
TRUST INDENTURE

by and between

AUSTIN HOUSING FINANCE CORPORATION
as Issuer

and

BOKF, NA
as Trustee

Dated as of June 1, 2019

Relating to

\$ _____
Austin Housing Finance Corporation.
Multifamily Housing Revenue Bonds
(RBJ Apartments) Series 2019

TABLE OF CONTENTS

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| | |
|---|----|
| ARTICLE V FUNDS AND ACCOUNTS | 35 |
| Section 5.1. Trust Funds Pledged and Assigned to the Trustee; Bank to Act as Custodian of Funds and Accounts if Sole Bondholder..... | 35 |
| Section 5.2. Project Fund; Disbursement of Project Funds. | 36 |
| Section 5.3. Revenue Fund. | 37 |
| Section 5.4. Bond Fund..... | 39 |
| Section 5.5. Deposit of Funds with Paying Agent. | 40 |
| Section 5.6. Rebate Fund. | 41 |
| Section 5.7. Mortgage Recovery Fund. | 43 |
| Section 5.8. Reserved..... | 45 |
| Section 5.9. Costs of Issuance Fund. | 45 |
| Section 5.10. Interest Earned on Funds. | 45 |
| Section 5.11. Final Balances. | 45 |
| ARTICLE VI INVESTMENTS..... | 45 |
| Section 6.1. Investments by the Trustee. | 45 |
| Section 6.2. Computation of Balances in Funds..... | 46 |
| Section 6.3. Downgrade of Investments. | 47 |
| ARTICLE VII DISCHARGE OF LIEN | 47 |
| Section 7.1. Payment of Bonds; Satisfaction, Defeasance, and Discharge of Bonds, and Obligation to Holders. | 47 |
| Section 7.2. Cancellation of Surrendered Bonds. | 49 |
| Section 7.3. Payment of Bonds. | 49 |
| Section 7.4. Application of Deposited Money..... | 49 |
| Section 7.5. Survival of Certain Provisions..... | 49 |
| ARTICLE VIII DEFAULT PROVISIONS AND REMEDIES | 49 |
| Section 8.1. Events of Default. | 49 |
| Section 8.2. Acceleration. | 50 |
| Section 8.3. Remedies..... | 50 |
| Section 8.4. Direction of Proceedings by Bondholder Representative..... | 51 |
| Section 8.5. Waiver of Stay or Extension Laws. | 51 |
| Section 8.6. Priority of Payment and Application of Moneys. | 51 |
| Section 8.7. Remedies Vested in the Trustee..... | 54 |
| Section 8.8. Rights and Remedies of Holders..... | 54 |
| Section 8.9. Termination of Proceedings..... | 55 |
| Section 8.10. Waiver of an Event of Default. | 55 |
| Section 8.11. Defaults and Remedies for Holders of Subordinated Bonds. | 55 |
| ARTICLE IX THE TRUSTEE | 56 |
| Section 9.1. Acceptance of the Trustee..... | 56 |

| | | |
|--|--|----|
| Section 9.2. | The Trustee’s Fees, Charges, and Expenses. | 60 |
| Section 9.3. | Notice to Holders of Default. | 61 |
| Section 9.4. | Intervention by the Trustee. | 61 |
| Section 9.5. | Successor Trustee. | 61 |
| Section 9.6. | Resignation by the Trustee. | 61 |
| Section 9.7. | Removal of the Trustee. | 62 |
| Section 9.8. | Appointment of Successor Trustee. | 62 |
| Section 9.9. | Acceptance by Successor Trustees. | 62 |
| Section 9.10. | Right of the Trustee To Pay Taxes and Other Charges. | 62 |
| Section 9.11. | The Trustee Protected in Relying Upon Resolutions. | 63 |
| Section 9.12. | Successor Trustee as Custodian of Funds and Paying Agent. | 63 |
| Section 9.13. | Co-Trustee. | 63 |
| Section 9.14. | Obligations as to Reporting. | 65 |
| Section 9.15. | Appointment of Bond Registrar and Paying Agent. | 65 |
| Section 9.16. | Successor Paying Agent or Bond Registrar. | 65 |
| Section 9.17. | Confirmation of the Trustee. | 65 |
| Section 9.18. | Certain Representations of the Trustee. | 65 |
| ARTICLE X SUPPLEMENTAL INDENTURES | | 66 |
| Section 10.1. | Supplemental Indentures Not Requiring Consent of Holders. | 66 |
| Section 10.2. | Supplemental Indentures Requiring Consent of Holders. | 67 |
| Section 10.3. | Opinion of Bond Counsel. | 68 |
| Section 10.4. | Rights of the Trustee. | 68 |
| ARTICLE XI AMENDMENTS TO LOAN DOCUMENTS | | 68 |
| Section 11.1. | Amendments Not Requiring Holder Consent. | 68 |
| Section 11.2. | Amendments Requiring Holder Consent. | 68 |
| Section 11.3. | Opinion of Bond Counsel. | 69 |
| Section 11.4. | Rights of the Trustee. | 69 |
| ARTICLE XII MISCELLANEOUS PROVISIONS | | 69 |
| Section 12.1. | Consent of Holders. | 69 |
| Section 12.2. | Rights Under Indenture. | 70 |
| Section 12.3. | Severability. | 70 |
| Section 12.4. | Notices. | 70 |
| Section 12.5. | Required Approvals. | 73 |
| Section 12.6. | Counterparts. | 73 |
| Section 12.7. | Limitation of Liability. | 73 |
| Section 12.8. | Subordination to Extended Use Agreement. | 75 |
| Section 12.9. | Governing Law. | 75 |
| Section 12.10. | Complete Agreement. | 75 |

EXHIBIT A – Form of Requisition Certificate

EXHIBIT B – Form of Bond

EXHIBIT C – Investor’s Letter

EXHIBIT D – Sinking Fund Installments

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TRUST INDENTURE

THIS TRUST INDENTURE (this "*Indenture*") dated as of June 1, 2019, by and between AUSTIN HOUSING FINANCE CORPORATION., a housing finance corporation duly organized and existing under the laws of the State of Texas (the "*Issuer*"), and BOKF, NA, a national banking association duly established, existing, and authorized to accept and execute trusts of the character herein set out, as the Trustee (the "*Trustee*," as that term is hereafter defined):

WITNESSETH:

WHEREAS, the Issuer has been created and organized pursuant to and in accordance with the provisions of the Texas Housing Finance Corporations Act, Chapter 394, Texas Local Government Code, as amended (the "*Act*"), for the purpose, among others, of issuing its revenue bonds to finance the cost of residential ownership and development that will provide decent, safe, and sanitary housing at affordable pricing; and

WHEREAS, AGC RBJ, LLC, a limited liability company organized and existing under the laws of the State of Texas (the "*Borrower*"), has requested that the Issuer issue bonds the proceeds of which will be used, among other things, to purchase, acquire, construct, and equip a 279-unit multifamily residential rental housing development known as RBJ Phase I to be located in the City of Austin, Travis County, Texas (the "*Project*"); and

WHEREAS, the Issuer has found and determined, and does hereby find and determine, that the purchase, acquisition, construction, and equipping of the Project by the Borrower will provide affordable and sanitary housing within the meaning of the Act, and that the Issuer, by assisting with the financing of the purchase, acquisition, construction, rehabilitating, and equipping of the Project, will be acting in a manner consistent with and in furtherance of the provisions of the Act; and

WHEREAS, pursuant to this Indenture, the Issuer has agreed to issue its Multifamily Housing Revenue Bonds (RBJ Apartments) Series 2019 (the "*Bonds*") for the purposes of funding a loan (the "*Loan*") to the Borrower the proceeds of which will be used to finance the purchase, acquisition, construction, rehabilitating, and equipping of the Project and pay certain costs of issuance of the Bonds; and

WHEREAS, under the terms of the Loan Agreement dated as of June 1, 2019 (the "*Loan Agreement*"), among the Issuer, the Borrower and the Bondholder Representative (as hereinafter defined), the Issuer has agreed to make the Loan and the Borrower has agreed to the repayment of the sums borrowed pursuant thereto and the Borrower has executed or caused to be executed the Mortgage and the Loan Documents (as such terms are hereinafter defined) with respect to the Project to secure, among other things, the payments due and other obligations under the Loan Agreement; and

WHEREAS, the Bonds have initially been sold at a price of par to JPMorgan Chase Bank N.A.; and

WHEREAS, JPMorgan Chase Bank, N.A., and Massachusetts Mutual Life Insurance Company (the "*Permanent Lender*") and the Borrower have entered into that certain Forward Bond Purchase Agreement, dated the date hereof in connection with the subsequent purchase of the Bonds by the Permanent Lender from JPMorgan Chase Bank, N.A. on the Conversion Date; and

WHEREAS, the execution and delivery of this Indenture and the issuance of the Bonds have been in all respects duly and validly authorized by the Issuer; and

WHEREAS, terms not otherwise defined in the recitals or granting clauses hereof shall have the meanings as hereinafter defined; and

WHEREAS, all things necessary to make the Bonds, when authenticated by the Trustee (to the extent required) and issued as provided in this Indenture, valid, binding, and legal limited obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid contract for the security of the Bonds, have been done and performed; and the execution and delivery of this Indenture, and the execution and issuance of said Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS INDENTURE WITNESSETH:

GRANTING CLAUSES

The Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the Holders thereof, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and, in order to secure the payment of the principal of and interest and premium, if any, on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants, agreements, and conditions expressed or implied herein and in the Bonds, does hereby assign, transfer in trust, and pledge to the Trustee and its successors and assigns in trust forever, and does hereby grant a security interest unto the Trustee and its successors in trust, and to them and their assigns forever, the following (excepting, however, the Unassigned Issuer's Rights) (collectively referred to as the "*Trust Estate*"):

GRANTING CLAUSE FIRST

All right, title, interest, and privileges of the Issuer in, to, and under (but not its obligations under) the Loan Agreement and the Note (as hereinafter defined), including, but not limited to, all sums which the Issuer is entitled to receive from the Borrower pursuant to the Loan Agreement (but excluding the Unassigned Issuer's Rights), the Funds (excluding funds held in the Rebate Fund), and all other sums (except rebatable arbitrage whether or not deposited in the Rebate Fund) which are required to be deposited in the Funds in accordance with **Article 5** hereof;

GRANTING CLAUSE SECOND

All of the Issuer's right, title, and interest in all property mortgaged, pledged, and assigned under the Mortgage and the Loan Documents to secure the Loan (not including the Unassigned Issuer's Rights) and/or the Bonds and any and all other property of every name and nature which may from time to time hereafter by delivery or by writing of any kind be subjected to the lien hereof by the Issuer or by anyone on its behalf or with its written consent, and the Trustee is hereby authorized to receive any and all such property at any and all times and to hold and apply the same as additional security hereunder subject to the terms hereof; and

GRANTING CLAUSE THIRD

The earnings derived from the investment of any of the foregoing sums (except amounts on deposit in and rebatable arbitrage required to be deposited in the Rebate Fund) as provided herein.

