Before the commencement of Appellee's chapter 9 case, this remedy operated as designed. No one disputes that the state

court-appointed receiver has improved the economic viability of Appellee's sewer system properties since he assumed control under the state receivership proceeding. *See* Memorandum Opinion, R. at Vol. II, Doc. 554, at 55 ("There is no doubt that the Receiver has done a far better job overseeing the running of the County's sewer system than the former commissioners."). The receiver eliminated corrupt and incompetent management, reduced excess staffing, trained remaining employees to better maintain, repair and improve the sewer system and improved collection efforts to capture lost revenues. *Id.* at 10-11. This result is exactly what the Alabama receivership remedy intended for revenue bond holders, and it is exactly to achieve this kind of result that the revenue bond market relies on the state receivership enforcement mechanism. Confidence in the receivership safeguard in situations like those presented in this case is fundamental to the revenue bond market and a critical part of the "traditional structure of revenue bond finance" that Congress acted to protect. *See* 1988 Senate Report, *supra*, at 4.

Where Congress's intent to override the state law is doubtful, our federal system "demands deference to 'long-established traditions of state regulation,'" *BFP v. Resolution Trust Corp.*, 511 U.S., 531, 546, 114 S. Ct. 1757,

1765-66 (1994), where doing so does not “stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S. Ct. 399, 404 (1941). *See also Savage v. Jones*, 225 U.S. 501, 533, 32 S. Ct. 715, 726 (1912). Here, Congress intended to preserve state law enforcement mechanisms, and respecting them would not defeat the purpose of the municipal bankruptcy statute. Guided by that underlying legislative purpose, this Court should construe the applicable federal statutes in a way that defers to the state law system and protects the receivership remedy that is an integral part of the system.

The Court should therefore reverse the Bankruptcy Court’s ruling that the effect of the commencement of a chapter 9 bankruptcy case is to terminate a receiver’s authority to manage the sewer system in a manner consistent with the revenue bond investors’ traditional state law remedies.

CONCLUSION

For the foregoing reasons, this Court should affirm the Bankruptcy Court’s ruling that “pledged special revenues” in section 922(d) means all revenues on which an indenture trustee has been granted a lien in connection with the revenue bonds and includes revenues that the municipality


receives before, on or after the bankruptcy petition date, whether in the possession of the indenture trustee, a receiver or the debtor. This Court should reverse the Bankruptcy Court's rulings that deny a receiver's continuing possession and control over revenue producing properties and that deny relief from the automatic stay to continue the receivership and application of pledged revenues to the outstanding bonds.

[Signature Page Follows]

Dated this 31st day of August, 2012.

Respectfully submitted,

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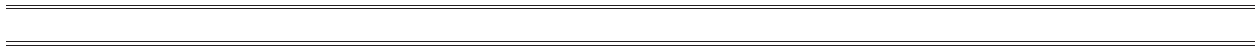
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Addendum I

[NABL Model Trust Indenture]



TRUST INDENTURE

between

[ISSUER]

and

[TRUSTEE]

[\$_____]

**[ISSUER]
[DESIGNATION] BONDS, SERIES [YEAR]
([BORROWER] PROJECT)**

Dated as of _____ 1, _____

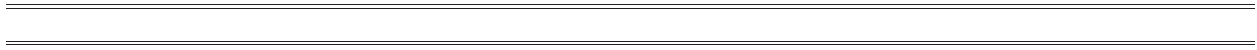


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TRUST INDENTURE

THIS TRUST INDENTURE (the “Indenture”) dated as of _____ 1, _____ is made by and between the [ISSUER] (the “Issuer”), a [TYPE OF ENTITY] organized and existing under the laws of the State of [NAME OF STATE], and [TRUSTEE] (the “Trustee”), [a national banking association/a [NAME OF STATE] banking corporation] authorized to exercise corporate trust powers:

WITNESSETH:

[RECITALS TAILORED TO PARTICULAR ACT]

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

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

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

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

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

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

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

(c) to secure the performance and observance of and compliance with the covenants, agreements, obligations, terms and conditions of this Indenture and the Loan Documents,

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

PROVIDED, FURTHER, that the pledge of the right, title and interest of the Issuer in and to the Trust Estate is given subject to the right of the Issuer to issue Additional Bonds secured on a parity basis with the Bonds by the Trust Estate; and

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

ARTICLE I DEFINITIONS AND INTERPRETATIONS

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

“*Act*” means [ENABLING LEGISLATION].

“*Additional Bonds*” means the additional parity bonds authorized to be issued by the Issuer pursuant to Section 2.13.

“*Affiliate*” of any specified entity means **[INSERT DEFINITION FOR TRANSACTION]**.

“*Agreement*” means the Loan Agreement, dated as of the date of this Indenture, between the Issuer and the Borrower, as amended or supplemented from time to time.

“*Attesting Officer*” means the **[Clerk, Assistant Clerk, Secretary, Assistant Secretary, etc.]** of the Issuer.

“*Authorized Denomination*” means \$5,000 and any multiple thereof **[means \$100,000 and any multiple of \$5,000 in excess thereof]**.

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

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

“*Bond*” or “*Bonds*” means the Initial Bonds and any Additional Bonds issued under this Indenture.

“*Bond Counsel*” means, with respect to the Bonds, **[FIRM]**, **[CITY, STATE]**, or any other firm of attorneys **[experienced in the matters covered by the opinion]** selected by the **[Issuer/Borrower]** and **[not unacceptable/acceptable]** to the **[Issuer and the]** Trustee.

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

“*Bond Legislation*” means the **[Bond Legislation as defined in the Agreement/authorizing action of the Issuer]**.

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

“*Book Entry Bonds*” means that part of a Series for which a Securities Depository or its nominee is the Bondholder.

“*Borrower*” means **[BORROWER]**, a **[TYPE OF ENTITY]** organized and existing under the laws of the State of **[NAME OF STATE]**, and, to the extent permitted by the Agreement, its lawful successors and assigns.

“*Business Day*” means any day of the year other than (a) a Saturday or Sunday, (b) any day on which banks located in **[City/State of Issuer]** or the city in which the Office of the

Trustee is located are required or authorized by law to remain closed, or (c) any day on which the New York Stock Exchange is closed.

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

“*Conditional Redemption*” means a redemption where the **[Borrower/Issuer]** has stated in the redemption notice to the Trustee that (a) the redemption is conditioned upon deposit of funds or (b) the **[Borrower/Issuer]** has retained the right to rescind the redemption, as further described in Section 3.09.

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

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

“*Defeasance Obligations*” means **[TO BE TAILORED TO THE PARTICULAR TRANSACTION]**.

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

“*Determination of Taxability*” means **[TO BE DRAFTED BY BOND COUNSEL]**.

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

“*Eligible Investments*” means **[TO BE TAILORED TO THE PARTICULAR TRANSACTION]**.

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

“*Event of Default*” means any of the events specified in Section 7.01 to be an Event of Default. A “default” means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“*Executive*” means the Chief Executive Officer of the Issuer.

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

“*Governmental Obligations*” means (a) noncallable, nonredeemable direct obligations of the United States of America, **[and]** (b) obligations the timely payment of the principal of, and interest on, which is fully and unconditionally guaranteed by the United States of America, **[and]**

(c) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in (a) or (b).]

“*Immediate Notice*” means notice transmitted by electronic means, in writing, by telecopier or other electronic means or by telephone (promptly confirmed in writing), and received by the party addressed.

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

“*Initial Bonds*” means the Issuer’s \$_____ [DESIGNATION] Bonds, Series [YEAR] ([BORROWER] Project).

“*Interest Payment Date*” means, (a) for the Initial Bonds, the [first/fifteenth] day of _____ and _____ of each year [beginning _____] and, for any Additional Bonds, the days designated in the supplemental indenture authorizing such Additional Bonds, (b) for Bonds subject to redemption in whole or in part on any date, the date of such redemption, and (c) for all Bonds any date determined pursuant to Section 7.08.

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

“*Issue Date*” means, with respect to the Initial Bonds, the date of issuance and delivery of the Initial Bonds to the Underwriter and, with respect to any Additional Bonds, the date of issuance and delivery of such Additional Bonds to the initial purchasers thereof.

“*Issuer*” means the [ISSUER] and its successors and assigns.

“*Issuer Representative*” means [Issuer Representative as defined in the Agreement].

“*Legislative Authority*” means the [GOVERNING BODY] of the Issuer.

[“*Letter of Representations*” shall mean when all the Bonds of a Series are Book Entry Bonds, the [related Letter of Representations _____, executed by the Issuer [, the Borrower] and the Trustee and delivered to the Securities Depository and any amendments thereto or successor agreements between the Issuer [, the Borrower] and the Trustee and any successor Securities Depository, relating to a system of Book Entry Bonds to be maintained by the Securities Depository with respect to the Bonds of such Series.] [Blanket Letter of Representations dated _____, executed by

the Issuer and delivered to the Securities Depository and any amendments thereto or successor blanket agreements between the Issuer and any successor Securities Depository, relating to a system of Book Entry Bonds to be maintained by the Securities Depository with respect to any bonds, notes or other obligations issued by the Issuer.]

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

“*Loan Documents*” means the Agreement [, **the Note and the Deed of Trust/Mortgage**].

“*Loan Payments*” means the amounts required to be paid by the Borrower in repayment of the Loan pursuant to the provisions of the Loan Documents, or all amounts realized by the Trustee thereunder in accordance with Article VII.

[“Note” means the [unsecured] non-negotiable promissory note of the Borrower, dated as of the date of the [Initial] Bonds, in the form attached to the Agreement as Exhibit A and in the principal amount of \$_____, evidencing the obligation of the Borrower to make Loan Payments.]

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

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

- (a) Bonds theretofore cancelled or delivered to the Trustee for cancellation under Section 2.11;
- (b) Bonds which are deemed to be no longer Outstanding in accordance with Article IX; and
- (c) Bonds in substitution for which other Bonds have been authenticated and delivered pursuant to Article II.

In determining whether the owners of a requisite aggregate principal amount of Bonds Outstanding have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions hereof, Bonds which are held by or on behalf of the Borrower or an Affiliate (unless all of the Outstanding Bonds are then owned by the Borrower or an Affiliate) shall be disregarded for the purpose of any such determination.

“*Paying Agent*” or “*Co-Paying Agent*” means any national banking association, state bank, bank and trust company or trust company appointed by the Borrower and meeting the

qualifications of, and subject to the obligations of, the Trustee in Article VIII. Initially, the Trustee shall be the Paying Agent.

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

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

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

“*Project*” means the Project, as defined in the Agreement.

“*Project Costs*,” “*Cost of the Project*” or “*Costs*” means **[TO BE TAILORED TO THE ACT AND THE PARTICULAR TRANSACTION]**.

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

“*Project Purposes*” means the Project Purposes, as defined in the Agreement.

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

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

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

“*Record Date*” means, (a) with respect to any Interest Payment Date described in subsection (a) of that defined term, (1) in the case of Bonds which are not Book Entry Bonds the Trustee’s close of business on the 15th day of the calendar month next preceding such Interest Payment Date, regardless of whether such day is a Business Day, and (2) in the case of Book Entry Bonds the Trustee’s close of business on the Business Day preceding the Interest Payment Date, and (b) with respect to any other Interest Payment Date, a date selected by the Trustee.