TO HAVE AND TO HOLD all the Trust Estate, together with all rights and privileges hereby transferred, pledged, assigned and/or granted or agreed or intended so to be, to the Trustee and its successors and assigns in trust and to them and their assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth, first for the equal and proportionate benefit, security, and protection of all Holders from time to time of the Bonds other than the Holders of the Subordinated Bonds issued under and secured by this Indenture, without privilege, priority, or distinction as to the lien or otherwise of any of the Bonds over any of the others except as otherwise provided herein and second for the benefit of the Holders of the Subordinated Bonds, all as herein provided, and for the uses and purposes and upon the terms, agreements, and conditions set forth herein;

PROVIDED, HOWEVER, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, or provide fully for payment as herein provided of the principal of the Bonds and the interest due or to become due thereon (together with premium, if any), at the time and in the manner set forth in the Bonds according to the true intent and meaning thereof, and shall make the payments into the Bond Fund as required under Article 5 hereof or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee sums sufficient for payment of the entire amount due or to become due thereon as herein provided, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof and of the Loan Documents, then this Indenture and the rights hereby granted shall cease, terminate, and be void except as otherwise provided herein.

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared and agreed by the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated (to the extent required), and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses, and purposes

as hereinafter expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant, with the Trustee for the benefit of the Holders, as follows:

ARTICLE I

DEFINITIONS, EXHIBITS AND GENERAL PROVISIONS

SECTION 1.1. DEFINITIONS. In this Indenture the following terms have the following meanings unless the context hereof clearly requires otherwise, and any other terms defined in the Loan Documents shall have the same meanings when used herein as assigned to them in the Loan Documents unless the context or use thereof indicates another or different meaning or intent:

"*Accounts*" means, collectively, the accounts of the Bond Fund created by **Section 5.4** hereof.

"*Act*" has the meaning provided in the Recitals.

"*Additional Charges*" means the payments required by **Section 4.3** of the Loan Agreement.

"*Administration Account*" means an Account of the Bond Fund established pursuant to **Section 5.4** hereof.

"*Architecture Contract*" has the meaning assigned to that term in the Loan Agreement.

"*Authorized Denomination*" has the meaning assigned to that term in **Section 2.2(2)** hereof.

"*Bank*" means JPMorgan Chase Bank N.A., a national banking association, or its successors and assigns.

"*Bankruptcy Code*" means the United States Bankruptcy Reform Act of 1978, as amended, or any similar or succeeding federal bankruptcy law.

"*Basic Payments*" has the meaning assigned to that term in the Loan Agreement.

"*Bond Closing*" means the date on which there is delivery by the Issuer of, and payment by the initial purchaser for, the Bonds.

"*Bond Counsel*" means McCall, Parkhurst & Horton L.L.P., or any other firm of nationally recognized bond counsel experienced in tax exempt private activity bond financing selected by the Issuer.

"*Bond Documents*" means this Indenture, the Loan Agreement, the Regulatory Agreement, the Tax Certificate and the Project Certificate.

"*Bond Fund*" means the Fund created by **Section 5.4** hereof.

"Bondholder Representative" means (i) the Bank or any affiliate of the Bank, so long as the Bank or such affiliate owns any of the Bonds; (ii) if neither the Bank nor any affiliate of Bank owns any of the Bonds, then (a) if and so long as one Holder holds a majority in principal amount of all Outstanding Bonds, such Holder or a Person appointed to be the Bondholder Representative by such Holder; and (b) if and so long as no one Holder owns a majority in principal amount of all Outstanding Bonds, the Holder at the time in question who holds the greatest principal amount of all Outstanding Bonds. As set forth in **Section 5.1**, in the event of any sale, transfer or other disposition any of the Bonds by the Bank or any Bank affiliate that owns the Bonds, the Bank shall transfer all Funds and Accounts to the custody of the Trustee. So long as the Bonds are not equally owned by different Holders, the Trustee shall determine the identity of each successor Bondholder Representative based on the criteria set forth in this definition, such determination to be conclusive absent manifest error. If the Outstanding Bonds are equally owned by different Holders, the Bondholder Representative shall be the Bondholder Representative designated by the Holders of a majority in principal amount of all Outstanding Bonds at the time in question. The Trustee shall be provided written notice if there is a change to the initial Bondholder Representative.

"Bond Register" means the bond register maintained by the Bond Registrar pursuant to **Section 2.9** hereof.

"Bond Purchase Agreement" means the Bond Purchase Agreement dated as of June 1, 2019 among JPMorgan Chase Bank, N.A. as the original purchaser, the Issuer and Borrower.

"Bond Registrar" means BOKF, NA, and any successor thereto appointed, qualified, and then acting as such under the provisions of this Indenture.

"Bonds" means the Bonds and any Subordinated Bonds.

"Bond Year" means the one-year period beginning on January 1 and ending on the next succeeding December 31, provided that the first Bond Year shall begin on the date of the Bond Closing and end on December 31, 2019.

"Borrower" means the entity identified as the Borrower in the Recitals, its successors and assigns, and any surviving, resulting, or transferee entity which may assume its obligations under the Loan Documents.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which commercial banks in Austin, Texas, and in New York City are authorized or required by law to remain closed.

"Code" or *"Internal Revenue Code"* means the Internal Revenue Code of 1986, as amended and in force and effect on the date hereof.

"Collateral Assignment" means the Collateral Assignment of Rights to Tax Credits and Membership Interests of even date herewith, from Borrower and Managing Member to Issuer.

"*Completion Date*" means the date shown as the date required for substantial completion of construction of the Project in **Schedule E** to the Loan Agreement, or such later date as the Bondholder Representative approves.

"*Comptroller*" means the Comptroller of Public Accounts of the State.

"*Computation Date*" has the meaning set forth in Section 1.148-1(b) of the Regulations and as defined in the Loan Agreement.

"*Condemnation*" or the phrase "eminent domain" as used herein shall include the taking or requisition by Governmental Authority or by a person, firm, or corporation acting under governmental authority and a conveyance made under threat of such taking or requisition.

"*Condemnation Award*" shall mean payment for property condemned or conveyed under threat of Condemnation.

"*Conditions to Conversion*" shall have the meaning assigned to that term in the Loan Agreement.

"*Construction Contract*" has the meaning assigned to that term in the Loan Agreement.

"*Construction Term*" means the period beginning on the date of the Bond Closing and ending on (i) if the Conditions to Conversion have been satisfied, the date specified as the Conversion Date in the Conversion Certificate and (ii) if the Conditions to Conversion have not been satisfied, the Construction Term Maturity Date.

"*Construction Term Maturity Date*" has the meaning assigned to that term in the Loan Agreement (as may be extended as provided for in **Section 4.2(f)** of the Loan Agreement).

"*Conversion Date*" has the meaning assigned to that term in the Loan Agreement.

"*Costs of Issuance*" means, with respect to any Bonds, all expenses incurred in connection with the authorization, sale, issuance, and delivery of the Bonds, as described in Section 147(g) of the Code including, without limitation, counsel fees (including Bond Counsel, the Trustee's counsel, and Issuer's counsel, as well as any other specialized counsel fees incurred in connection with the issuance of the Bonds), the Issuance Fee, financial advisory fees, placement agent's fees, and accountant fees related to issuance of the Bonds, and initial Trustee, Bond Registrar, and Paying Agent fees, title insurance fees, survey fees and recording and filing fees, including any applicable documentary stamp taxes, intangible tax, and the mortgage registration tax.

"*Costs of Issuance Fund*" means the fund created by **Section 5.9** hereof.

"*Dated Date*" means the effective date of this Indenture, dated as of June __, 2019.

"*Debt Service*" means, for any period, the sum of all regularly scheduled principal and interest payments which would be due and payable under the Loan for the applicable number of months for which the Debt Service is being calculated.

"*Debt Service Coverage Ratio*" means, as of the date such calculation is made, the ratio, as determined by the Permanent Lender, of (a) Net Cash Flow from the Project for the applicable number of months for which the Debt Service Coverage Ratio is being calculated to (b) Debt Service for the same measured period of time.

"*Default Rate*" shall have the meaning assigned to that term in the Loan Agreement.

"*Defeasance Collateral*" shall have the meaning set forth in **Section 7.1** hereof.

"*Determination of Taxability*" means a final judgment or order of a court of original jurisdiction, a final order of any other court of competent jurisdiction, or a final ruling or decision of the Internal Revenue Service, in any such case to the effect that the interest on any of the Bonds (other than interest on any Bond for a period during which such Bond is held by a "substantial user" of any facility financed with the proceeds of the Bonds or a "related person of such a substantial user," as such terms are used in Section 147(a) of the Code and except as a result of any minimum tax, preference tax, or other similar tax) is not excludable from the gross income for federal income tax purposes of the Holders thereof. With respect to the foregoing, a judgment or order of a court or a ruling or decision of the Internal Revenue Service shall be considered final only if no appeal or action for judicial review has been filed and the time for filing such appeal or action has expired.

"*Event of Default*" means any of the events set forth in **Section 8.1** hereof.

"*Extended Use Agreement*" has the meaning given to such term in **Section 12.8** hereof.

"*Facility*" means the buildings and improvements located on the Project Premises as they may now or from time to time exist.

"*Fiscal Year*" means the fiscal year of the Borrower which commences each January 1 and ends on December 31.

"*Forward Bond Purchase Agreement*" has the meaning assigned to that term in the Loan Agreement.

"*Funds*" means, collectively, the Bond Fund, the Project Fund, the Rebate Fund, the Revenue Fund, the Mortgage Recovery Fund and the Costs of Issuance Fund.

"*Government Obligations*" means direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, including evidences of a direct ownership interest in future interest or principal payments on obligations issued or guaranteed by the United States of America, which obligations are held in a custody account by a custodian pursuant to the terms of a custody agreement.

"*Governmental Authority*" means any nation, country, commonwealth, territory, Government, state, county, parish, municipality, agency, or other political subdivision and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, including, without limitation, any state agencies and Persons responsible in whole or in part for monitoring compliance with environmental matters in the states in which Borrower is located or otherwise conducting its business activities and the United States Environmental Protection Agency.

"*Gross Proceeds*" means any proceeds, as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds, as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

"*Hazardous Substances*" has the meaning assigned to that term in the Loan Agreement.

"*Holder*" means the Person in whose name a Bond is registered in the Bond Register.

"*Indenture*" means this Trust Indenture, as the same may from time to time be amended or supplemented as herein provided.

"*Independent Accountant*" means a certified public accountant or firm of certified public accountants selected by the Borrower registered and qualified to practice as such under the laws of the State, and not employed by the Issuer or the Borrower, except to perform independent audits of the books and records of either or both of them or other similar periodic reviews and to perform other independent services.

"*Independent Counsel*" means any attorney acceptable to the Trustee, duly admitted to practice law before the highest court of any state or of the District of Columbia, who may be counsel to the Issuer but who may not be an officer or an employee of the Issuer.

"*Initial Bond*" means the Initial Bond registered by the Comptroller and subsequently canceled and replaced by definitive Bonds for each maturity.

"*Interest Account*" means an Account of the Bond Fund established pursuant to **Section 5.4** hereof.

"*Investor's Letter*" means a letter in the form of **Exhibit C** hereto and executed by the initial Holder and any subsequent transferees of the Bonds pursuant to **Section 2.12** hereof.

"*Investor Member*" means the Investor Member under and as defined in the Loan Agreement, or its successors and assigns.

"*Issuance Fee*" means a fee equal to .5% of the initial aggregate principal amount of the Bonds, which is payable on the day of Bond Closing by the Trustee to the Issuer solely from amounts on deposit in the Costs of Issuance Fund.

"*Issuer*" means Austin Housing Finance Corporation, a housing finance corporation duly organized and existing under the laws of the State of Texas, including the Act, and its successors and assigns.

"*Issuer Administration Fee*" means the annual prorated amount payable January 1 of each year beginning January 1, 2020 to the Issuer for its ordinary monitoring fees and expenses under the Indenture in an amount equal to the greatest of (a) .0003 times the amount of Bonds Outstanding on January 1 of each year, (b) \$12 times the number of units in the Project, and (c) \$1,200 per year.

"*Loan*" means the loan of proceeds of the Bonds by the Issuer to the Borrower described in **Section 4.1** of the Loan Agreement.

"*Loan Agreement*" means the Loan Agreement dated of even date herewith by and among the Issuer, the Bank, as Bondholder Representative, and the Borrower, as the same may from time to time be amended, modified, or supplemented as provided therein and in this Indenture.

"*Loan Documents*" means the Loan Agreement, the Note, the Mortgage, the Collateral Assignment, the Regulatory Agreement, the Servicing Agreement, and assignments by Borrower to the Trustee of the Construction Contract, Architecture Contract, and Plans and Specifications and consents by the contracting parties to such assignments, the Permanent Loan Documents and any and all other documents evidencing, securing, or otherwise pertaining to the Loan.

"*Managing Member*" has the meaning assigned to that term in the Loan Agreement.

"*Maturity Date*" means _____ as subject to the terms hereof.

"*Maximum Lawful Rate*" means the maximum non-usurious interest that at any time or from time to time may be contracted for, taken, reserved, charged, or received on the indebtedness under this Indenture under the laws applicable to the Issuer that are presently in effect or, to the extent allowed by law, under such applicable laws that may hereafter be in effect and that allow a higher maximum non-usurious interest rate than the laws applicable to the Issuer now allow. As of the Dated Date, the Maximum Lawful Rate is 15% per annum. The Issuer shall notify the Trustee of any change in the Maximum Lawful Rate.

"*Mortgage*" means the Construction and Permanent Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith from the Borrower as grantor to the trustee named therein for the benefit of the Issuer, and assigned to the Trustee, with respect to the Project, as the same may from time to time be replaced, amended, or supplemented as provided therein and in this Indenture.

"*Mortgaged Property*" has of the meaning assigned to the term "Property" in the Mortgage.

"*Mortgage Recovery Fund*" means the Fund created by **Section 5.7** hereof.

"*Net Cash Flow*" means, as determined by the Permanent Lender, for any period, the excess, if any, of (A) the actual gross operating income generated by the lesser of actual or ninety-three percent (93%) economic occupancy of the Project during such period (excluding insurance and condemnation proceeds (other than business interruption insurance or other insurance or condemnation proceeds retained by the Borrower), loan proceeds, security and cleaning deposits made by any tenant (except to the extent Borrower is then entitled under the applicable lease to apply the same to rent or other amounts then payable by the tenant under the applicable lease) and similar items), over (B) Project Expenses. In computing the Debt Service Coverage Ratio for the Conditions to Conversion, rent concessions may be amortized over twelve months.

"*Net Proceeds*" shall have the meaning set forth in the _____.

"*Nonpurpose Investments*" means any investment property (as defined in Section 148(b) of the Code) that is acquired with the Gross Proceeds of the Bonds and which is not acquired to carry out the governmental purpose of the Bonds.

"*Note*" means the Promissory Note in the original principal amount of \$_____.00 made as of even date herewith by the Borrower to the order of the Issuer and assigned to the Trustee for the benefit of the Holder, as amended and restated, including in connection with Conversion.

"*Operations Office*" with respect to the Trustee means the designated office of the Trustee or any affiliate of the Trustee for the payment of interest and principal on the Bonds.

"*Ordinary Fees and Expenses*" means the fees and expenses charged or incurred by the Trustee in the fulfillment of its obligations hereunder which are reimbursable to the Trustee from the Trust Estate, plus its indirect out-of-pocket expenses.

"*Outstanding Bonds*" or "*Bonds Outstanding*" means, as of the date of determination, all Bonds theretofore issued and delivered under this Indenture except:

(a) Bonds theretofore canceled by the Bond Registrar, the Trustee, or the Paying Agent or delivered to the Bond Registrar, the Trustee, or the Paying Agent for cancellation;

(b) Bonds for which payment or redemption moneys or securities (as provided in **Section 2.10** hereof or **Article 7** hereof) shall have been theretofore deposited with the Trustee or the Paying Agent in trust for the Holders of such Bonds; provided, however, that if such Bonds are to be redeemed, notice of such redemption shall have been duly given pursuant to this Indenture or irrevocable action shall have been taken to call such Bonds for redemption at a stated redemption date; and

(c) Bonds in exchange for or in lieu of which other Bonds shall have been issued and delivered pursuant to **Section 2.7** hereof or other provisions of this Indenture;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Bonds have given any request, demand, authorization, direction, notice, consent, or waiver hereunder, Bonds owned by the Borrower shall be disregarded and deemed not to be Outstanding Bonds (unless the Borrower owns all the Bonds otherwise outstanding, in which case they shall be deemed Outstanding), except that in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, or waiver, only Bonds which the Trustee actually knows to be so owned shall be disregarded.

"*Paying Agent*" means the Trustee or any other entity designated pursuant to this Indenture as the agent of the Issuer and the Trustee to receive and disburse the principal of and premium, if any, and interest on the Bonds. The parties agree that the Trustee has designated the Bank as the Paying Agent so long as the Bank is the Holder of the Bonds.

"*Payment Date*" has the meaning assigned to that term in the Loan Agreement.

"*Permanent Lender*" has the meaning assigned to that term in the Loan Agreement.

"*Permanent Loan Documents*" has the meaning assigned to that term in the Loan Agreement.

"*Permitted Investments*" means, to the extent not prohibited by State law, the following:

(i) certificates or interest-bearing notes or obligations of the United States, or those for which the full faith and credit of the United States are pledged for the payment of principal and interest;

(ii) investments in any of the following obligations, provided such obligations are backed by the full faith and credit of the United States: (a) direct obligations or fully guaranteed certificates of beneficial interest of the Export-Import Bank of the United States, (b) debentures of the Federal Housing Administration, (c) mortgage-backed securities of the Government National Mortgage Association, (d) certificates of beneficial interest of the Farmers Home Administration, (e) obligations of the Federal Financing Bank, (f) project notes and local authority bonds of the United States Department of Housing and Urban Development, or (g) obligations of the Private Export Funding Corp.;

(iii) investments in (a) senior obligations of the Federal Home Loan Bank System, (b) participation certificates or senior debt obligations of the Federal Home Loan Mortgage Corporation, (c) mortgage-backed securities and senior debt obligations (excluding stripped mortgage securities that are valued greater than par on the portion of the unpaid principal) of the Federal National Mortgage Association or (d) senior debt obligations of the Student Loan Marketing Association;

(iv) repurchase agreements with primary dealers and/or banks rated "A" or better by either of the Rating Agencies collateralized with the obligations described in (i) or (ii) above held by a third-party custodian;

(v) money market mutual funds registered with the Securities Exchange Commission conforming to Rule a-7 of the Investment Company Act of 1940 that invest primarily in direct obligations issued by the U.S. Treasury and repurchase agreements backed by those obligations, and rated in the highest category by either of the Rating Agencies.

(vi) certificates of deposit of any bank (including the Trustee or an affiliate thereof), trust company or savings and loan association whose short-term obligations are rated "A-1" or better by either of the Rating Agencies provided that such certificates of deposit are fully secured by the obligations described in (i) or (ii) above, the Trustee has a perfected first security interest in the obligations securing the certificates and the Trustee holds (or shall have the option to appoint a bank, trust company or savings and loan association as its agent to hold) the obligations securing the certificates;

(vii) certificates of deposit of any bank (including the Trustee or an affiliate thereof), trust company or savings and loan association which certificates are fully insured by the Federal Deposit Insurance Corporation;

(viii) commercial paper rated "A-1+" or better by either of the Rating Agencies;

(ix) obligations of, or obligations fully guaranteed by, any state of the United States of America or any political subdivision thereof which obligations are rated by either of the Rating Agencies in the highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise and without regard to credit enhancement) assigned by such rating agency to obligations of that nature; and

(x) any other investment which is approved in writing delivered to the Trustee by the Borrower.

The Trustee shall not have a duty or any obligation to determine whether a Permitted Investment is prohibited by State law.

"*Person*" means any natural person, firm, partnership, association, limited liability company, corporation, company or public body.

"*Plans and Specifications*" means the plans and specifications for the Facility identified in and defined as such in the Loan Agreement, together with such amendments thereto as are made from time to time in accordance with **Section 5.10** of the Loan Agreement.

"*Prepayment Fee*" has the meaning assigned to that term in the Permanent Loan Agreement.

"*Principal Account*" means an Account of the Bond Fund established pursuant to **Section 5.4** hereof.

"*Principal Office*" with respect to the Trustee means the office designated as such in **Section 12.4** hereof.

"*Project*" means the Project Premises, the Facility, and any and all Project Equipment located on or used in connection with the Project Premises.

"*Project Certificate*" means the Project Certificate delivered to the Issuer by the Borrower on or before the Bond Closing.

"*Project Engineer*" means an engineer retained by the Bondholder Representative to provide consulting services to the Bondholder Representative with respect to the Project as its construction consultant as provided for in the Loan Agreement.

"*Project Equipment*" means the property described as "*Personal Property*" in the Mortgage.