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

“*Required Reserve*” means, as of any date, the aggregate of the Series Required Reserve for all Series of Bonds for which any Bonds of such Series are at the time Outstanding.

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

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

“*Revenues*” means (a) the Loan Payments, (b) all amounts payable to the Trustee with respect to the principal of, redemption premium, if any, or interest on, the Bonds (1) by the Borrower as required under the Agreement and (2) upon deposit in the Debt Service Fund from the proceeds of the Bonds and (c) investment income with respect to any moneys held by the Trustee in the Project Fund, the Debt Service Fund and the Reserve Fund. The term “*Revenues*” does not include any moneys or investments or investment income in the Rebate Fund.

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

“*Series*” means the Initial Bonds and any Additional Bonds so designated pursuant to Section 2.13.

“*Series Required Reserve*” means, (a) for the Initial Bonds, an amount equal to [\$_____], (b) for any Series of Additional Bonds, an amount, determined at the time of issuance of such Additional Bonds, not to exceed the least of (1) 10% of the original principal amount of such Additional Bonds, (2) 125% of the average annual debt service payment on such Additional Bonds, (3) 100% of the maximum annual debt service payable on such Additional Bonds, or (4) an amount which, when added to the existing Series Required Reserves for Outstanding Bonds, will not cause the total Required Reserve to exceed maximum annual debt service payable on the Outstanding Bonds and the Additional Bonds; provided the Series Required Reserve for any Series of Additional Bonds may be revised to a lesser amount in accordance with requirements of Regulations specifying the maximum amount in a reserve fund permitted to be invested without regard to investment yield.

“*State*” means the State of **[NAME OF STATE]**.

“*Trust Estate*” means all right, title and interest of the Issuer in and to (a) the Loan Documents (except for Unassigned Issuer’s Rights), (b) Revenues, (c) Funds (except for the Rebate Fund) and (d) all other property of every name and nature from time to time hereafter by delivery or by writing mortgaged, pledged, delivered or hypothecated as and for additional

security under this Indenture by the Issuer or by anyone on its behalf or with its written consent in favor of the Trustee.

“*Trustee*” means [NAME OF BANK OR TRUST COMPANY] [a national banking association/a state banking association] and any successor trustee under this Indenture, acting in its trust capacity.

“*Unassigned Issuer’s Rights*” means Unassigned Issuer’s Rights as defined in the Agreement.

“*Underwriter*” means, with respect to the Initial Bonds, [NAME OF UNDERWRITER or UNDERWRITERS’ REPRESENTATIVE] and, with respect to the Additional Bonds, the initial purchaser of such Additional Bonds.

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

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

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

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

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

(e) Any terms not defined in this Indenture but which are defined in the Agreement **[Loan Documents]** have the same meaning in this Indenture as are given to them in the Agreement **[Loan Documents]**.

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

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

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

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

**ARTICLE II
AUTHORIZATION, EXECUTION,
AUTHENTICATION, REGISTRATION AND DELIVERY OF BONDS**

Section 2.01 Authorization of Bonds; Limitation. The Initial Bonds are hereby authorized to be issued as revenue bonds of the Issuer in the aggregate principal amount of \$_____ designated “[DESIGNATION] Bonds, Series [YEAR] ([BORROWER] Project).” Additional Bonds are hereby authorized to be issued pursuant to Section 2.13 and supplemental indentures described in Article X. No obligations may be issued by the Issuer or the Borrower (a) which are senior in claim on the Trust Estate to the Bonds, (b) which, other than Additional Bonds, have a claim on the Trust Estate in parity with the Bonds or (c) which are junior or subordinate in claim on the Trust Estate to the Bonds.

Section 2.02 Bonds [Limited/Special] Obligations. The Bonds shall be [limited/special] obligations of the Issuer, payable solely from the Trust Estate. The Bonds shall constitute a valid claim of the respective owners thereof against the Trust Estate, which is pledged to secure the payment of the principal of, redemption premium, if any, and interest on the Bonds, and which shall be utilized for no other purpose, except as expressly authorized in this Indenture. The Bonds shall not constitute general obligations of the Issuer and under no circumstances shall the Bonds be payable from, nor shall the holders thereof have any rightful claim to, any income, revenues, funds or assets of the Issuer other than those pledged hereunder as security for the payment of the Bonds.

Section 2.03 Details of Bonds. The Initial Bonds shall be issued in Authorized Denominations, shall be dated the date of this Indenture, shall be numbered from R-1 upward, and shall bear interest (calculated on the basis of a 360-day year of twelve 30-day months) payable on _____ 1, ____, and thereafter on each Interest Payment Date at the rates per annum and shall mature on _____ 1, in the years and amounts as follows:

<u>Amount</u>	<u>Year</u>	<u>Rate</u>	%	<u>Amount</u>	<u>Year</u>	<u>Rate</u>	%
\$			%	\$			%

All Initial Bonds shall bear interest (a) from [_____ 1, ____/the Issue Date], if authenticated prior to the first Interest Payment Date, or (b) otherwise from the Interest Payment Date that is, or that immediately precedes, the date on which such Initial Bond is authenticated (unless payment of interest is in default, in which case such Initial Bond shall bear interest from the date to which interest has been paid).

The principal of, redemption premium, if any, and interest on the Initial Bonds shall be payable in lawful money of the United States of America. Principal of and redemption premium,

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

If any principal of, redemption premium, if any, or interest on any Initial Bond is not paid when due (whether at maturity, by acceleration or call for redemption or otherwise), then the overdue installments of principal and, to the extent permitted by law, interest and redemption premium, if any, shall bear interest until paid at the same rate set forth in such Initial Bond.

Details of Additional Bonds shall be as set forth in supplemental indentures providing for their issuance.

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

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

Section 2.06 Forms of Bonds. The Initial Bonds shall be substantially in the form set forth in Appendix A with such appropriate variations, legends, omissions and insertions as permitted or required by this Indenture. The form of each Series of Additional Bonds shall be as set forth in the supplemental indenture providing for their issuance.

Section 2.07 Delivery of Initial Bonds. The Trustee shall **[release/authenticate and deliver]** the Initial Bonds when there have been filed with it the following:

- (a) A copy certified by the Attesting Officer of the Issuer of the Bond Legislation authorizing (1) the execution and delivery of the Agreement **[and the assignment of the Agreement and the Note]**, (2) the execution and delivery of this Indenture, and (3) the issuance, sale, execution and delivery of the Initial Bonds;

- (b) An original executed counterpart of this Indenture;
- (c) An original executed counterpart of the Agreement;
- (d) An opinion or opinions of Bond Counsel, addressed to the Issuer and the Trustee, to the effect that this Indenture and the Bonds have each been validly authorized, are binding and enforceable against the Issuer, subject to bankruptcy and equitable principles, that the issuance of the Initial Bonds has been duly authorized and that interest on the Initial Bonds is not included in gross income for federal income tax purposes under the Code **[and is exempt from income taxation by the State of [NAME OF STATE]]**;
- (e) A request and authorization of the Issuer, signed by its Executive, to the Trustee to authenticate and deliver the Initial Bonds to such person or persons named therein upon payment for the account of the Issuer of a specified sum plus accrued interest to the date of delivery;
- (f) An opinion of Counsel to the Borrower, addressed to the Issuer, the Trustee and Bond Counsel, to the effect that the Loan Documents have been duly authorized, executed and delivered by the Borrower and are enforceable against the Borrower, subject to bankruptcy and equitable principles;
- [(g) The original executed Note, assigned by the Issuer to the Trustee;]**
- [(h) An original executed counterpart of the Deed of Trust/Mortgage;]**
- [(i) An opinion or certificate to the effect that necessary State law approvals, consents or opinions have been obtained.]**

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

Additional Bonds shall be delivered only upon compliance with Section 2.13 and the provisions of the supplemental indentures providing for their issuance.

Section 2.08 Registration of Transfer and Exchange of Bonds; Persons Treated as Bondholders. The Trustee shall act as initial bond registrar (the "Bond Registrar") and in such capacity shall maintain a bond register (the "Bond Register") for the registration and transfer of Bonds. Upon surrender of any Bonds at the Office of the Trustee, together with an assignment duly executed by the current Bondholder of such Bonds or such Bondholder's duly authorized attorney or legal representative in such form as shall be satisfactory to the Trustee, such Bonds

may, at the option of the Bondholder, be exchanged for an equal aggregate principal amount of Bonds of the same Series and maturity, of Authorized Denominations and bearing interest at the same rate and in the same form as the Bonds surrendered for exchange, registered in the name or names requested by the assignee of the then Bondholder; provided the Trustee is not required to exchange or register the transfer of Bonds after the giving of notice calling such Bond for redemption, in whole or in part. The Issuer shall execute and the Trustee shall authenticate any Bonds whose execution and authentication is necessary to provide for exchange of Bonds pursuant to this Section and the Issuer may rely on a representation from the Trustee that such execution is required.

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

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

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

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

If, after the delivery of such replacement Bond, the original Bond in lieu of which such replacement Bond was issued is presented for payment or registration, the Trustee shall seek to recover such replacement Bond from the person to whom it was delivered or any person taking

therefrom and shall be entitled to recover from the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Trustee, the Borrower or the Issuer in connection therewith.

Section 2.11 Cancellation and Disposition of Bonds. The Issuer or the Borrower may deliver Bonds to the Trustee for cancellation at any time and for any reason and the Trustee is hereby authorized to cancel such Bonds. All Bonds that have been paid (whether at maturity or by acceleration, upon redemption or pursuant to Section 3.10) or delivered to the Trustee for cancellation shall not be reissued. Unless otherwise directed by the Issuer or the Borrower, the Trustee shall treat such Bonds in accordance with its document retention policies or as may be directed by state law.

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

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

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

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

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

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

The Issuer, the Borrower and the Trustee will recognize the Securities Depository or its nominee as the Bondholder of Book Entry Bonds for all purposes, including receipt of payments, notices and voting; provided the Trustee may recognize votes by or on behalf of Beneficial Owners as if such votes were made by Bondholders of a related portion of the Bonds when such votes are received in compliance with an omnibus proxy of the Securities Depository or otherwise pursuant to the rules of the Securities Depository or the provisions of the Letter of Representations or other comparable evidence delivered to the Trustee by the Bondholders **[or as provided in Sections 8.10 and 11.11 of this Indenture.]**

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

Section 2.13 Additional Bonds. The Issuer will not issue any other bonds or obligations having a lien on the Trust Estate except for Additional Bonds issued pursuant to this Section **[and Section _____ of the Agreement]**. Additional Bonds may be issued and the Trustee shall **[authenticate and]** deliver such Additional Bonds when there have been filed with it the following:

- (a) A copy certified by the Attesting Officer of the Issuer of the Bond Legislation authorizing (1) the execution and delivery of any amendments to the Loan Documents required by the issuance of such Additional Bonds, (2) the execution and delivery of a supplemental indenture providing for, among other things, the date, rate or rates of interest on, interest payment dates, maturity dates and redemption provisions of such Additional Bonds, and (3) the issuance, sale, execution and delivery of the Additional Bonds;

- (b) An original executed counterpart of the supplemental indenture;
- (c) Original executed counterparts of any amendments or supplements to the Agreement **[and the Note]**;
- (d) An opinion of Counsel to the Borrower, addressed to the Issuer, the Trustee and Bond Counsel, to the effect that the amendments to the Loan Documents have been duly authorized, executed and delivered by the Borrower and are enforceable against the Borrower, subject to bankruptcy and equitable principles;
- (e) An opinion or opinions of Bond Counsel, addressed to the Issuer and the Trustee, to the effect that issuance of the Additional Bonds is permitted under this Indenture, the supplemental indenture and the Additional Bonds have each been validly authorized, are binding and enforceable against the Issuer, subject to bankruptcy and equitable principles, the issuance of the Additional Bonds has been duly authorized, **[interest on the Additional Bonds is not included in gross income for federal income tax purposes under the Code] [and is exempt from income taxation by the State of [NAME OF STATE]]**, and issuance of the Additional Bonds will not adversely affect the income tax status of interest on Bonds Outstanding;
- (f) A request and authorization of the Issuer, signed by its Executive, to the Trustee to authenticate and deliver the Additional Bonds to such person or persons named therein after confirmation of payment to the Trustee for the account of the Issuer of a specified sum with directions as to the disposition of such of such sum; and
- (g) A certificate of the Issuer, signed by its Executive, that the Issuer is not in default under this Indenture, and evidence satisfactory to the Trustee that upon issuance of the Additional Bonds amounts will be deposited in the Funds hereunder adequate for the necessary balances therein after issuance of the Additional Bonds.