"*Project Expenses*" means costs and expenses incurred by the Borrower during the applicable period in connection with the Borrower's operation, maintenance and leasing of the Project during such period, including, but not limited to, all amounts payable by the Borrower on account of all property management fees, costs and expenses (including all salaries, payroll taxes and benefits), issuance fees on the Bond, all maintenance costs and expenses (including maintenance supply costs), all utility costs and expenses, all pest control costs and expenses, all property-related legal fees, costs and expenses, all property-related accounting fees, and all monthly amounts required to be deposited in any replacement reserve required under the Loan Documents (and for purposes of such determination, the Permanent Lender shall include as Project Expenses in any monthly period, 1/12th of the annual real estate taxes and assessments (assuming that the Project has been fully assessed for real estate tax purposes) constituting a lien on the Project (if any), 1/12th of the annual insurance premiums for all insurance required to be carried by the Borrower with respect to the Project and such portion of such other non-monthly expenses as the Permanent Lender may deem appropriate) (provided, however, that for purposes of calculating the Project Expenses described above, "Project Expenses" shall not include any repair or replacement cost which would, in accordance with generally accepted accounting principles, consistently applied, be treated as a capitalized cost or any Debt Service payments payable solely from cash flow). In computing the Debt Service Coverage Ratio for the Conditions to Conversion, Project Expenses in total for all expense categories, except Real Estate Taxes and Insurance, will not be lower than the greater of (1) the original underwriting specified in **Exhibit A** to the Rate Lock Letter, (2) actual expenses for the past three months annualized and (3), the most recent operating budget prepared by the approved property manager. Real Estate Taxes and Insurance will be included individually, at actual, assuming a fully assessed and occupied property. At any time while the Bonds are outstanding, if Real Estate Taxes are not assessed for the Project, then Project Expenses will not include the Real Estate Taxes.

"*Project Fund*" means the fund created under **Section 5.2** hereof.

"*Project Premises*" means the real property described in **Exhibit A** to the Mortgage.

"*Purchase Date*" means the date on which any Outstanding Bonds are purchased pursuant to **Article 3** hereof.

"*Qualified Project Costs*" means the costs and expenses of the Project incurred no earlier than sixty (60) days prior to December 18, 2014 (or which are qualifying preliminary expenditures), and no earlier than three (3) years prior to the date reimbursed with proceeds of the Bonds, but in no event shall such costs have been incurred with respect to a portion of the Project that is placed in service, within the meaning of Section 1.150-2 of the Regulations, earlier than eighteen (18) months prior to the date the related costs are reimbursed with proceeds of the Bonds; provided that such costs are chargeable to a capital account with respect to the Project for federal income tax purposes, or would be so chargeable either with a proper election by the Borrower or but for the proper election by the Borrower to deduct those amounts; provided, however, that, if any portion of the Project is being constructed by the Borrower or a Related Person to the Borrower (whether as a general contractor or a subcontractor), "*Qualified Project Costs*" shall include only (a) the actual out-of-pocket costs incurred by the Borrower or such Related Person in constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Borrower or such Related Person (but excluding any profit component), and (c) any overhead expenses incurred by the Borrower or such Related Person that are directly attributable to the work performed on the Project and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the construction of the Project or payments received by such Related Person due to early completion of the Project (or any portion thereof). Qualified Project Costs do not include Costs of Issuance.

"*Rate Lock Letter*" means the Interest Rate Lock Letter under and as defined in the Loan Agreement.

"*Rating Agencies*" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, or Moody's Investors Service, Inc.

"*Real Estate Taxes and Insurance*" means, for each particular fiscal year, ad valorem real estate taxes and assessments for the Project and insurance premiums related to the insurance required by the Loan Agreement to be maintained for the Project.

"*Rebate Amount*" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"*Rebate Analyst*" means a rebate analyst selected by the Issuer and reasonably acceptable to the Borrower.

"*Rebate Analyst's Fee*" means the reasonable fee payable to the Rebate Analyst.

"*Rebate Fund*" means the fund so designated in **Section 5.6** hereof into which the Trustee is to deposit rebatable arbitrage paid by the Borrower.

"*Rebate Requirement*" or "*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 defined and determined in accordance with Section 1.148-3 of the Regulations.

"*Record Date*" means with respect to any Payment Date, (a) the close of business on the first day of the month (whether or not a Business Day) of such Payment Date or (b) if there is a default in payment of interest and principal due on such Payment Date, a special Record Date for the payment of such defaulted interest established by the Trustee by notice mailed by the Trustee; such notice shall be mailed not less than 15 days preceding the applicable special Record Date, to the Holder as set forth in the Bond Register at the close of business on the fifth Business Day next preceding the date of mailing.

"*Recovery Proceeds*" means the proceeds of any insurance recovery or Condemnation Award less amounts reimbursed to the Borrower, the Trustee, and the Issuer for expenses incurred in connection therewith.

"*Redemption or Purchase Account*" means an Account of the Bond Fund established pursuant to **Section 5.4** hereof.

"*Regulations*" means any proposed, temporary, or final Income Tax Regulations issued pursuant to sections 103 and 141 through 150 of the Code. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amended or replace the specific Regulation referenced.

"*Regulatory Agreement*" means the Regulatory and Land Use Restriction Agreement, of even date herewith, among the Borrower, the Issuer, and the Trustee, together with any amendments and supplements thereto permitted thereby.

"*Related Person*" means a "*related person*" within the meaning of Section 147(a)(2) of the Code.

"*Representative*" means any officer of the Issuer or of the sole member of the Managing Member, or any other Person at any time designated to act on behalf of the Issuer or the Borrower, as the case may be, as evidenced by a written certificate furnished to such other party and the Trustee containing the specimen signature of such Person and signed for the Issuer by any officer or for the Borrower by any officer of the sole member of the Managing Member. The Trustee may conclusively presume that a Person designated in a written certificate filed with it as a Representative is a Representative until such time as the Issuer or the Borrower, as the case may be, files with it a written certificate satisfying the above requirements, identifying a different Person or Persons to act in such capacity.

"*Requirements*" shall have the meaning assigned to that term in the Loan Agreement.

"*Responsible Agent*" means any Person duly authorized and designated by the Trustee, the Bond Registrar, or the Paying Agent to act on its behalf in carrying out the applicable duties and powers of such entity as set forth in this Indenture; any action required by the Trustee, the Bond Registrar, or the Paying Agent under this Indenture may be taken by a Responsible Agent.

"*Revenue Fund*" means the Fund designated in **Section 5.3** hereof.

"*Securities Act*" means the Securities Act of 1933, as amended.

"*Servicer*" means any servicer of the Loan engaged by the Permanent Lender to provide such services in accordance with the Permanent Loan Agreement; *provided* that references to the Servicer in this Indenture and the other Loan Documents shall only be effective and applicable during periods while a Servicer has been designated and is serving in such capacity.

"*Servicing Agreement*" means the Disbursing and Servicing Agreement to be entered into by the Borrower, Trustee and Servicer on or about the Conversion Date, as amended, modified, supplemented or restated from time to time or any agreement entered into in substitution therefor.

"*Sponsor*" means the City of Austin, Texas.

"*State*" means the State of Texas.

"*Subordinated Bond Interest Account*" means an Account of the Bond Fund established pursuant to **Section 5.4** hereof.

"*Subordinated Bond Principal Account*" means an Account of the Bond Fund established pursuant to **Section 5.4** hereof.

"*Subordinated Bond Redemption or Purchase Account*" means an Account of the Bond Fund established pursuant to **Section 5.4** hereof.

"*Subordinated Bonds*" means Bonds which are purchased by or at the direction of Borrower with the consent of the Permanent Lender pursuant to **Section 2.9(9)** hereof.

"*Tax Certificate*" means the Borrower's Federal Tax Certificate delivered to the Issuer by the Borrower on the Bond Closing in which the Borrower certifies to various facts relating to the Project and the Bond on the exclusion of interest on the Bonds from gross income for purposes of federal income taxation.

"*Tax Credits*" means the low income housing tax credits allocated to the Project pursuant to Section 42 of the Code (and which are referred to as the Low-Income Housing Tax Credit in the Loan Agreement).

"*Title Company*" means Independence Title and its successors and assigns.

"*Title Policy*" means the title insurance policy required pursuant to **Section 1(a)(11)** of **Schedule D** of the Loan Agreement.

"*Treasury*" means the United States Department of the Treasury, and any successor to its functions.

"*Treasury Issue*" means a U.S. government debt obligation.

"*Trustee*" means BOKF, NA, and any co-trustee or successor trustee appointed, qualified, and then acting as trustee under the provisions of this Indenture.

"*Trust Estate*" means the Trust Estate as described and set forth in the Granting Clauses hereof.

"*Unassigned Issuer's Rights*" means the rights of the Issuer to receive notices, requests and other communications and to receive indemnification and certain direct payments to be made to it pursuant to **Sections 4.2(b)(iii), 4.3, 7.3, 7.16, 11.6, and 12.17** (but only insofar as the provisions of such Section relate to the Issuer) of the Loan Agreement, the Issuer's rights to give approvals and consents as set forth in the Loan Agreement, the Issuer's right to receive the Issuance Fee, and the Issuer's rights under and relating to the enforcement of the Regulatory Agreement and the Extended Use Agreement relating to the Project.

"*Yield*" of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations, and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

SECTION 1.2. RULES OF INTERPRETATION.

(1) This Indenture shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as they may be preempted by Federal rules, regulations, and laws applicable to the Issuer. References in this Indenture and the other Bond Documents to particular sections of the Internal Revenue Code, the Uniform Commercial Code, or any other legislation rule, or regulation shall be deemed to refer also to any successor sections thereto or other re-designation for codification purposes. The Issuer and the Trustee expressly acknowledge and agree that any judicial action to enforce any rights of the Issuer under this Indenture may be brought and maintained at the option of the acting party in any state district court in the State having jurisdiction over the matter or in the United States District Court for any district in the State having jurisdiction over the matter or in any United States Bankruptcy Court in any case involving or having jurisdiction over the Borrower or over the Project.

(2) The words "*herein*," "*hereof*," and "*hereunder*" and words of similar import, without reference to any particular section or subdivision, refer to this Indenture as a whole rather than to any particular section or subdivision of this Indenture.

(3) References in this Indenture to any particular article, section, or subdivision hereof are to the designated article, section, or subdivision of this Indenture as originally executed.

(4) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; and all computations provided for herein shall be made in accordance with generally accepted accounting principles consistently applied and applied on the same basis as in prior years.

(5) The Table of Contents and titles of articles and sections herein are for convenience of reference only and are not a part of this Indenture and shall not define or limit the provisions hereof.

(6) Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine gender and neuter state and vice versa.

(7) Articles, sections, subsections, and clauses mentioned by number only are those so numbered which are contained in this Indenture.

(8) Any opinion of counsel called for herein shall be a written opinion of such counsel.