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

ARTICLE III REDEMPTION OF BONDS

Section 3.01 Redemption Dates and Prices. The Initial Bonds may not be called for redemption by the Issuer except as provided in this Article III. Additional Bonds may not be called for redemption by the Issuer except as provided in the supplemental indenture providing for their issuance.

Section 3.02 Mandatory Sinking Fund Redemption of Initial Bonds. The Trustee shall redeem Initial Bonds maturing on _____ 1, _____, on _____ 1 in the years and in

the principal amounts and at a price of 100% of the principal amount of the Initial Bonds to be redeemed plus interest accrued to the redemption date, as follows:

Year

Amount

When such Initial Bonds have been redeemed as set out above, the balance of \$_____ will mature on _____ 1, _____, unless otherwise previously retired.

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

Section 3.03 Optional Redemption of Initial Bonds. The Initial Bonds maturing on or after _____ 1, _____, are subject to redemption by the Issuer **[at the direction of the Borrower]** on or after _____ 1, _____, in whole or in part at any time from any moneys that may be available for such purpose, upon payment of the following redemption prices (expressed as a percentage of principal amount of Initial Bonds to be redeemed) plus interest accrued to the redemption date:

<u>Redemption Period</u>	Redemption Price
_____ 1, _____, through _____, _____, inclusive	
_____ 1, _____, through _____, _____, inclusive	
_____ 1, _____, and thereafter _____%	

[Section 3.04 Mandatory Redemption Upon Determination of Taxability. The Bonds shall be subject to mandatory redemption prior to maturity by the Issuer, as a whole and not in part, on the earliest practicable date for which notice can be given following the occurrence of a Determination of Taxability, at a redemption price equal to [____%] of the principal amount thereof plus accrued interest to the redemption date.]

[Section 3.05 Mandatory Redemption from Surplus Bond Proceeds. To the extent that moneys are transferred from the Project Fund to the Debt Service Fund pursuant to Section 4.02(b) for purposes of redeeming the Bonds, the Bonds are subject to mandatory redemption in part in Authorized Denominations on the next scheduled Interest Payment Date at a redemption price equal to 100% of the aggregate principal amount of the Bonds to be redeemed plus accrued interest to the redemption date.]

[Section 3.06 Extraordinary Redemption from Insurance and Condemnation Proceeds. The Bonds are subject to redemption in whole at any time or in part (and if in part in Authorized Denominations; provided that no Bond may be redeemed in part if the principal amount to be Outstanding following such partial redemption is not an Authorized Denomination) from any net insurance or condemnation proceeds deposited with the Trustee for the purpose of redemption pursuant to Section ____ of the Agreement. Such redemption shall occur on any Business Day selected by the [Borrower/Trustee] for which adequate notice pursuant to Section 3.09 may be given, at a redemption price equal to 100% of the aggregate principal amount of the Bonds to be redeemed plus accrued interest to the redemption date.]

Section 3.07 Extraordinary Redemption of Initial Bonds.

[PROVISIONS MUST BE TAILORED TO THE PARTICULAR TRANSACTION.]

Section 3.08 Selection of Bonds for Redemption. If less than all of the Bonds are called for redemption, they shall be redeemed [from maturities in such order as determined by the [Borrower/Issuer] [proportionately by maturity], and by lot within any maturity (provided, however, that if an Event of Default has occurred and is continuing any Bonds called for redemption shall be redeemed in proportion by maturity and within maturities by lot), subject to selection by the Trustee as provided below. The portion of any Bond to be redeemed shall be an Authorized Denomination or any multiple thereof and in selecting Bonds for redemption, each Bond shall be considered as representing that number of Bonds which is obtained by dividing the principal amount of such Bond by the minimum Authorized Denomination. If a portion of a Bond shall be called for redemption, a new Bond in principal amount equal to the unredeemed portion thereof shall be issued to the Bondholder upon the surrender thereof. If for any reason the principal amount of Bonds called for redemption would result in a redemption of Bonds less

than the Authorized Denomination, the Trustee, to the extent possible within the principal amount of Bonds to be redeemed, is hereby authorized to adjust the selection of Bonds for such purpose in order to minimize any such redemption. Notwithstanding the foregoing, the Securities Depository for Book Entry Bonds shall select the Bonds for redemption within particular maturities according to its stated procedures.

Section 3.09 Notice of Redemption.

(a) When Bonds (or portions thereof) are to be redeemed pursuant to Section 3.03 or 3.07, the **[Issuer/Borrower]** shall give or cause to be given notice of the redemption of the Bonds to the Trustee no later than **[45]** days prior to the redemption date or such shorter time as may be acceptable to the Trustee. In the case of an optional redemption under Section 3.03, the notice may state (1) that it is conditioned upon the deposit of moneys, in an amount equal to the amount necessary to effect the redemption, with the Trustee no later than the **[date that is five (5) Business Days prior to the]** redemption date or (2) that the **[Issuer/Borrower]** retains the right to rescind such notice [on or prior to the scheduled redemption date] (in either case, a “Conditional Redemption”), and such notice and optional redemption shall be of no effect if such moneys are not so deposited or if the notice is rescinded as described in subsection (d) of this Section. The Trustee, at the expense of the Borrower, shall send notice of any redemption, identifying the Bonds to be redeemed, the redemption date and the method and place of payment and the information required by subsection (b) of this Section, by first class mail to each holder of a Bond called for redemption to the holder’s address listed on the Bond Register. Such notice shall be sent by the Trustee by first class mail between **[30]** and **[60]** days prior to the scheduled redemption date. With respect to Book Entry Bonds, if the Trustee sends notice of redemption to the Securities Depository pursuant to the Letter of Representations, the Trustee shall not be required to give the notice set forth in the immediately preceding sentence. If notice is given as stated in this paragraph (a), failure of any Bondholder to receive such notice, or any defect in the notice, shall not affect the redemption or the validity of the proceedings for the redemption of the Bonds.

(b) In addition to the foregoing, the redemption notice shall contain with respect to each Bond being redeemed, (1) the CUSIP number, (2) the date of issue, (3) the interest rate, (4) the maturity date, and (5) any other descriptive information determined by the Trustee to be needed to identify the Bonds. If a redemption is a Conditional Redemption, the notice shall so state. The Trustee shall also send each notice of redemption at least thirty (30) days before the redemption date to (A) any Rating Service then rating the Bonds to be redeemed; (B) all of the registered clearing agencies known to the Trustee to be in the business of holding substantial amounts of bonds of a type similar to the Bonds; and (C) one or more national information services that disseminate notices of redemption of bonds such as the Bonds **[such services to be identified by the Trustee]**. **[Each redemption notice shall also be sent to participants of the Securities Depository and to Beneficial Owners as provided in Section 8.10.]**

(c) On or before the date fixed for redemption, subject to the provisions of subsections (a) and (d) of this Section, moneys shall be deposited with the Trustee to pay the principal of, redemption premium, if any, and interest accrued to the redemption date on the Bonds called for redemption. Upon the deposit of such moneys, unless the **[Issuer/Borrower]** has given notice of rescission as described in subsection (d) of this Section, the Bonds shall cease to bear interest on the redemption date and shall no longer be entitled to the benefits of this Indenture (other than for payment and transfer and exchange) and shall no longer be considered Outstanding.

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

Section 3.10 Purchase at Any Time. The Trustee, upon the written request of the **[Issuer/Borrower]** shall purchase Bonds as specified by the **[Issuer/Borrower]** in the open market at a price not exceeding a price set by **[Issuer/Borrower]**. Such purchase of Bonds shall be made with funds provided by the **[Issuer/Borrower]** and not with any portion of the Trust Estate or any Defeasance Obligations. Upon purchase by the Trustee, such Bonds shall be treated as delivered for cancellation pursuant to Section 2.11. Nothing in this Indenture shall prevent the **[Issuer/Borrower]** from purchasing Bonds on the open market without the involvement of the Trustee and delivering such Bonds to the Trustee for cancellation pursuant to Section 2.11. Bonds purchased pursuant to this Section which are subject to the mandatory sinking fund redemption schedule in Section 3.02 **[shall/may]** be credited against future mandatory sinking fund redemption payments in accordance with Section 3.02. The principal amount of Bonds to be redeemed by optional redemption under this Indenture may be reduced by the principal amount of Bonds purchased by the Borrower or the Issuer, at the request of the Borrower, and delivered to the Trustee for cancellation at least forty-five (45) days prior to the redemption date.

ARTICLE IV FUNDS AND ACCOUNTS

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

- (a) Project Fund.
- (b) Debt Service Fund.
- (c) Reserve Fund.
- (d) Rebate Fund.

Section 4.02 Project Fund. The Project Fund shall be used for the payment of Project Costs and Issuance Costs [**and any future capital acquisitions and improvements**] or Issuance Costs to be paid from the proceeds of Additional Bonds. The Project Fund shall consist of the amounts required or permitted to be deposited therein pursuant to any provision hereof or of the Loan Documents, and the proceeds of the Initial Bonds shall be deposited therein in the amount set out in an Officer's Certificate of the Issuer. Separate accounts within the Project Fund shall be maintained by the Trustee for future capital acquisitions and improvements if the Issuer or the Borrower determines that separate accounts are desirable with respect to particular capital acquisitions and improvements or designated portions of capital acquisitions and improvements. Payments from the Project Fund, including any account so established, shall be made by the Trustee as follows:

- (a) Payments from the Project Fund shall be made only upon receipt by the Trustee of a requisition executed by the Borrower in the form required by the Agreement.
- (b) Upon completion [**or abandonment**] of the Project (as evidenced by a certificate of the Borrower delivered to the Trustee), any moneys remaining in the Project Fund shall be transferred to the Debt Service Fund to redeem Bonds pursuant to Section 3.05, unless the Borrower directs that such moneys be deposited into the Reserve Fund, or applied to any other use, accompanied in either case by an opinion of Bond Counsel to the effect that such application will not adversely affect any applicable exemption from federal income taxation of the interest on any Series of Bonds.
- (c) Notwithstanding anything to the contrary herein, to the extent an Event of Default described in clause (a) or (b) of Section 7.01 shall have occurred and be continuing and no other moneys are available under this Indenture to cure such Event of Default, no moneys on deposit in the Project Fund shall be applied in accordance with Section 4.02(b). In such event, moneys on deposit in the Project Fund shall be applied by the Trustee in accordance with Article VII.

Section 4.03 Debt Service Fund.

(a) The Trustee shall deposit into the Debt Service Fund (1) the portion of the proceeds of the Initial Bonds representing accrued and capitalized interest as set out in an Officer's Certificate of the Issuer, (2) all payments hereafter made by the Borrower for deposit in such Fund pursuant to the Agreement (including any insurance or condemnation moneys required to be deposited therein pursuant to the Agreement) and (3) all other amounts required or permitted hereunder to be deposited in the Debt Service Fund.

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

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

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

(3) to the payments of any deficiencies in the Reserve Fund in accordance with the requirements of Section 4.04, including for reimbursement to the provider of any credit facility deposited in the Reserve Fund pursuant to Section 4.04(d).

Section 4.04 Reserve Fund.

(a) The Trustee initially shall deposit in the Reserve Fund an amount equal to the Series Required Reserve on the Initial Bonds from **[the proceeds of the Bonds/moneys provided by the Borrower]**. Except as provided in subsection (d) of this Section, in connection with the issuance of any Additional Bonds, Required Reserve shall be recomputed for all Bonds then to be Outstanding, including the Additional Bonds then being issued, and any required increase in the amount on deposit in such Fund shall be funded at issuance for the Additional Bonds. The amount of any withdrawal for the purpose of subsection (b)(1) of this Section shall be restored by the Borrower in no more than [_____] (___) substantially equal, consecutive, monthly installments, each payable on the last Business Day of the month, commencing with the month in which the withdrawal is made; provided that, if any withdrawal is made and if, prior to the restoration of the amount withdrawn, an additional withdrawal is made, such additional withdrawal shall be restored in equal monthly installments over the remainder of the restoration period for the initial withdrawal. In addition, if the fair market value of the investments in the Reserve Fund is less than the Required Reserve on any valuation date in accordance with Section 5.03, the difference between such Required Reserve and the value of the Reserve Fund shall be restored by the Borrower in no more than [_____] (___), consecutive, monthly installments, each payable on the last Business Day of the month, commencing with the month in which the valuation revealing the deficiency is made. Upon the making of any monthly deposit to restore a withdrawal or deficiency, the **[Borrower/Issuer]**, at its cost, may direct the Trustee to recompute the value of the assets in the Reserve Fund, in which event the remaining amount to be restored,

if any, after taking the new valuation into account shall be deposited in equal monthly installments over the balance of the restoration period.

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

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

(2) Upon delivery of an Officer's Certificate of the Borrower delivered to the Trustee, any amount in the Reserve Fund in excess of the Required Reserve on any valuation date shall be (A) transferred to the Debt Service Fund and credited against the payments next becoming due (in direct order) under the Agreement in respect of the principal of and redemption premium, if any, or interest on the Initial Bonds or any Additional Bonds, or (B) applied as may be specified in an Officer's Certificate of the Borrower if such Certificate is accompanied by an opinion of Bond Counsel to the effect that such application will not cause interest on any Series of Bonds to be includable in gross income for federal income tax purposes; and

(3) In each month during the 12-month period preceding the final maturity date of any Series of Bonds, moneys held in the Reserve Fund shall be credited against the payments otherwise due under the Agreement in respect of principal of, redemption premium, if any, and interest on such Series of Bonds and shall be transferred to the Debt Service Fund for the payment of such principal, redemption premium and interest; provided, however, that no such credit shall be given and no such transfer shall be made if and to the extent that, immediately prior to such crediting and transfer, the amount on deposit in the Reserve Fund is not at least equal to the Required Reserve, less the amounts previously transferred to the Fund during such 12-month period pursuant to this subparagraph (3).

(c) Any deposit made in connection with the issuance of Additional Bonds hereunder may, if authorized under the supplemental indenture providing for the issuance of the Additional Bonds, be deposited into a separate, segregated account within the Reserve Fund, provided that all accounts within the Reserve Fund shall be held for the equal and proportionate benefit of all Bondholders and that the aggregate amount on deposit in all such accounts shall meet the requirements of this Section. Any supplemental indenture providing for the establishment of such separate accounts may contain such further provisions as may be necessary or appropriate for the proper administration of such accounts, including provisions establishing priorities for the application of amounts on deposit in the various accounts (including investment income) for the purposes set forth in this Section.

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

provided that:

(1) the credit facility (including any replacement credit facility) is issued by a bank, trust company, national banking association or insurance company whose unsecured long term debt obligations (in the case of a bank, trust company or national banking association) or whose claims paying abilities (in the case of an insurance company) are rated by a Rating Service, at the time the credit facility is issued and at the time of each extension or renewal thereof, in a rating category at least equal to the rating category assigned by such Rating Service to the Bonds [**at the Closing Date/at the time of substitution**], determined without regard to credit enhancement, if applicable, but in no event lower than an “investment grade” rating category, or the Rating Service otherwise provides evidence to the Trustee that the credit facility shall not result in a decrease or withdrawal of the rating on the Bonds;

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

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

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

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

Upon such substitution, funds on deposit in the Reserve Fund which, when added to the face amount of the credit facility, exceed the Series Required Reserve on all Outstanding Bonds shall be applied as provided in subsection (b)(2) above. Thereafter, the credit facility shall be considered a part of the Reserve Fund and the amount available thereunder shall be included in any calculation of the amount required to be retained in the Reserve Fund; provided that, (A) if the sum of the amount available under the credit facility and the amount of moneys on deposit in the Reserve Fund exceeds the amount required to be on deposit pursuant to subsection (a) of this Section, the Borrower shall be permitted to (i) cause the amount available under the credit facility to be reduced by an amount equal to such excess, or (ii) direct that the excess moneys be applied as permitted under subsection (b)(2) of this Section, and (B) if the credit facility is not extended, renewed or replaced at least [**six (6) months**] prior to its scheduled expiration or

termination date, the Trustee shall, not later than ____ days prior to such date, draw on the credit facility for the full amount thereof.

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

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

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

Section 4.06 Rebate Fund. Pursuant to the Agreement, the Borrower has covenanted to calculate and pay directly to the government of the United States of America all amounts due for payment of “arbitrage rebate” under Section 148(f) of the Code with respect to the Initial Bonds. Accordingly, no amounts shall be deposited in the Rebate Fund, provided, however, that the **[Issuer/Borrower]** may in the future deposit with the Trustee or direct the Trustee to deposit in the Rebate Fund amounts held in any Fund hereunder for any or all Series of Bonds (which direction shall specify the procedures for collection and payment of amounts due in respect of arbitrage rebate) if (a) required under any amendments to Section 148(f) of the Code, (b) the Borrower fails to make any required arbitrage rebate payments to the government of the United States of America, or (c) the Issuer and the Borrower otherwise agree that the funding of the Rebate Fund is desirable and appropriate. The Rebate Fund is a trust fund, but amounts therein do not constitute part of the Trust Estate. Amounts on deposit in the Rebate Fund may be used solely to make payments to the United States of America under Section 148 of the Code and to pay costs related to the calculation of the amounts due. Upon satisfaction of the Borrower’s covenants described above, any amounts remaining in the Rebate Fund shall be applied in accordance with Section 4.07.

Section 4.07 Repayment to the Borrower from Amounts Remaining in Any Funds.

Any amounts remaining in any Funds (a) after all of the Outstanding Bonds shall be deemed paid and discharged under the provisions of this Indenture, and (b) after payment of all fees, charges and expenses of the Trustee, the Bond Registrar and any Paying Agents and of all other amounts required to be paid under this Indenture or the Loan Documents, shall be paid to the Borrower as

provided in the Agreement to the extent that such amounts are in excess of those necessary to effect the payment and discharge of the Outstanding Bonds and payment of the Rebate Amount, if any.

Section 4.08 Disposition of Unclaimed Funds. Notwithstanding any provisions of this Indenture, and subject to applicable unclaimed property laws, any money deposited with the Trustee or any Paying Agent in trust for the payment of principal of, redemption premium of or interest on the Bonds remaining unclaimed for [_____] years after the payment thereof: **[(a) shall be reported and disposed of by the Trustee in accordance with applicable unclaimed property laws; or (b)]** to the extent permitted by applicable law, shall be paid to **[the Issuer][the Borrower][other disposition]**, whereupon all liability of the Issuer and the Trustee with respect to such money shall cease, and the holders of the Bonds shall thereafter look solely to the Borrower for payment of any amounts then due. **[All moneys held by the Trustee or any Paying Agent and subject to this Section shall be held uninvested and without liability for interest thereon.]**

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

ARTICLE V INVESTMENT OR DEPOSIT OF FUNDS

Section 5.01 Deposits and Security Therefor. All moneys received by the Trustee under this Indenture for deposit in any Fund established hereunder shall be considered trust funds. All moneys on deposit with the Trustee shall, to the extent not insured, be secured in the manner required or permitted by State or other applicable law. Subject to the foregoing requirements as to security, if at any time the commercial department of the Trustee is unwilling to accept such deposits or unable to secure them as provided above, the Trustee may deposit such moneys with any other depository which is authorized to receive and secure them as aforesaid and the deposits of which are insured by the Federal Deposit Insurance Corporation. All security for deposits shall be perfected in such manner as may be required or permitted under applicable law in order to grant to the Trustee a perfected lien on or security interest in such security.

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

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

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

absence of such direction, by the Trustee] [in certain specified Eligible Investments payable on demand].

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

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

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

(f) Unless otherwise provided in an applicable supplemental indenture, prior to the completion of the Project, investment income on amounts on deposit in the Reserve Fund and the Debt Service Fund shall be transferred to the Project Fund to the extent that no deficiency will exist in the Reserve Fund or the Debt Service Fund after such transfer or shall be applied to such other purpose or purposes as directed by the Borrower with an opinion of Bond Counsel addressed to the Trustee to the effect that such application will not cause interest on the Bonds to be includable in gross income for federal income tax purposes. After completion of the Project, investment income on amounts on deposit in the Reserve Fund shall be transferred to the Debt Service Fund to the extent that no deficiency will exist in the Debt Service Reserve Fund after such transfer. In all other situations, earnings from investment shall remain in the respective Fund where earned.

Section 5.03 Valuation of Funds. The Trustee shall determine the market value of the assets in each of the Funds established hereunder on, or on a date not earlier than three days prior to, (a) _____ 1 of each year and (b) the date of issuance for a Series of Additional Bonds. As soon as practicable after each such valuation date, the Trustee shall furnish to the **[Issuer and the] Borrower** a report of the status of each Fund as of such date. The Trustee shall also advise the Borrower at such time of the amount then available in the Debt Service Fund as a credit against the Borrower's obligation to make any deposits to the Debt Service Fund prior to the next valuation date. In computing the value of assets in any Fund, investments shall be valued at the fair market value thereof and shall include accrued but unpaid interest on each investment, and all investments (valued as aforesaid) and accrued interest thereon shall be deemed a part of such

Funds. All Eligible Investments that mature within [six (6)] months of any valuation date or are payable on demand shall be valued at par plus any accrued and unpaid interest. Upon the request of the Borrower, the Trustee shall also provide the Borrower with monthly or other periodic statements showing amounts deposited into and withdrawn from each Fund, the investments made with amounts in each Fund and the investment income received from such investments.