(9) Every "*request*," "*order*," "*demand*," "*direction*," "*application*," "*appointment*," "*notice*," "*statement*," "*certificate*," "*consent*," or similar action under this Indenture by any party shall, unless the form of such issuance is specifically provided, be in writing signed by a duly authorized representative of such party with a duly authorized signature.

(10) Words of the masculine gender shall mean and include correlative words of the female gender and the neuter state, and words importing the singular number shall mean and include the plural number and vice versa.

(11) Words importing the redemption of a Bond or the calling of a Bond for redemption do not include or connote the payment of such Bond at its stated maturity or the purchase of such Bond.

(12) References in this Indenture to particular sections of the Code, the Act or any other legislation shall be deemed to refer also to any successor sections thereto or other re-designation for codification purposes.

(13) The terms "*receipt*," "*received*," "*recovery*," "*recovered*" and any similar terms, when used in this Indenture with respect to moneys or payments due the Issuer, shall be deemed to refer to the passage of physical possession and control of such moneys and payments to the Issuer, the Owners of the Bonds or the Trustee on its behalf.

(14) All references herein to time shall be to the prevailing Central time.

(15) All references in this Indenture to "*counsel fees*," "*attorney fees*," or the like shall mean and include fees and disbursements of in-house or outside counsel, whether or not suit is instituted, and including fees and disbursements preparatory to and during trial and appeal and in any bankruptcy or arbitration proceeding.

ARTICLE II

THE BONDS

SECTION 2.1. AUTHORIZED AMOUNT AND FORM OF BONDS. The Bonds secured by this Indenture shall be issued in fully registered form without coupons and in substantially the form set forth herein with such appropriate variations, omissions, and insertions as are permitted or required by this Indenture, and in accordance with the further provisions of this **Article 2.** The maximum aggregate principal amount of Bonds that shall be issued hereunder shall be \$_____, unless duplicate Bonds are issued as provided in **Section 2.7** hereof or **2.11** hereof. The Bonds, together with the Certificate of Authentication, the form of Assignment, and the registration information thereon, shall be in substantially the forms found at **Exhibit B** hereto.

SECTION 2.2. ISSUANCE OF BONDS. The Bonds shall:

- (1) be dated as of the Dated Date;
- (2) be initially issued and delivered as fully registered bonds without coupons, in the minimum denominations of \$100,000 or any integral multiples of \$1,000 in excess of \$100,000; except that a Bond may be exchanged after redemption or purchase for a Bond in the denomination of less than \$100,000 to the extent necessary to represent the unredeemed or unpurchased portion of such Bond (the "*Authorized Denomination*");
- (3) be designated Series 2019 Bonds;
- (4) except for the Initial Bond which shall be numbered I-1, be numbered from _____ upwards in chronological order of delivery for each respective series of Bonds with such number being preceded by such designation as the Trustee shall determine;
- (5) mature on the Maturity Date;
- (6) shall bear interest from the date of delivery thereof at the rates provided for in the Bonds provided that the interest rate on the Bonds will be increased to a per annum rate equal to the Default Rate both prospectively and retroactively to the date on which a Determination of Taxability on the Bonds shall be applicable, and the Borrower shall pay to the Holders promptly upon demand any interest due retroactively;
- (7) be payable in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, at the Operations Office of the Trustee or Paying Agent, except that interest on the Bonds will be payable by check mailed on the Payment Date by the Trustee to the Holders of such Bonds on the applicable Record Date (the "*Record Date Holders*" as defined in the form of Bond set forth in **Exhibit B** hereto) at the last addresses thereof as shown in the Bond Register on the applicable Record Date; and, if the Bonds are not in book-entry form, the principal of and any premium on any Bonds shall be payable at the Operations Office of the Trustee

without presentation and surrender of the Bonds except for the final principal payment as provided in **Section 3.4(2)**; and

(8) be subject to redemption upon the terms and conditions and at the redemption prices specified in **Article 3** hereof.

Notwithstanding anything contained herein to the contrary, during any period of time that the Note bears interest at the Default Rate, the Bonds shall also bear interest at the Default Rate.

During any period of time that the Note bears interest at the rate described in **Section 7.14** of the Loan Agreement, the Bonds shall also bear interest at such rate; provided that in no event shall the interest rate on the Bonds or the Note exceed the Maximum Lawful Rate.

Notwithstanding the foregoing, if the date for payment of the principal of, premium, if any, or interest on the Bonds shall be a day which is not a Business Day, then the date for such payment shall be the next succeeding day which is a Business Day, and payment on such later date shall have the same force and effect as if made on the nominal date of payment.

Notwithstanding the foregoing, any Holder of at least \$1,000,000 principal amount of any Bonds (or a lesser amount of such Bonds if such Bonds constitute all the Outstanding Bonds at the time), upon payment by the Holder of the costs of wire transfers, may file with the Trustee an instrument satisfactory to the Trustee not less than five (5) days prior to the applicable Record Date requesting the interest amounts payable by the Trustee to such Holder be paid by transferring by wire transfer in immediately available funds, on the day such payment is due, the amount to be distributed to such Holder to a designated account maintained by such Holder at any bank in the United States. The designation so given will be effective unless and until rescinded in writing by the Holder at least five (5) days prior to the Record Date for the Payment Date to which such rescission is designated to apply. The Trustee shall pay all amounts payable by the Trustee hereunder to such Holder by transfer directly to said designated bank in accordance with the provisions of any such instrument, provided that if such amount represents a payment of the principal of and/or premium on any Bond, such Bond shall have been presented to the Trustee at its Operations Office. All payments so made shall be valid and effective to satisfy and discharge the liability upon such Bonds. Notwithstanding the foregoing, all payments of principal of and interest on and/or premium on the Bonds payable on the Maturity Date, a Purchase Date, or any date of redemption shall only be payable upon presentation of the Bonds maturing, being purchased or being redeemed at the Operations Office of the Trustee.

SECTION 2.3. EXECUTION; LIMITED OBLIGATION. (1) Bonds shall be signed by, or executed with the facsimile or manual signature of, the President, Vice President or Treasurer of the Issuer and attested by the facsimile or manual signature of the Secretary of the Issuer.

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

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

(2) THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON WHICH ARE PAYABLE SOLELY FROM THE PLEDGED RECEIPTS OR FROM ANY OTHER MONEYS MADE AVAILABLE TO THE ISSUER FOR SUCH PURPOSE FROM THE TRUST ESTATE; PROVIDED, HOWEVER, THAT UNDER THIS INDENTURE, THE ISSUER HAS RESERVED TO ITSELF, AND HAS NOT PLEDGED OR ASSIGNED, THE UNASSIGNED ISSUER'S RIGHTS. THE BONDS DO NOT CONSTITUTE, WITHIN THE MEANING OF ANY STATUTORY OR CONSTITUTIONAL PROVISION, AN INDEBTEDNESS, AN OBLIGATION OR A LOAN OF CREDIT OF THE STATE, THE SPONSOR OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. THE BONDS DO NOT CREATE A MORAL OBLIGATION ON THE PART OF THE STATE, THE SPONSOR OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE AND EACH OF SUCH ENTITIES IS PROHIBITED FROM MAKING ANY PAYMENTS WITH RESPECT TO THE BONDS. THE ISSUER HAS NO TAXING POWER. THE BONDS ARE ISSUED UNDER CHAPTER 394, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED.

SECTION 2.4. REGISTRATION AND AUTHENTICATION; INITIAL BOND. (1) No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Indenture unless a certificate of authentication or registration on such Bond, substantially in the form set forth in **Exhibit B** hereto, shall have been duly executed manually by a Responsible Agent of the Bond Registrar or, with respect to the Initial Bond, the Comptroller. Certificates of authentication or registration on different Bonds need not be signed by the same person. The Bond Registrar shall authenticate the signatures of officers of the Issuer on each Bond by execution of the certificate of authentication on the Bond; and the certificate of authentication so executed on each Bond shall be conclusive evidence that it has been authenticated and delivered under this Indenture.

(2) The Initial Bond, which shall be numbered I-1, registered by the Comptroller, shall be identical to the form of Bond attached as **Exhibit B**, except that the second-to-last paragraph of the Initial Bond shall read as follows:

"This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture unless the Comptroller's Registration Certificate hereon has been executed by an authorized representative of the Texas Comptroller of Public Accounts by manual signature."

In lieu of the authentication certificate of the Trustee, the Initial Bond shall contain the following certificate:

**"REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS**

OFFICE OF THE COMPTROLLER §

OF PUBLIC ACCOUNTS § REGISTER NO. _____

THE STATE OF TEXAS §

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Texas Comptroller of Public Accounts.

Witness my signature and seal of office this _____.

Comptroller of Public Accounts of the State of
Texas

(SEAL)"

The provisions of **Exhibit B** may be rearranged or re-ordered for purposes of the Initial Bond.

SECTION 2.5. CONDITIONS PRECEDENT TO THE DELIVERY OF BONDS. Upon the execution and delivery of this Indenture, the Bond Purchase Agreement and the Forward Bond Purchase Agreement and delivery of the purchase price of the Bonds, the Issuer shall execute and deliver the Bonds to the Bond Registrar, and the Bond Registrar shall authenticate the Bonds (other than the Initial Bond that bears the certificate of registration of the Comptroller) for delivery from time to time as required by this Indenture. The Bond Registrar shall deliver the Initial Bond to or upon the order of the purchaser of the Bonds at such time as may be directed by the Issuer. Concurrently with the delivery of the Bonds the Trustee shall have received the following:

- (1) original executed counterparts of the Loan Agreement, the Note (endorsed to the Trustee), the Tax Certificate, and this Indenture;
- (2) copies of original executed counterparts of the Mortgage, the Regulatory Agreement, and UCC financing statements as delivered to the Title Company for recording or filing as appropriate;
- (3) to the extent Trustee receives written notice that the same are required by the Bondholder Representative (as it may direct the Title Company to provide to the Trustee), copies of original executed counterparts of all Loan Documents and Permanent Loan Documents specifically referenced in the definitions of Loan Documents and Permanent Loan Documents;

(4) a copy, duly certified, of the resolution passed by the governing body of the Issuer, approving the execution and delivery of this Indenture and the Loan Agreement and the issuance of the Bonds;

(5) a request and authorization (which may be part of a certificate of the Issuer) to the Trustee on behalf of the Issuer, signed by an authorized representative, to deliver the Bonds to the purchaser identified upon payment to the Trustee for the account of the Issuer of a specified sum and payment of the Costs of Issuance;

(6) the opinion of counsel to the Borrower in the form required by Bond Counsel and counsel to the Bondholder Representative, addressed to the Issuer, the Trustee, the Borrower, and the Bondholder Representative, compliance with such form to be evidenced by Bond Counsel's delivery of its opinion required in clause (7) below;

(7) the opinion of Bond Counsel, with a reliance letter addressed to the Borrower, Issuer, the Trustee, the Bondholder Representative, and the Permanent Lender, to the effect that (a) the Bonds have been duly and validly issued, and (b) the interest on the Bonds is excludable from gross income of the Holder thereof for federal income tax purposes, subject to the customary assumptions and qualifications;

(8) original of an Investor's Letter executed by the Bondholder Representative and addressed to the Trustee and the Issuer in the form of **Exhibit C** hereto;

(9) the approving opinion of the Attorney General of the State approving the Bonds; and

(10) any other documents or opinions which the Trustee, the Issuer, or Bond Counsel may reasonably require.

SECTION 2.6. NO ADDITIONAL BONDS. No additional Bonds may be issued hereunder.

SECTION 2.7. MUTILATED, LOST, OR DESTROYED BONDS. In case any Bond issued hereunder shall become mutilated or be destroyed or lost, the Issuer shall, if not then prohibited by law, cause to be executed, and the Bond Registrar shall authenticate and deliver, a new Bond of like amount, series, Maturity Date, and tenor, in exchange and substitution for and upon cancellation of any such mutilated Bond, or in lieu of and in substitution for any such Bond destroyed or lost, upon the Holder's paying the reasonable expenses and charges of the Bond Registrar and the Issuer and, in the case of a Bond destroyed or lost, the Holder's filing with the Bond Registrar of evidence satisfactory to the Bond Registrar and the Trustee that such Bond was destroyed or lost, and of the Holder's ownership thereof, and furnishing the Borrower, the Issuer, the Trustee, and the Bond Registrar with indemnity satisfactory to them. If the mutilated, destroyed, or lost Bond has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new Bond prior to payment.

SECTION 2.8. OWNERSHIP OF BONDS. The Issuer, the Trustee, the Bond Registrar, and Paying Agent may deem and treat the Holder of any Bond, whether or not such Bond shall be

overdue, as the absolute owner of such Bond for the purpose of receiving payment thereof and for all other purposes whatsoever, and the Issuer (or any agent thereof), the Trustee, the Bond Registrar, and the Paying Agent shall not be affected by any notice to the contrary.

SECTION 2.9. REGISTRATION, TRANSFER, AND EXCHANGE OF REGISTERED BONDS.

(1) The Bond Registrar shall, at the expense of the Borrower, prepare, execute, and authenticate fully registered Bonds (other than the Initial Bond), and shall cause to be kept at the designated corporate trust office of the Bond Registrar (which will be the Operations Office for the Trustee if it is the Bond Registrar) a Bond Register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the Trustee or the Bond Registrar shall provide for the registration of Bonds and the registration of transfers of Bonds. The Bond Registrar shall contain a record of every Bond, including bond number and principal amount at any time registered by the Comptroller or authenticated hereunder, together with the name and address of the Holder thereof, the date of registration or authentication, the date of transfer or payment, and such other matters as are appropriate for the Bond Register in the estimation of the Bond Registrar and the Trustee.

(2) The transfer of each Bond is subject to registration by the Holder thereof only upon compliance with the conditions for registration of transfer imposed on the Holder under this **Section 2.9** and **Section 2.12** hereof. Upon surrender of any Bond at the operations office of the Bond Registrar, the Issuer shall execute (if necessary), and the Bond Registrar shall authenticate and deliver, in the name of the designated transferee or transferees (but not registered in blank or to "bearer" or a similar designation), one or more new Bonds of any Authorized Denomination or Denominations of a like series and aggregate principal amount, having the same stated maturity and interest rate.

(3) At the option of the Holder, Bonds may be exchanged for other Bonds of any Authorized Denomination or Denominations of a like series and aggregate principal amount and stated maturity, upon surrender of the Bonds to be exchanged at the operations office of the Bond Registrar, and upon payment of the taxes, if any, hereinafter referred to. Whenever any Bonds are so surrendered for exchange, the Issuer shall execute (if necessary), and the Bond Registrar shall authenticate and deliver, the Bonds which the Holder making the exchange is entitled to receive.

(4) All Bonds delivered in exchange for or upon transfer of Bonds shall be valid special and limited obligations of the Issuer evidencing the same debt, and entitled to the same benefits under this Indenture, as the Bonds surrendered for such exchange or transfer.

(5) Registration of the transfer of a Bond may be made on the Bond Register by the Holder in person or by the Holder's attorney duly authorized in writing. Every Bond presented or surrendered for registration of transfer or exchange shall (i) be accompanied by evidence of compliance with the provisions of **Section 2.12** hereof, and (ii) be duly endorsed or be accompanied by a written instrument or instruments of transfer, in the form printed on the Bond or in another form satisfactory to the Bond Registrar, duly executed and with guaranty of signature of the Holder thereof or his, her or its attorney duly authorized in writing, and (iii) include written instructions as to the details of the transfer of the Bond.

(6) No service charge shall be made to the Holder for any registration, transfer, or exchange, but the Bond Registrar and the Trustee shall require payment of a sum sufficient to cover any tax, fee, or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, other than exchanges expressly provided in this Indenture to be made without expense or without charge to Holders, and any legal or unusual costs of transfers and lost bonds.

(7) Subject to the provisions of subsection (8) below, the Bond Registrar shall endeavor to comply with rules applicable to transfer agents registered with the Securities and Exchange Commission as to the 72-hour "turnaround" standard established for the transfer of registered corporate securities.

(8) The Bond Registrar shall not be required (a) to transfer or exchange any Bond during a period beginning at the opening of business fifteen (15) days before the day of the mailing of a notice of redemption or purchase of Bonds under this Indenture and ending at the close of business on the day of such mailing or (b) to transfer or exchange any Bond so selected for redemption or purchase in whole or in part.

(9) Bonds purchased by the Borrower or any "*related person*" of the Borrower within the meaning of Section 144(a)(3) of the Code (to the extent actually known by the Trustee to be such a "*related person*") shall be canceled, unless the Issuer and the Trustee receive an opinion of Bond Counsel to the effect that such purchase will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes; and the Bond Registrar shall register any Bonds purchased by any other Person at the direction or request of the Borrower in the name of such Person, and such Bonds shall be deemed to be Subordinated Bonds. The Borrower shall provide written notice to the Trustee of any transfer of the Bonds pursuant to this **Section 2.9(9)** and the Trustee shall note on the Bond Register that such Bonds are Subordinated Bonds. In the absence of such written notice from the Borrower, the Trustee may presume that a transfer is not being made pursuant to this **Section 2.9(9)**. Subordinated Bonds may only be purchased with the prior written consent of the Permanent Lender.

SECTION 2.10 NONPRESENTMENT OF BONDS. In the event any Bond shall not be presented for payment when the principal, premium, if any, or purchase price thereof becomes due, if funds sufficient to pay such Bond or the purchase price thereof shall have been paid to the Trustee (or the Paying Agent (if any)) for the benefit of the registered owner thereof, all liability of the Issuer to the registered owner thereof for the payment of such Bond or the purchase price thereof shall forthwith cease, terminate, and be completely discharged, and thereupon it shall be the duty of the Trustee or other Paying Agent to hold such fund or funds, without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond. Any such moneys still held by the Trustee (or other Paying Agent, if any) after three years from the date on which such amount was paid to the Trustee or other Paying Agent, shall be paid to the Borrower and the owner of such Bond shall thereafter be entitled to look only to the Borrower for payment, and the Borrower shall not be liable for any interest thereon. If any Bond purchased in accordance with **Section 3.1** hereof is not presented for payment when the purchase price thereof becomes due, if funds sufficient to pay such purchase price shall have been

paid to the Trustee (or the Paying Agent (if any)) for the benefit of the registered owner thereof, the Trustee or the Bond Registrar shall authenticate and deliver a new Bond of like amount, series, Maturity Date, and tenor, but bearing a number not contemporaneously Outstanding, in substitution for such Bond or the principal amount thereof so subject to purchase.

SECTION 2.11.DISPOSITION OF BONDS. Whenever any Outstanding Bond shall be delivered to the Bond Registrar or the Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount and interest represented thereby or for replacement pursuant to **Section 2.7** hereof or transfer pursuant to **Section 2.9** hereof, such Bond shall be canceled and disposed of by the Bond Registrar or the Trustee, as the case may be, in accordance with its applicable policies, and counterparts of a certificate of cancellation evidencing such cancellation shall be furnished by the Bond Registrar, or the Trustee, as the case may be, to the Issuer and the Bond Registrar or the Trustee, as the case may be, from time to time, upon request, and in accordance with the Bond Registrar's or the Trustee's policies.

SECTION 2.12.RESTRICTIONS ON TRANSFER. The Bonds or interests in the Bonds may be transferred (i) to any subsidiary, affiliate or parent of the Bank, or following the receipt by the Trustee of evidence that each such Bond is rated "A" or better (or its equivalent) by one of the Rating Agencies, and an opinion of Independent Counsel to the effect that the exemption of the Bonds or any securities evidenced thereby from the registration requirements of the Securities Act, and the exemption of this Indenture from qualification under the Trust Indenture Act of 1939, as amended, will not be impaired as a result of such transfer, and an opinion of Bond Counsel that such transfer will not adversely affect the exclusion of interest on the Bonds from the calculation of gross income of the Holders thereof for federal income tax purposes, (ii) to an "*accredited investor*" (as defined in Rule 501(a)(1), (2), (3), (7), or (8) of Regulation D promulgated under the Securities Act) or (iii) to a Qualified Institutional Buyer (as defined in Rule 144A promulgated under the Securities Act). An Investor's Letter shall be delivered to the Issuer and the Trustee in connection with any transfer of the Bonds or interests in the Bonds pursuant to (ii) and (iii) of the immediately preceding sentence. The Trustee shall be entitled to rely, without any further inquiry, on any Investor's Letter delivered to it and shall be fully protected in registering any transfer or exchange of any Bonds in reliance on any such Investor's Letter which appears on its face to be correct and of which the Trustee or a Responsible Agent has no actual knowledge otherwise. For purposes of this Section, "*actual knowledge*" means the fact of knowledge without any duty to investigate. IN THE INVESTOR'S LETTER, ANY SUCH "*ACCREDITED INVESTOR*" OR QUALIFIED INSTITUTIONAL BUYER, AS TRANSFEREE, SHALL AGREE TO INDEMNIFY THE BORROWER, THE ISSUER, THE SPONSOR, THE TRUSTEE, AND THE BOND REGISTRAR FROM AND AGAINST ANY AND ALL LIABILITY, COST OR EXPENSE (INCLUDING ATTORNEYS' FEES) THAT MAY RESULT IF THE REPRESENTATIONS CONTAINED IN SUCH INVESTOR'S LETTER ARE FALSE IN ANY MATERIAL RESPECT. The Trustee or the Bond Registrar, as the case may be, are authorized and directed to put a stop order on the Bond Register in regard to the foregoing restrictions on the transfer of the Bonds. Notwithstanding the foregoing, the Bondholder Representative may sell, assign, or transfer the Bonds in whole or in part at any time, subject to the Securities Act.