ARTICLE VI

COVENANTS AND AGREEMENTS OF THE ISSUER

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

(a) Payment of Principal, Interest and Redemption Premium. The Issuer will pay all principal of, redemption premium, if any, and interest on the Bonds or cause them to be paid, solely from the sources provided herein, on the dates, at the places and in the manner provided in this Indenture and the Agreement.

(b) Revenues and Assignment of Revenues. The Issuer will not assign the Revenues or create or authorize to be created any debt, lien or charge thereon, other than the assignment thereof under this Indenture.

(c) Recordings and Filings. At the expense of the Borrower, the Issuer will cooperate with the Borrower in performing the Borrower's obligation to cause this Indenture, or any related instruments or documents relating to the assignment made by the Issuer under this Indenture to secure the Bonds, to be recorded and filed in the manner and in the places which may be required by law in order to preserve and protect fully the security of the holders of the Bonds and the rights of the Trustee hereunder.

(d) Inspection of Project Books. All books, instruments and documents in the Issuer's possession relating to the Project and the Revenues shall be open to inspection at all times during the Issuer's regular business hours by any accountants or other agents of the Trustee which the Trustee may designate from time to time or by the holders of [___%] or more in principal amount of any Series of the Bonds then Outstanding, or a designated representative thereof.

(e) Register. At reasonable times and under reasonable regulations established by the Bond Registrar, the Bond Register may be inspected and copied by or delivered to the Borrower, the Issuer, the Trustee, by holders of [___%] or more in principal amount of any Series of the Bonds then Outstanding, or a designated representative thereof.

(f) Rights and Enforcement of the Agreement. The Trustee may enforce, in its name or in the name of the Issuer, all rights of the Issuer for and on behalf of the Bondholders, except for Unassigned Issuer's Rights, and may enforce all covenants, agreements

and obligations of the Borrower under and pursuant to the Agreement, regardless of whether the Issuer is in default in the pursuit or enforcement of those rights, covenants, agreements or obligations. The Issuer, however, will do all things and take all actions on its part necessary to comply with covenants, agreements, obligations, duties and responsibilities on its part to be observed or performed under the Agreement, and will take all actions within its authority to keep the Agreement in effect in accordance with the terms thereof.

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

The Issuer represents and warrants that:

(a) It is duly authorized by the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds, to execute and deliver this Indenture and the Loan Documents to which it is a party and to provide the security for payment of the principal of, redemption premium, if any, and interest on the Bonds in the manner and to the extent set forth in this Indenture.

(b) All actions required on its part to be performed for the issuance, sale and delivery of the Bonds and for the execution and delivery of this Indenture and the Loan Documents to which it is a party have been or will be taken duly and effectively; provided no representation is made as to compliance with any state securities or “Blue Sky” laws.

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

Section 6.03 Tax Covenants.

(a) The Issuer covenants that it will neither make nor direct the Trustee to make any investment or other use of the proceeds of any Series of Bonds issued hereunder that would cause such Series of Bonds to be “arbitrage bonds” as that term is defined in Section 148(a) of the Code, that it will comply with the requirements of the Code throughout the term of such Series of Bonds. The Trustee covenants that in those instances where it exercises discretion over the investment of funds, it shall not knowingly make any investment inconsistent with the foregoing covenants.

(b) Notwithstanding the foregoing, the Issuer hereby reserves the right to elect to issue one or more Series of Additional Bonds, the interest on which is not exempt from federal income taxation, if such election is made prior to the issuance of such Additional Bonds, and the covenants contained in this Section shall not apply to such Series of Bonds.

(c) The Issuer covenants that it (1) will take, or use its best efforts to require

to be taken, all actions that may be required of the Issuer for the interest on the Bonds to be and remain not included in gross income for federal income tax purposes and (2) will not take or authorize to be taken any actions within its control that would adversely affect that status under the provisions of the Code.

[Section 6.04 Enforcement of Issuer's Obligations. So long as no Event of Default hereunder shall have occurred and be continuing, the Issuer may exercise all its rights under the Loan Documents or any other lease, agreement or contract, or supplement or amendment thereto, provided that, except as permitted hereby or by the Loan Documents, the Issuer shall not amend any of the same so as to affect adversely the Issuer's ability to perform its covenants under this Indenture or change the payments or term of the Loan Documents or the security interest thereby and hereby created. The Issuer shall file with the Trustee copies of the Agreement, together with all amendments or supplements thereto, whether or not the Trustee's consent is required thereto, and shall give prompt notice to the Trustee of any default by any of the parties thereto of which it has actual knowledge.]

ARTICLE VII EVENTS OF DEFAULT AND REMEDIES

Section 7.01 Events of Default Defined. Each of the following is an "Event of Default" hereunder:

- (a) Default in the payment of any installment of interest on any Bond when it becomes due and payable [**and continuance of such default for a period of __ days**];
- (b) Default in the payment of principal of (or redemption premium, if any, on) any Bond when it becomes due and payable;
- (c) Subject to the provisions of Section 7.07, default in the performance, or breach, of any covenant, warranty or representation of the Issuer contained in this Indenture (other than a default under subsections (a) and (b) of this Section);
- (d) The occurrence of any Event of Default under [**the Agreement**][**the Loan Documents**]; or
- (e) (1) An Event of Bankruptcy of the Issuer; (2) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar official of the Issuer or of any substantial portion of its property; or (3) the ordering of the winding up or liquidation of the affairs of the Issuer.

If a Determination of Taxability occurs, there shall be no Event of Default resulting therefrom if the Bonds are redeemed pursuant to Section 3.04.

Section 7.02 Remedies Upon Default.

(a) If an Event of Default under Section 7.01 occurs and is continuing, the Trustee may, and upon the written request to the Trustee by the holder or holders of not less than **[a majority/25%]** in aggregate principal amount of the Bonds then Outstanding shall, subject to the requirements of Section 8.02(e), by written notice to the Issuer and the Borrower, declare the principal of the Bonds and all interest accrued thereon to the date of acceleration to be immediately due and payable.

(b) At any time after such a declaration of acceleration has been made and before the entry of a judgment or decree for payment of the money due, the Trustee may, or the holders of not less than **[a majority/25%]** in aggregate principal amount of the Bonds then Outstanding, may by written notice to the Issuer and the Trustee, and subject to the requirements of Section 8.02(e), direct the Trustee to, rescind and annul such declaration and its consequences if:

(1) there has been paid to or deposited with the Trustee by or for the account of the Issuer, or provision satisfactory to the Trustee has been made for the payment of a sum sufficient to pay: (A) all overdue installments of interest on the Bonds; (B) the principal of, and redemption premium, if any, on any Bonds which have become due other than by such declaration of acceleration and interest thereon; (C) to the extent lawful, interest upon overdue installments of interest and redemption premium, if any; and (D) all sums paid or advanced by the Trustee hereunder, together with the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and Counsel prior to the date of notice of rescission; and

(2) all Events of Default, other than the nonpayment of principal of, redemption premium, if any, and interest on the Bonds which have occasioned such acceleration, have been cured or waived.

(c) No such rescission and annulment shall affect any subsequent default or impair any consequent right.

Section 7.03 Additional Remedies.

(a) The Trustee, upon the occurrence of an Event of Default may, and upon the written request of the holders of not less than **[a majority/25%]** in aggregate principal amount of the Bonds Outstanding, and subject to the requirements of Section 8.02(e), shall: (a) exercise any or all rights of the Issuer under the Loan Documents; and (b) proceed to protect and enforce its rights and the rights of the holders of the Bonds under this Indenture by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained in this Indenture or in the Loan Documents or in aid of the execution of any power herein or therein granted, or for the enforcement of any other appropriate legal or equitable remedy, and the Trustee in reliance upon the advice of Counsel may deem most effective to protect and enforce any of the rights or interests of the holders of the Bonds under the Bonds or this Indenture.

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

Section 7.04 Marshaling of Assets.

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

Section 7.05 Trustee May File Proofs of Claim.

(a) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding under the Bankruptcy Code relating to the Issuer or the Borrower, any other obligor upon the Bonds or any property of the Issuer or Borrower, the Trustee (whether or not the principal of the Bonds shall then be due and payable by acceleration or otherwise, and whether or not the Trustee shall have made any demand upon the Issuer or the Borrower for the payment of overdue principal, redemption premium, if any, and interest) shall be entitled and empowered, by intervention in such proceeding or other means:

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

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

and any receiver, assignee, trustee, liquidator, sequestrator or similar official in any such judicial proceeding is hereby authorized by each holder to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and Counsel, and any other amounts due the Trustee under Section 8.05.

(b) No provision of this Indenture empowers the Trustee to authorize or consent to or accept or adopt on behalf of any holders of the Bonds any plan of reorganization, arrangement, adjustment or composition affecting any of the Bonds or the rights of any holder thereof, or to authorize the Trustee to vote in respect of the claim of any holder in any proceeding described in subsection (a) of this Section.

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

Section 7.07 Notice and Opportunity to Cure Certain Defaults. No default under Section 7.01(c) (other than the occurrence of a Determination of Taxability, to which this Section 7.07 shall not be applicable) shall constitute an Event of Default until written notice of such default shall have been given to the Borrower by the Trustee or by the holders of at least 25% in aggregate principal amount of the Bonds Outstanding, and the Borrower shall have had thirty (30) days after receipt of such notice to correct such default or cause such default to be corrected, and shall have failed to do so. In the event, however, that the default be such that it cannot be corrected within such thirty (30) day period, it shall not constitute an Event of Default if corrective action is instituted by the Borrower within such period and diligently pursued (as determined by the Trustee) until the default is corrected. The Trustee shall send a copy of each such notice to the Issuer, but receipt of such notice by the Issuer shall not be a condition precedent to further action by the Trustee.

Section 7.08 Priority of Payment Following Event of Default.

(a) If at any time after the occurrence of an Event of Default the moneys held by the Trustee under this Indenture (other than amounts in the Rebate Fund) shall not be sufficient to pay the principal of and interest on the Bonds as the same become due and payable, such moneys, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of remedies in this Article or otherwise, shall, subject to subsections (b) and (c) of this Section, be applied by the Trustee as follows:

- (1) first, to the payment of all amounts due the Trustee under Section 8.05;

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

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

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

(b) If the principal of all Bonds shall have become due and payable, whether by their terms or by a declaration of acceleration, and subject to subsection (a)(1) of this Section regarding payment to the Trustee, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, without any discrimination or preference.

(c) Whenever moneys are to be applied pursuant to the provisions of this Section, the Trustee may, in its discretion, establish and maintain a reserve for future fees and expenses, and may apply moneys to be distributed at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix a date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates, and for which moneys are available, shall cease to accrue. The Trustee shall also select a Record Date for such payment date. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any moneys and of the fixing of any such Record Date and payment date, and shall not be required to make payment to the holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 7.09 Bondholders May Direct Proceedings. The owners of a majority in aggregate principal amount of the Bonds Outstanding shall, subject to the requirements of

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

Section 7.10 Limitations on Rights of Bondholders.