SECTION 2.13.CONCERNING SUBORDINATED BONDS. (1) Interest on Subordinated Bonds shall be payable on each Payment Date (subject to the terms, provisions and priorities set forth in this Indenture). Holders of Subordinated Bonds shall be paid principal in accordance with their

terms on each Maturity Date (subject to the terms, provisions, and priorities set forth in this Indenture).

(2) Subordinated Bonds shall be and hereby are subordinated in priority and in right and time of payment to all amounts due on the Bonds other than Subordinated Bonds. Payment of the Subordinated Bonds shall be made by the Trustee only from funds, if any, not required to be used for payment on the Bonds other than Subordinated Bonds, and the Holders of the Subordinated Bonds, by acceptance of the Subordinated Bonds, expressly agree and acknowledge that (A) no payment shall be due and payable or made on the Subordinated Bonds if the Trustee does not hold sufficient funds in the Interest Account, Principal Account or the Redemption or Purchase Account of the Bond Fund to make required payments then due on Bonds other than Subordinated Bonds and (B) no remedy shall be had for any default in payment on the Subordinated Bonds so long as any Bonds other than Subordinated Bonds remain Outstanding.

SECTION 2.14. NO USURY. The Issuer intends to conform strictly to the usury laws applicable to this Indenture and the Bonds and all agreements made in the Bond Documents and the Loan Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to the Holders as interest or other amounts paid for the use of money advanced or to be advanced hereunder exceed the highest lawful rate prescribed by Texas Government Code Section 1204.006(a) or under any other law which a court of competent jurisdiction may deem applicable hereto. If, from any circumstances whatsoever, the fulfillment of any provision of the Bond Documents or the Loan Documents shall involve the payment of interest in excess of the limit prescribed by any law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to pay interest hereunder shall be reduced to the maximum limit prescribed by law; and if from any circumstances whatsoever, the Holders shall ever receive anything of value deemed interest, the amount of which would exceed the highest lawful rate, such amount as would be excessive interest shall be deemed to have been applied, as of the date of receipt by the Holders, to the reduction of the principal remaining unpaid hereunder and under the Bonds and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance, such excess shall be refunded to the Borrower. Subject to the express terms of the Note, this paragraph shall control every other provision of the Bond Documents and all Loan Documents.

In determining whether the amount of interest charged and paid might otherwise exceed the limit prescribed by law, the Issuer intends and agrees that interest shall be computed upon the assumption that payments under the Bond Documents and the Loan Documents will be paid according to the agreed terms, and any sums of money which are taken into account in the calculation of interest, even though paid at one time, shall be spread over the stated term of the Bonds.

ARTICLE III

REDEMPTION AND PURCHASE OF BONDS BEFORE MATURITY

SECTION 3.1. REDEMPTION AND PURCHASE. Subject to the provisions of **Sections 3.2** and **3.4** hereof, the Bonds are subject to purchase or redemption as follows:

(1) Extraordinary Redemption. (a) The Bonds are subject to mandatory redemption, in whole or in part, on any Business Day, in the event of damage to, or destruction or Condemnation of the Project or any part thereof under the conditions and to the extent provided in **Section 5.7(2)** hereof, at a redemption price equal to the principal amount thereof plus accrued and unpaid interest and payment of any Prepayment Fee owed.

(b) The Bonds are subject to mandatory redemption in whole on the first date after which proper notice has been given in accordance with **Section 3.4** of this Indenture if the Bondholder Representative gives written notice to the Trustee that (i) the Conversion Date has not occurred on or before the Construction Term Maturity Date (as may be extended as provided for in **Section 4.2(f)** of the Loan Agreement), and (ii) the Bondholder Representative demands such redemption at a redemption price equal to the principal amount thereof plus accrued and unpaid interest plus three percent (3.0%) of the principal of the Bonds Outstanding and any Prepayment Fee owed.

(c) The Bonds are subject to mandatory redemption in part on the first date after which proper notice has been given in accordance with **Section 3.4** of this Indenture that Bond proceeds then remaining on deposit in the Project Fund are not needed for the development of the Project and to cause the Conditions to Conversion to be satisfied prior to the Construction Term Maturity Date (based on the written concurrence of the Bondholder Representative and the Borrower, after the Borrower advises the Trustee in writing that no further requisitions will be made from the Project Fund), at a redemption price equal to a principal amount equal to the amount then on deposit in the Project Fund (or such lesser amount as the Bondholder Representative determines as may be needed to cause the Conversion Date to occur under and for purposes of the Loan Agreement) plus accrued and unpaid interest.

(d) **[Prior to Conversion, the]** Bonds are subject to mandatory redemption in whole upon the occurrence of a Determination of Taxability at a redemption price equal to the principal amount thereof plus accrued and unpaid interest.

(e) Each mandatory redemption as provided above shall occur on the first Business Day after which proper notice is given under **Section 3.4** of this Indenture.

(2) Optional Redemption. The Bonds are subject to redemption at the option of the Borrower (as a prepayment), in whole or in part on any date at a redemption price of par plus accrued and unpaid interest to the redemption date as follows:

(a) Prepayments Prior to Conversion Date. The Bonds may not be redeemed in whole or in part until 30 months from Bond Closing, and thereafter until the Conversion Date, the Bonds may be prepaid in whole or in part, at a redemption price equal to par plus accrued interest to the redemption date, without penalty or premium (except as may be otherwise due to the Permanent Lender under the terms of the Forward Bond Purchase Agreement as a result of that prepayment). If, for any reason, the Conversion Date has not occurred on or before the Construction Term Maturity Date, the Bonds (and the Loan) may be prepaid in

whole or in part, at a redemption price equal to par plus accrued interest to the redemption date, without penalty or premium (except as may be otherwise due to the Permanent Lender under the terms of the Forward Bond Purchase Agreement as a result of that prepayment).

(b) Prepayments After Conversion Date. The Bonds may be redeemed on any Business Date after, but not prior to the tenth (10th) anniversary of the Conversion Date, subject to the payment of any Prepayment Fee due in connection with such redemption, in accordance with the applicable terms of the Permanent Loan Agreement.

(3) Mandatory Sinking Fund Redemption. The Bonds shall be subject to mandatory sinking fund redemption in the years and in the principal amounts set forth in **Exhibit D** attached to this Indenture (without notice to the Holder or presentment by the Holder); provided that, on the Conversion Date, the Bondholder Representative may provide to the Trustee a revised mandatory sinking fund redemption schedule showing substantially level monthly debt service on the Bonds, based on the principal amount of the Bonds outstanding on the Conversion Date at a forty (40) year amortization interest rate of the Bonds, with a final principal payment equal to outstanding principal amount on the date that is 18 years from the Conversion Date.

(4) Mandatory Redemption Upon Event of Default. Prior to the Conversion Date, the Bonds are subject to mandatory redemption in whole upon the occurrence and continuance of an Event of Default and in connection with an acceleration under **Section 8.2** hereof at the written direction of the Bondholder Representative at a redemption price equal to the principal amount of the Bonds then Outstanding, plus accrued and unpaid interest and plus three percent (3.0%) of the principal of the Bonds Outstanding. Any prepayment or redemption in accordance with this Section is subject to the payment by the Borrower of a Prepayment Fee (if any) due to the Permanent Lender.

(5) Redemption for Stabilization. The Bonds are subject to purchase or redemption in part at the option of the Borrower, subject to **Section 3.1(2)(a)** hereof, on any date on or prior to the Conversion Date, in an aggregate amount sufficient to meet the Conditions to Conversion as provided in the Forward Bond Purchase Agreement, at a redemption price equal to the aggregate principal amount thereof plus accrued and unpaid interest plus any Prepayment Fee then due under **Section 3.1(2)(b)**.

If less than all Outstanding Bonds other than Subordinated Bonds are redeemed or purchased other than pursuant to mandatory sinking fund redemption, the Borrower shall provide to the Trustee a revised sinking fund amortization table (as approved in writing by the Bondholder Representative), which shall provide for a mandatory sinking fund schedule in lieu of the then existing **Exhibit D** attached hereto.

SECTION 3.2. NOTICE OF REDEMPTION OR PURCHASE.

(1) To effect the redemption or purchase of the Bonds under **Section 3.1** hereof, the Trustee shall promptly give notice within the time, in the manner and with the effect provided by this **Section 3.2**. Notice of redemption date or purchase shall be mailed by first class mail not less than thirty (30) days prior to the redemption date or Purchase Date by the Trustee to the Paying Agent and the Holders of Bonds to be redeemed or purchased. No defect in or failure to give notice shall affect the validity of the proceedings for redemption or purchase of any Bond not affected by such defect. Such notice, which shall be prepared by the Trustee at the expense of the Borrower, shall state the subsection under **Section 3.1** hereof pursuant to which the Bonds are being called for redemption or purchase, and the date on which and the place where they shall be presented for redemption or purchase and, unless all Outstanding Bonds are to be redeemed or purchased, each such notice shall refer to the Bonds to be redeemed or purchased by their numbers and maturities. The notice shall state the conditions precedent to redemption or purchase specified in **Section 3.4** hereof. Except as specifically provided in this Indenture and provided sufficient funds are on deposit with the Trustee with respect to such redemption or purchase, the Bonds thus called for redemption or purchase, provided funds for their redemption or purchase have been duly deposited, shall cease to bear interest from and after the specified redemption or purchase date and the Holder of such Bonds shall have no further rights with respect to the Bonds or under this Indenture except to receive the redemption or purchase price of such Bonds.

(2) The Bond Registrar, if not the Trustee, shall, upon the Trustee's request, furnish the names and addresses of the Holders of the Bonds as of the Record Date immediately preceding such redemption date or Purchase Date to the Trustee.

SECTION 3.3. CANCELLATION. Subject to the provisions of **Section 2.10** hereof, all Bonds which have been redeemed shall be canceled by the Trustee as provided in **Section 2.11** hereof and shall not be reissued.

SECTION 3.4. METHOD OF REDEMPTION OR PURCHASE.