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

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

Section 7.11 Unconditional Right of Bondholder to Receive Payment.

Notwithstanding any other provision of this Indenture, any Bondholder shall have the absolute and unconditional right to receive payment of principal of, redemption premium, if any, and interest on the Bonds on and after the due date thereof, and to institute suit for the enforcement of any such payment.

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

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

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

Section 7.15 Waiver of Defaults.

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

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

Section 7.16 Notice of Events of Default. If an Event of Default occurs of which the Trustee has or is deemed to have notice under Section 8.02(h), the Trustee shall give Immediate Notice thereof to the Issuer and the Borrower. **[Within [] days thereafter (unless such Event of Default has been cured or waived), the Trustee shall give notice of such Event of Default to each holder of Bonds then Outstanding, provided, however, that except in the instance of an Event of Default under Section 7.01(a) or (b), the Trustee may withhold such notice to Bondholders if and so long as the Trustee in good faith determines that the withholding of such notice is in the interests of Bondholders, and provided, further, that notice to Bondholders of any Event of Default under Section 7.01(c) shall be subject to the provisions of Section 7.07 and shall not be given until the grace period has expired.]**

Section 7.17 Right to Cure. If the Issuer shall, for whatever reason, at any time fail to pay any amount or perform any act which it is obligated to pay or perform and, as a result, a default or Event of Default occurs or may occur, the Borrower shall have the right to perform

such act or pay such amount on behalf of the Issuer and thereby cure or prevent such default or Event of Default.

ARTICLE VIII THE TRUSTEE

Section 8.01 Duties and Responsibilities of the Trustee.

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

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

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee that conform to the requirements of this Indenture; but the Trustee is under a duty to examine such certificates and opinions to determine whether they conform to the requirements of this Indenture.

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

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

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

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

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

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any liability **[in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers,]** if it has reasonable grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

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

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

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

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

(b) any request, direction, order or demand of the Borrower under this Indenture shall be sufficiently evidenced by an Officer's Certificate (unless other evidence thereof is specifically prescribed) and any resolution of the board of directors of the Borrower may be sufficiently evidenced by a copy thereof certified by **[an Authorized Borrower Representative]**, the Executive or an Attesting Officer of the Borrower, as appropriate;

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

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

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

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

(g) the Trustee may execute any of its trusts or powers or perform any duties under this Indenture either directly or by or through agents or attorneys, and may in all cases pay, subject to reimbursement as provided in Section 8.05, such reasonable compensation as it deems proper to all such agents and attorneys reasonably employed or retained by it, and the Trustee shall not be responsible for any misconduct [, **negligence**] or [**gross**] negligence of any agent or attorney appointed with due care by it;

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

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

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

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

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

(m) except for information provided by the Trustee concerning the Trustee, the Trustee shall have no responsibility for any information in any offering memorandum or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

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

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

Section 8.05 Compensation and Expenses of the Trustee. The Borrower has covenanted and agreed, pursuant to the Agreement:

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

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

(c) to indemnify, defend and hold the Trustee harmless from and against any loss, liability or expense incurred without [gross] negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the office of Trustee under this Indenture and the Loan Documents, including the costs of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder or thereunder.

In the event the Trustee incurs expenses or renders services in any proceedings under

Bankruptcy Law relating to the Issuer or the Borrower, the expenses so incurred and compensation for services so rendered are intended to constitute expenses of administration under Bankruptcy Law.

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

Section 8.06 Qualifications of Trustee. There shall at all times be a trustee hereunder which shall be a corporation or banking association organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise corporate trust powers, which has a combined capital and surplus of at least **[\$50,000,000]**, or is an affiliate of, or has a contractual relationship with, a corporation or banking association meeting such capital and surplus requirement which guarantees the obligations and liabilities of the proposed trustee, and which is subject to supervision or examination by federal or state banking authority. If such corporation or banking association publishes reports of condition at least annually, pursuant to law or the requirements of any supervising or examining authority above referred to, then for purposes of this Section, the combined capital and surplus of such corporation or banking association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign promptly in the manner and with the effect specified in this Article.

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

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

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

(c) Prior to the occurrence and continuance of an Event of Default hereunder, or after the curing or waiver of any such Event of Default, the Issuer, the holders of a majority in aggregate principal amount of the Outstanding Bonds **[or the Borrower]**, may remove the Trustee and shall appoint a successor Trustee. In the event there shall have occurred and be continuing an Event of Default hereunder, the holders of a majority in aggregate principal amount of the Outstanding Bonds may remove the Trustee and shall appoint a successor Trustee.

In each instance such removal and appointment shall be accomplished by an instrument or concurrent instruments in writing signed by the Issuer or such holders [**or the Borrower**], as the case may be, and delivered to the Trustee, the Issuer, the Borrower and holders of the Outstanding Bonds.

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

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

Section 8.08 Acceptance of Appointment by Successor Trustee.

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

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

Section 8.09 Merger, Succession or Consolidation of Trustee. Any corporation or association: (a) into which the Trustee is merged or with which it is consolidated; (b) resulting from any merger or consolidation to which the Trustee is a party; or (c) succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor Trustee

without the execution or filing of any document or the taking of any further action. Any such successor must nevertheless be eligible and qualified under the provisions of Section 8.06.

Section 8.10 Notices to Bondholders; Waiver. Where this Indenture provides for notice to Bondholders of any event, [**after an Event of Default**] such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Bondholder affected by each event, at his or her address as it appears on the Bond Register, not later than the latest date, and not earlier than the earliest date, prescribed for the first giving of such notice. In any case where notice to Bondholders is given by mail, neither the failure to mail such notice, nor any default in any notice so mailed to any particular Bondholder shall affect the sufficiency of such notice with respect to other Bondholders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Bondholders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

[For so long as the Bonds are registered solely in the name of the Securities Depository or its nominee, the Trustee, on behalf of the Issuer (at the expense of the Borrower), shall maintain a register (the “Beneficial Owner Register”) in which the Trustee shall record the name and address of any person that is identified to the Trustee as a beneficial owner of an interest in the Bonds and for which the Trustee has: (i) information sufficient to permit delivery of first class mail and (ii) either: (x) a certificate executed, as depository or securities intermediary, by any trust company, bank, banker or member of a national securities exchange (wherever situated), if such certificate is in form satisfactory to the Trustee, or (y) a certificate or affidavit of the Person executing such instrument or writing as a beneficial owner if such certificate or affidavit is in form satisfactory to the Trustee or (z) such other instrument or writing as the Trustee deems sufficient for the purposes of this Section. The Trustee, the Issuer and the Borrower shall not be responsible for the accuracy of the Beneficial Owner Register, and no Person listed in the Beneficial Owner Register shall be entitled to any rights under this Indenture other than the right to receive notices in the manner provided in the following paragraph.]

[For so long as the Bonds are registered solely in the name of the Securities Depository or its nominee, where this Indenture provides for notice to the Bondholders of the existence of, or during the continuance of, any Event of Default [or at any time upon the written request of the Issuer or the Borrower], the Trustee, at the expense of the Borrower, shall: (i) establish a record date (the “Record Date”) for determination of the Persons entitled to receive such notice; (ii) request a securities position listing from the Securities Depository showing the Depository Participants holding positions in the Bonds affected by such notice as of the Record Date for such notice; (iii) mail, first class postage prepaid, copies of the notice as provided above to each Depository Participant identified in the securities position listing as holding a position in the Bonds as of the Record Date for the notice, to each Person listed in the Beneficial Owner Register, to each nationally recognized municipal securities information repository and state information depository (within the meaning of Rule 15c2-12 of the United States Securities and Exchange

Commission under the Securities Exchange Act of 1934), and to any Person identified to the [Issuer] [Trustee] as a nonobjecting beneficial owner pursuant to the immediately following clause; (iv) request that the Depository Participant retransmit the notice to all Persons for which it served as nominee on the Record Date, including nonobjecting beneficial owners, or retransmit the notice to objecting beneficial owners and provide a listing of nonobjecting beneficial owners for whom the Depository Participant served as nominee on the Record Date to the [Issuer] [Trustee], (v) provide on behalf of the Borrower and not as its agent, an undertaking of the Borrower to pay to any Depository Participant or other nominee (other than the Securities Depository) the reasonable costs of transmitting the notice to Persons for whom the Depository Participant acts as nominee; and (vi) provide as many copies of the notice as may be requested by any nominee owner of the Bonds. Any default in performance of the duties required by this paragraph shall not affect the sufficiency of notice to the Bondholders given in accordance with the first paragraph of this Section, nor the validity of any action taken under this Indenture in reliance on such notice to Bondholders.]

Where this Indenture provides for notice to the Bondholders of any event, the form of the notice shall prominently include a title block, separate from the body of the notice, which shall include the following information: (i) the complete title of the Bonds; (ii) the complete name of the Issuer and of the Borrower; (iii) the entire nine-digit CUSIP number of each affected maturity of the Bonds; (iv) the Record Date; and (v) a summary that is no more than the maximum number of characters permitted by the Securities Depository.

Any notice required or permitted by this Indenture to be given to the Securities Depository shall be given to it in the manner provided by this Section for giving notice to Bondholders, and also shall be given in ASCII (or other format requested by the Securities Depository) format on magnetic medium, and shall be sent to: The Depository Trust Company, Proxy Department, 55 Water Street, 50th Floor, New York, New York 10041-0099, (teletype: (212) 855-5181), or such other address as may be specified by the Securities Depository in writing to the Trustee.

ARTICLE IX DISCHARGE AND DEFEASANCE

Section 9.01 Discharge.

If

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

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

then the right, title and interest of the Trustee in the Trust Estate shall thereupon cease and the Trustee, on request of the Issuer and at the expense of the Borrower, shall release this Indenture and the Trust Estate and shall execute such documents to evidence such release as may be reasonably required by the Issuer and shall turn over to the Borrower, or to such other Person as may be entitled to receive the same, all balances remaining in any Funds hereunder except for amounts required to pay such Bonds or held pursuant to Section 4.08.

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

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

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

Section 9.03 Notice of Defeasance.

(a) If moneys or Defeasance Obligations have been deposited with the Trustee pursuant to Section 9.02 for payment of less than all Bonds of a Series and maturity, the Bonds of such Series and maturity to be so paid from such deposit shall be selected by the Trustee by lot by such method as shall provide for the selection of portions (in Authorized Denominations) of the principal of Bonds of such Series and maturity of a denomination larger than the smallest Authorized Denomination. Such selection shall be made within [7] days after the moneys or Defeasance Obligations have been deposited with the Trustee. This selection process shall be in lieu of the selection process otherwise provided with respect to redemption of Bonds in Article III. After such selection is made, Bonds that are to be paid from such deposit (including Bonds issued in exchange for such Bonds pursuant to the transfer or exchange provisions of this Indenture) shall be identified by a separate CUSIP number or other designation satisfactory to the Trustee. The Trustee shall notify Bondholders whose Bonds (or portions thereof) have been selected for payment from the moneys or Defeasance Obligations on deposit and shall direct such Bondholders to surrender their Bonds to the Trustee in exchange for Bonds with the appropriate designation. The selection of Bonds for payment from such deposit pursuant to this subsection shall be conclusive and binding on the Issuer and the Borrower.

The Issuer shall give to the Trustee in form satisfactory to it irrevocable instructions to give notice of the deposit of moneys or Defeasance Obligations, the selection of Bonds to be redeemed including CUSIP numbers and the anticipated date of redemption. The Trustee shall promptly give such notice to the Bondholders including the information required under Section 3.09.

(b) In case any of the Bonds, for the payment of which moneys or Defeasance Obligations have been deposited with the Trustee pursuant to Section 9.02, are to be redeemed on any date prior to their maturity, the Issuer, in addition to any notice required under subsection (a) of this Section, shall give to the Trustee in form satisfactory to it irrevocable instructions to give notice of redemption of such Bonds on the redemption date for such Bonds as provided in Section 3.09.

(c) In addition to the foregoing notice, in the event such Bonds to be redeemed are not by their terms subject to redemption within the next succeeding [65] days, the Trustee shall give further notice to the Bondholders that the deposit required by Section 9.02 has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this Article and stating the maturity or redemption date or dates upon which moneys are to be available for the payment of the principal of and redemption premium, if any, on said Bonds; such further notice shall be given promptly following the making of the deposit required by Section 9.02; and such further notice also shall be given in the manner set forth in Section 3.09(b); but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of the deposit.

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

ARTICLE X
SUPPLEMENTAL INDENTURES AND AMENDMENTS

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

- (a) cure any ambiguity or defect or omission or correct or supplement any provision herein or in any supplemental indenture;
- (b) grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Bondholders or the Trustee which are not contrary to or inconsistent with this Indenture as then in effect or to subject to the pledge and lien of this Indenture additional revenues, properties or collateral including Defeasance Obligations;
- (c) add to the covenants and agreements of the Issuer in this Indenture other covenants and agreements thereafter to be observed by the Issuer or to surrender any right or power herein reserved to or conferred upon the Issuer which are not contrary to or inconsistent with this Indenture as then in effect;
- (d) permit the appointment of a co-trustee under this Indenture;
- (e) modify, alter, supplement or amend this Indenture in such manner as shall permit the qualification of this Indenture, if required, under the Trust Indenture Act of 1939 or, the Securities Act of 1933, as from time to time amended, or any similar federal statute hereafter in effect;
- (f) make any other change herein that is determined by the Trustee to be not materially adverse to the interests of the Bondholders [**and which does not involve a change described in Section 10.02 requiring consents of specific Bondholders**]; [or]
- (g) implement the issuance of Additional Bonds as provided by Section 2.13 [./; or]
- (h) if a Series of Bonds are all Book Entry Bonds, amend, modify, alter or replace the Letter of Representations as provided in Section 2.12 or other provisions relating to Book Entry Bonds.

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

Section 10.02 Supplemental Indentures Requiring Bondholders' Consent. The Issuer and the Trustee, at any time and from time to time, may execute and deliver a supplemental indenture for the purpose of making any modification or amendment to this Indenture, but only with the written consent, given as provided in Section 10.03, of the holders of at least two-thirds [**a majority**] in aggregate principal amount of the Bonds Outstanding at the time such consent is given, and in case less than all of the Bonds then Outstanding are affected by the modification or amendment, of the holders of at least two-thirds [**a majority**] in aggregate principal amount of the Bonds so affected and Outstanding at the time such consent is given; provided, however, that if such modification or amendment will, by its terms, not take effect so long as any Bonds so affected remain Outstanding, the consent of the holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section. Notwithstanding the foregoing, no modification or amendment contained in any such supplemental indenture shall permit any of the following, without the consent of each Bondholder whose rights are affected thereby: (a) a change in the terms of stated maturity or redemption of any Bond or of any installment of interest thereon; (b) a reduction in the principal amount of or redemption premium on any Bond or in the rate of interest thereon or a change in the coin or currency in which such Bond is payable; (c) the creation of a lien on or a pledge of any part of the Trust Estate, or the money or assets pledged under this Indenture or any part thereof; (d) the granting of a preference or priority of any Bond or Bonds over any other Bond or Bonds; (e) a reduction in the aggregate principal amount of Bonds of which the consent of the Bondholders is required to effect any such modification or amendment; or (f) a change in the provisions of Section 7.15. Notwithstanding the foregoing, the holder of any Bond may extend the time for payment of the principal of or interest on such Bond; provided, however, that upon the occurrence of an Event of Default, funds available hereunder for the payment of the principal of and interest on the Bonds shall not be applied to any payment so extended until all principal and interest payments which have not been extended have first been paid in full. Notice of any supplemental indenture executed pursuant to this Section [**or Section 10.01**] shall be given to the Bondholders promptly following the execution thereof by the [**Issuer**] [**Trustee**].

Section 10.03 Consents of Bondholders and Opinions. Each supplemental indenture executed and delivered pursuant to the provisions of Section 10.02 shall take effect only when and as provided in this Section 10.03. A copy of such supplemental indenture (or brief summary thereof or reference thereto in form approved by the Trustee), together with a request to Bondholders for their consent thereto in form satisfactory to the Trustee, shall be sent by the [**Trustee/Issuer or the Borrower**] to Bondholders, at the expense of the Borrower, by [**registered or certified/first class**] mail, postage prepaid, provided that a failure to mail such request shall not affect the validity of the supplemental indenture when consented to as provided hereinafter. Such supplemental indenture shall not be effective unless and until there shall have been filed with the Trustee (a) the written consents of Bondholders of the percentage of Bonds specified in Section 10.02 given as provided in Section 11.11, and (b) the opinion of Counsel described in Section 10.06. Any such consent shall be binding upon the Bondholder giving such consent and upon any subsequent holder of such Bonds and of any Bonds issued in exchange therefor or in lieu thereof (whether or not such subsequent Bondholder has notice thereof), unless such consent is revoked in writing by the Bondholder giving such consent or a subsequent holder

of such Bonds by filing such revocation with the Trustee prior to the date the Trustee receives the material required in subsections (a) and (b) of this Section.

Notwithstanding anything else herein, if a supplemental indenture is to become effective under Section 10.02 on the same date as the date of issuance of Additional Bonds, the consents of the underwriters or purchasers of such Additional Bonds shall be counted for purposes of Section 10.02 and this Section.

Section 10.04 Exclusion of Certain Bonds. Bonds which are to be disregarded under the last sentence of the definition of “Outstanding” shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article. At the time of any consent or other action taken under this Article or elsewhere in this Indenture, the Issuer, the Borrower or an Affiliate shall furnish the Trustee an Officer’s Certificate of the Issuer, the Borrower or an Affiliate, upon which the Trustee may rely, describing all Bonds so to be excluded.

Section 10.05 Notation on Bonds. Bonds authenticated and delivered after the effective date of any action taken as provided in this Article may, and, if the Issuer [or the Borrower] so determines, shall bear a notation by endorsement or otherwise in form approved by the Trustee as to such action, and in that case upon demand of the holder of any Outstanding Bond at such effective date and presentation of such Bond for the purpose at the Office of the Trustee, or upon any transfer of any Bond Outstanding at such effective date, suitable notation shall be made on such Bond or upon any Bond issued upon any such transfer by the Trustee as to any such action. If the Issuer shall so determine, new Bonds so modified as in the opinion of the Trustee and the Issuer to conform to such action shall be prepared, authenticated and delivered, and upon demand of the holder of any Bond then Outstanding shall be exchanged, without cost to such Bondholder for Bonds then Outstanding, upon surrender of such Bonds for Bonds of an equal aggregate principal amount and of the same Series, maturity and interest rate, in any Authorized Denomination.

Section 10.06 Delivery of Counsel’s Opinion with Respect to Supplemental Indentures. Subject to the provisions of Section 8.01, the Trustee in executing or accepting the additional trusts permitted by this Article or the modifications thereby of the trusts created by this Indenture may rely, and shall be fully protected in relying, on an opinion of Counsel acceptable to it stating that (a) the execution of such supplemental indenture is authorized or permitted by this Indenture and (b) all conditions precedent to the execution and delivery of such supplemental indenture have been complied with, and an opinion of Bond Counsel that the execution and performance of such supplemental indenture shall not, in and of itself, adversely affect the federal income tax status of the Bonds. **[The Trustee may accept and rely upon such opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to the provisions of this Article complies with the requirements of this Article.]**

Section 10.07 Amendments to Loan Documents Not Requiring Bondholders’ Consent. Without the consent of or notice to the Bondholders, the Issuer and the Trustee may consent to any amendment, change or modification of the Loan Documents as may be required (a) by the provisions of the Agreement or this Indenture, (b) for the purpose of curing any

ambiguity, inconsistency or defect or omission in the Loan Documents, (c) in connection with an amendment or to effect any purpose for which there could be an amendment of this Indenture pursuant to Section 10.01, (d) in connection with implementing the issuance of Additional Bonds, or (e) in connection with any other change therein which is not to the material prejudice of the Trustee or the Bondholders.

Section 10.08 Amendments to Loan Documents Requiring Bondholders' Consent.

Except for the amendments, changes or modifications contemplated in Section 10.07, neither the Issuer nor the Trustee shall consent to:

(a) any amendment, change or modification of the Loan Documents which would change the amount or time as of which Loan Payments are required to be paid, without the giving of notice as provided in Section 10.03 of the proposed amendment, change or modification and receipt of the written consent thereto of the Bondholders of all of the then Outstanding Bonds; or

(b) any other amendment, change or modification of the Loan Documents without the giving of notice as provided in Section 10.03 of the proposed amendment, change or modification and receipt of the written consent thereto of the Bondholders of not less than two-thirds [**a majority**] in aggregate principal amount of the Bonds then Outstanding.

The notices to and consent of the Bondholders to any amendments shall be obtained as provided in Section 10.03 with respect to supplemental indentures. Notice of any amendment pursuant to this Section shall be given to the Bondholders promptly following the execution thereof.

Section 10.09 Delivery of Opinion of Counsel with Respect to Amendments. In consenting to an amendment, change or modification to the Loan Documents permitted by this Article X, the Issuer and the Trustee shall be entitled to receive, and (subject, with respect to the Trustee, to Section 8.01) shall be fully protected in relying upon, an opinion of Counsel acceptable to each of them stating that (a) the execution of such consent, amendment, change or modification is authorized or permitted by this Indenture and the applicable Loan Document, and (b) all conditions precedent to the execution and delivery of such consent, amendment, change or modification have been complied with [**and an opinion of Bond Counsel that the delivery and performance of such amendment, change or modification shall not, in and of itself, adversely affect the federal income tax status of the Bonds**]. [**The Trustee and the Issuer may accept and rely upon such opinion of Counsel as conclusive evidence that any such consent, amendment, change or modification complies with the provisions of this Article.**]

Section 10.10 Effect of Supplemental Indentures. Upon the execution and delivery of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every holder of any Bond theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

**ARTICLE XI
MISCELLANEOUS PROVISIONS**

Section 11.01 Security Agreement; Financing Statements. In addition to the assignment by the Issuer of its rights in the Trust Estate to the Trustee, the Issuer hereby acknowledges that, in order to more fully protect, perfect and preserve the rights of the Trustee and the Bondholders in the Trust Estate, the Issuer grants to the Trustee a security interest in the Trust Estate and the proceeds thereof. The Issuer agrees to cooperate with the Trustee in filing financing statements, and continuations thereof, in such manner and in such places as may be required by law and the Loan Documents in order to perfect such security interest. At the time of the issuance of the Bonds and at the required intervals under applicable State law, the Trustee, at the expense of the Borrower, [shall/may] obtain an opinion of Counsel setting forth what, if any, actions by the Issuer or Trustee should be taken in order to protect, perfect and preserve such security interest. The Trustee shall cooperate with the Issuer and the Borrower as necessary, including the execution of any necessary financing statements and continuations thereof.

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

The secured party is [NAME OF TRUSTEE]. Its address from which information concerning the security interest may be obtained and its mailing address is: [ADDRESS OF TRUSTEE]. The debtor is [NAME OF ISSUER]. Its mailing address is: [ADDRESS OF ISSUER].

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

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

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

Borrower:

Issuer:

Trustee:

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

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

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

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

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

Section 11.08 Limitation of Liability of Officials of the Issuer. Notwithstanding anything to the contrary contained herein, for payment of the obligations of the Issuer under this Indenture and the Bonds, the Trustee, the Bondholders and any other party entitled to seek payment from the Issuer under or to enforce this Indenture and the Bonds will be entitled to look

solely to amounts on deposit with and held by the Trustee for the benefit of the Bondholders, subject to the terms of this Indenture, the Project and such collateral, if any, as may now or hereafter be given to secure the payment of the obligations of the Issuer under this Indenture and the Bonds, and no other property or assets of the Issuer or any officer or director of the Issuer shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies hereunder, or for any payment required to be made under this Indenture and the Bonds, or for the performance of any of the covenants or warranties contained herein.

[Paragraph tailored to State law]

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

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

Any Officer's Certificate of the Issuer or the Borrower may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, Counsel, unless such official or officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his or her certificate or opinion is based are erroneous. Any opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an official or officials of the Issuer or an officer or officers of the Borrower stating that the information with respect to such factual matters is in the possession of the Issuer or the Borrower, unless such Counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

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

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

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

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

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

ISSUER

By: _____

By: _____

TRUSTEE

By: _____

APPENDIX A

FORM OF INITIAL BOND

[FORM OF FRONT OF BOND]

R _____

UNITED STATES OF AMERICA
STATE OF [NAME OF STATE]
[NAME OF ISSUER]
[DESIGNATION] BOND, SERIES [YEAR]
([BORROWER] PROJECT)

MATURITY DATE:

DATED:

CUSIP NO. _____

INTEREST RATE:

PRINCIPAL AMOUNT:

DOLLARS

BONDHOLDER:

The [ISSUER], a [TYPE OF ENTITY] of the State of [NAME OF STATE] (the “Issuer”), for value received, hereby promises to pay (but only out of the Revenues, as defined in the Indenture hereinafter mentioned, and other assets pledged therefor as hereinafter mentioned) to the registered owner identified above, or registered assigns, on the maturity date identified above (subject to any right of prior redemption hereinafter mentioned), the principal amount identified above in lawful money of the United States of America; and to pay interest on the principal amount hereof in like lawful money from the date of initial authentication and delivery hereof until payment of such principal amount shall be discharged as provided in the Indenture, at the rates per annum as set forth, payable, on _____ 1 and _____ 1 (or, if such day is not a Business Day, on the next succeeding Business Day) in each year, commencing _____ 1, _____ (each, an “Interest Payment Date”). The principal hereof is payable upon presentation hereof upon maturity, redemption or acceleration, at the principal corporate trust office of [TRUSTEE, CITY, STATE] (together with any successor as paying agent under the Indenture, the “Paying Agent”). Interest hereon is payable by check or draft mailed to the owner of Bonds (as defined in the Indenture) hereof, or by wire transfer if the owner hereof owns at least [\$_____] in aggregate principal amount of Bonds as provided in the Indenture. Such interest is payable to the person whose name appears on the bond registration books of the Trustee, as Bond Registrar, as the owner hereof as of the close of business on the fifteenth calendar day of the calendar month preceding an Interest Payment Date, at such person’s address as it appears on such registration books.

[INSERT LANGUAGE REQUIRED BY ACT TO DEFINE TYPE OF OBLIGATION AND ISSUER’S RESPONSIBILITY]

Reference is hereby made to the reverse side of this Bond for additional provisions of this Bond.

It is hereby certified and recited that any and all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Trust Indenture dated as of _____ 1, _____ (the "Indenture") between the Issuer and [TRUSTEE], as trustee, paying agent and registrar (herein "Trustee," "Paying Agent" and "Bond Registrar," respectively) and by the Constitution and laws of the State, and that the amount of this Bond is not in excess of the amount of Bonds permitted to be issued under the Indenture.

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

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of its Executive and attested by the manual or facsimile signature of its Attesting Officer **[and its corporate seal (or a facsimile thereof) to be impressed or imprinted hereon]** all as of the date of original issuance hereof.

[ISSUER]

(SEAL)

Attest:

By: _____
Executive

Attesting Officer

[FORM OF CERTIFICATE OF AUTHENTICATION]

This is one of the Bonds referred to in the within-mentioned Indenture, and is one of the Issuer's **[DESIGNATION]** Bonds, Series **[YEAR]** (**[BORROWER]** Project).

TRUSTEE

Date of Authentication: _____

By: _____
Authorized Signatory

[FORM OF REVERSE SIDE OF THE BONDS]

This Bond is one of a duly authorized issue of bonds of the Issuer designated as “[ISSUER] [DESIGNATION] Bonds, Series [YEAR] ([BORROWER] Project)” (the “Initial Bonds”), issued in the aggregate principal amount of \$ _____, pursuant to the provisions of a _____ of the Issuer adopted on _____, _____ (the “Bond Legislation”), and pursuant to the Indenture. The Initial Bonds are issued for the purpose of funding a loan to [BORROWER] (the “Borrower”) for the purpose of **[Insert Appropriate Language]**. The terms and conditions of the loan of the proceeds of the Initial Bonds to the Borrower for such purposes and the repayment of such loan are contained in a Loan Agreement dated as of _____ 1, _____ (as amended, the “Agreement”) between the Issuer and the Borrower.

Reference is hereby made to the Indenture and the Agreement (copies of which are on file at the principal corporate trust office of the Trustee in [CITY, STATE]) and all indentures and agreements supplemental thereto and to the Bond Legislation for a description of the rights thereunder of the Bondholders of the Initial Bonds of the nature and extent of the security, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Issuer and the Borrower thereunder, to all the provisions of which Indenture the Bondholder of this Initial Bond, by acceptance hereof, assents and agrees.

The Initial Bonds and the interest thereon are payable from Revenues that are available to the Trustee pursuant to the Indenture, as and to the extent provided in the Indenture. The Initial Bonds and the interest thereon are secured by a pledge and assignment of said Revenues and of amounts held in certain funds and accounts established pursuant to the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture.

The Initial Bonds further are secured by an assignment to the Trustee of the rights, title and interest of the Issuer in the Agreement. **[In addition, the Borrower has executed and delivered to the Trustee a Mortgage/Deed of Trust dated as of _____, _____ (the “Mortgage/Deed of Trust”), which creates a lien on and security interest in certain Mortgaged Property (defined therein), including the Borrower’s interest in the real estate on which the Project is located.]**

The Initial Bonds are **[special/limited]** obligations of the Issuer and are not a lien or charge upon the funds or property of the Issuer, except to the extent of the aforementioned pledge and assignment. Under certain circumstances set forth in the Indenture and the Agreement, the Issuer may issue Additional Bonds (as defined in the Indenture) pursuant to the Indenture ranking on a parity with the Initial Bonds (the Initial Bonds and any Additional Bonds are referred to herein collectively as the “Bonds”). Reference is hereby made to the Indenture, the Agreement **[and the Mortgage/Deed of Trust]** for a description of the rights, duties and obligations of the Issuer, the Trustee, the Borrower, and the owners of the Bonds and the terms upon which the Bonds are issued and secured.

The Initial Bonds maturing in the year _____ are subject to mandatory sinking fund redemption on and after _____ 1, _____, at a redemption price equal to the principal amount thereof redeemed plus accrued interest to the redemption date in the principal amounts set forth in the Indenture.

The Initial Bonds maturing on or after _____ 1, _____ are also subject to redemption by the Issuer prior to maturity any time on or after _____ 1, _____, in whole or in part (and if in part from maturities in such order as determined by the Issuer, and by lot within any maturity, subject to selection by the Securities Depository or the Trustee), at the following redemption prices (expressed as a percentage of the principal amount thereof) plus accrued interest to and including the redemption date:

<u>Redemption Period</u>	<u>Redemption Price</u>
_____ 1, _____ through _____ 1, _____, inclusive	_____ %
_____ 1, _____ through _____ 1, _____, inclusive	_____ %
_____ 1, _____ and thereafter	_____ %

[Insert any Extraordinary Redemption Provisions]

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

Notice of any redemption of Bonds shall be given by mail to the Registered Owners of Bonds to be redeemed not less than thirty (30) days nor more than sixty (60) days prior to the date fixed for redemption.

[FORM OF ASSIGNMENT]

For value received (the undersigned does) hereby sell, assign and transfer unto _____ the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) _____ attorney, to transfer the same on the books of the Bond Registrar with full power of substitution in the premises.

Bondholder

NOTE: The signature on this assignment must correspond with the name as it appear upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Dated: _____

Signature guaranteed:

NOTE: Signature(s) must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Trustee, which requirements include membership or participation in the Medallion Signature Program.

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COMBINED CERTIFICATIONS

The undersigned hereby certifies the following:

1. Independent Authorship. No counsel for any party in this case authored this brief in whole or in part, and no party, party's counsel or any other person, other than SIFMA, its members or its counsel, contributed money that was intended to fund preparing or submitting this brief.
2. Type-Volume Limitations. This brief complies with the type-volume limitation set forth in Fed. R. App. P. 29(d) and 32(a)(7)(B). As measured by the word-processing system used to prepare this brief, this brief contains 4,869 words, excluding the portions of the brief exempted from such limitations by Fed. R. App. P. 32(a)(7)(B)(iii) and 11th Cir. R. 32-4.
3. Typeface and Type-Style Requirements. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6). It was prepared using a 14-point, proportionally spaced typeface with serifs and set in a roman style, except as otherwise permitted.

4. Filing. In accordance with Fed. R. App. P. 25(a)(2)(B)(ii) and 11th Cir. R. 31-3, on August 31, 2012, an original plus six copies of the foregoing brief were dispatched to the Clerk of the Court via third-party commercial carrier for delivery on September 4, 2012.

5. Service. On August 31, 2012, a true and correct copy of the foregoing brief was served by first class mail in accordance with Fed. R. App. P. 25(c)(1)(B) and 11th Cir. R. 31-3 upon each of the following counsel of record for the parties:

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[Signature Page Follows]

Signed this 31st day of August, 2012.

A handwritten signature in cursive script, appearing to read "Richard Levin", written in black ink.

Richard Levin