(1) The Trustee shall redeem Bonds under **Section 3.1(1)** hereof only if it has received written notice and instructions from the Bondholder Representative to so redeem at least forty (40) days before the redemption date or Purchase Date (or such shorter period as consented to by the Trustee), and the Trustee has been provided with immediately available funds sufficient for such purpose when added to other funds on deposit in the Bond Fund, at least ten (10) Business Days prior to the redemption date. The Trustee shall purchase Bonds under **Section 3.1(2)** or **Section 3.1(5)** hereof in accordance with the instructions from the Borrower, subject to **Section 2.9(9)** and **Section 3.1(2)**. At least thirty-five (35) days prior to the redemption date (or such shorter period as consented to by the Trustee), the Borrower shall give the Trustee written notice of its election to redeem or purchase Bonds pursuant to **Section 3.1(2)** or **Section 3.1(5)**, which notice shall contain the redemption date and the principal amount of Bonds to be redeemed and direct the Trustee to redeem the Bonds. Mandatory sinking fund redemptions under **Section 3.1(3)** do not require any prior notice of redemption.

(2) The Trustee shall select Bonds other than Subordinated Bonds for redemption or purchase by lot. If a Bond may be redeemed or purchased only in part, it shall be surrendered to

the Trustee (with, if the Issuer or the Trustee so requires, a written instrument of transfer in form satisfactory to the Issuer and the Trustee duly executed by the Holder thereof or his, her or its attorney duly authorized in writing) and the Issuer shall execute (if necessary) and the Bond Registrar shall authenticate and deliver to the Holder of such Bond, without service charge, a new Bond or Bonds of the same series, of any Authorized Denomination or Denominations, as requested by such Holder, having the same stated maturity and interest rate in aggregate principal amount equal to and in exchange for the unredeemed or unpurchased portion of the principal of the Bond so surrendered.

ARTICLE IV

GENERAL COVENANTS

SECTION 4.1. PAYMENT OF PRINCIPAL, PREMIUM, AND INTEREST. The Issuer will duly and punctually pay or cause to be paid the principal of, premium, if any, and interest on the Bonds in accordance with the terms of the Bonds and this Indenture, but solely from moneys derived from the Loan Agreement and other moneys derived from the Granting Clauses set forth herein, and trust funds deposited in the Funds (excluding funds held in the Rebate Fund and rebatable arbitrage whether or not deposited in the Rebate Fund) to the extent hereof and in the manner provided in **Article 5** hereof. Nothing in the Bonds or in this Indenture shall be considered as assigning or pledging funds or assets of the Issuer other than those covered by the Granting Clauses set forth herein.

SECTION 4.2. PERFORMANCE OF COVENANTS. (1) The Issuer covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations, and provisions contained in this Indenture, and in every Bond executed, authenticated (to the extent required), and delivered hereunder; that it is duly authorized under the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds authorized hereby, to execute this Indenture, to loan the proceeds of the Bonds to the Borrower, and to assign and pledge the payments from the Loan Agreement in the manner and to the extent herein set forth; that all action required on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken; and that the Bonds in the hands of the Holders thereof are and will be valid and enforceable obligations of the Issuer according to the terms thereof.

(2) The Trustee covenants that it is duly organized, validly existing, and in good standing and possesses all authorizations necessary to enter into this Indenture; that it has full power and authority to enter into this Indenture and the transactions contemplated hereby; that this Indenture has been duly executed and delivered by it; that this Indenture constitutes a legal, valid, binding, and enforceable obligation of the Trustee (subject to bankruptcy, insolvency, or creditor rights laws generally and principles of equity generally); that the execution, delivery, and performance of this Indenture by the Trustee will not cause or constitute, including after due notice or lapse of time or both, a default under or conflict with organizational documents or other agreements or otherwise materially or adversely affect performance of duties; that the execution of this Indenture by the Trustee, assuming that neither the Trustee or this Indenture is required to be qualified under the Trust Indenture Act of 1939, as amended, will not violate any law, regulation, order, or decree of any Governmental Authority; assuming that neither the Trustee or the Indenture is required to

be qualified under the Trust Indenture Act of 1939, as amended, that all consents, approvals, authorizations, orders, or filings of or with any court or governmental agency or body, if any, required for the execution, delivery, and performance of this Indenture by the Trustee have been obtained or made; and that there is no pending action, suit, proceeding, arbitration, or governmental investigation against it, an adverse outcome of which would materially adversely affect its performance under this Indenture.

SECTION 4.3. INSTRUMENTS OF FURTHER ASSURANCE. The Issuer covenants that it has not made, done, executed, or suffered, and will not make, do, execute, or suffer, any act or thing whereby its interest in the Loan Agreement or any part thereof is now or at any time hereafter will be impaired, changed, or encumbered in any manner whatsoever, except as may be expressly permitted herein or in the Loan Agreement; and that it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such instruments supplemental hereto and such further acts, instruments, and transfers as the Trustee may reasonably require for the better assuring, transferring, pledging, assigning, and confirming unto the Trustee all and singular the sums assigned and pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds.

SECTION 4.4. RECORDING AND FILING. The Trustee shall take such action, at the expense of the Borrower, as the Bondholder Representative may require in writing with respect to the execution and filing of any financing statements and continuation statements as are necessary to perfect and maintain the perfection of the liens on personal property granted in the Mortgage and to preserve and protect fully the security of the Holders of the Bonds and the rights of the Trustee hereunder and under any of the other aforesaid instruments; provided, however, the Trustee shall not be responsible for the initial filing of any financing statements and the Trustee shall rely on such initial filings unless otherwise notified that the filing of a continuation statement is required to maintain the perfection of any lien or security interest in the Trust Estate. The Trustee shall take such action, at the expense of the Borrower, as the Bondholder Representative may require with respect to the execution and filing of any financing statements and continuation statements to perfect and maintain the perfection of the liens on personal property granted in the Mortgage and to preserve and protect fully the security of the Holders of the Bonds and the rights of the Trustee hereunder and under any of the other aforesaid instruments; provided, however, the Trustee shall not be responsible for the initial filing of any financing statements and the Trustee shall rely on such initial filings unless otherwise notified that the filing of a continuation statement is required to maintain the perfection of any lien or security interest in the Trust Estate. The Trustee shall not be responsible for and makes no representations as to existence, genuineness, value or protection of any collateral, for the legality, effectiveness or sufficiency of any Bond Document or Loan Document, or for the creation, perfection, priority, sufficiency or protection of any liens securing the Note. The Trustee shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any lien or security interest in the collateral.

SECTION 4.5. BOOKS AND RECORDS. The Trustee covenants that so long as any Outstanding Bonds issued hereunder and secured by this Indenture shall be unpaid, the Trustee will keep proper books or records and accounts, in which full, true, and correct entries will be made of all its financial dealings or transactions in relation to the Project and the payments derived from the Loan Agreement, this Indenture, and the Mortgage. Upon reasonable notice and at

reasonable times during the Trustee's regular business hours and under reasonable regulations established by the Trustee, such books shall be open to the inspection of the Borrower, the Bondholder Representative, the Holders, or the Issuer, and such accountants or other agencies as the Borrower, the Bondholder Representative, the Holders, or the Issuer may from time to time designate in writing to the Trustee.

SECTION 4.6. **HOLDERS' ACCESS TO BOND REGISTER.** At reasonable times and under reasonable regulations established by the Bond Registrar, the Bond Register or a copy thereof may be inspected and copied by the Borrower, the Issuer, the Trustee, or the Holders of ten percent (10%) or more in principal amount of the then Outstanding Bonds (or a designated representative thereof), such authority of any such designated representative to be evidenced to the reasonable satisfaction of the Bond Registrar. Except as otherwise may be provided by law, the Bond Register shall not be deemed a public record and shall not be made available for inspection by the public, unless and until notice to the contrary is given to the Bond Registrar by the Issuer and the Bondholder Representative.

SECTION 4.7. **RIGHTS UNDER LOAN AGREEMENT.** The Loan Agreement sets forth covenants and obligations of the Issuer and the Borrower, and reference is hereby made to the same for a detailed statement of said covenants and obligations. The Issuer agrees to cooperate in the enforcement of all covenants and obligations of the Borrower under the Loan Agreement and agrees that the Trustee and the Bondholder Representative may enforce all rights of the Issuer (other than the Unassigned Issuer's Rights) and all obligations of the Borrower under and pursuant to the Loan Agreement in their respective names and on behalf of the Holders, whether or not the Issuer has undertaken to enforce such rights and obligations.

SECTION 4.8. **RIGHTS UNDER MORTGAGE.**

(1) The Issuer acknowledges that it has assigned its interest in and to the Mortgage, other than the Unassigned Issuer's Rights, to the Trustee under this Indenture and that such instrument further secures payment of the Loan, interest thereon, and amounts due under certain other Loan Documents, and reference is hereby made to the same for a detailed statement of the obligations of the parties thereto.

(2) Subject to the terms of the Mortgage, the Loan Agreement and the Regulatory Agreement, unless an Event of Default under the Loan Documents has occurred and is continuing, the Borrower shall be permitted to possess, use, and enjoy the Mortgaged Property and to receive and use the issues and profits of the Mortgaged Property.

SECTION 4.9. **TAX COVENANTS RELATING TO THE BONDS.**

(1) The Issuer shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds) in a manner which, if made or omitted, respectively, would cause the interest on the Bonds to become includable in the gross income, as defined in Section 61 of the Code, of the owners thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Issuer shall have received a written opinion of Bond Counsel to the effect that failure to comply with such covenant will not adversely

affect the exemption from federal income tax of the interest on the Bonds, the Issuer shall comply with each of the specific covenants in this Section.

(2) The Issuer shall not direct or make any investment of the proceeds of the Bonds or any other funds of the Issuer in a manner which would result in the Bonds becoming "*arbitrage bonds*" within the meaning of section 148 of the Code or "*hedge bonds*" within the meaning of section 149 of the Code. In the event the Issuer or the Borrower is of the opinion that it is necessary to restrict or limit the Yield on the investment of any money paid to or held by the Trustee hereunder in order to avoid classification of the Bonds as "*arbitrage bonds*" or "*hedge bonds*," the Issuer or the Borrower may issue to the Trustee a written instrument to such effect (along with appropriate written instructions), in which event the Trustee will take such action as is necessary to effect such written instructions so to restrict or limit the Yield on such investment in accordance with such instrument and instructions, irrespective of whether the Trustee shares such opinion. The Trustee may conclusively rely upon any such instructions and shall not be responsible for any loss resulting from investment of any money held hereunder in accordance with such instructions.

(3) Except to the extent permitted by section 149(b) of the Code and Regulations and rulings thereunder, the Issuer shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(4) The Issuer shall timely file or cause to be timely filed the information required by section 149(e) of the Code with the Secretary of the Treasury on such form and in such place as such Secretary may prescribe.

(5) Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the Issuer shall not, at any time prior to the earlier of the stated maturity or final payment of the Bonds enter into any transaction that reduces the amount required to be paid to the United States pursuant to **Section 5.6** hereof because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(6) The Issuer hereby directs the Borrower to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as it deems necessary or appropriate in connection with the Bonds.

(7) The weighted average maturity of the Bonds does not exceed 120% of the reasonably expected economic life, within the meaning of section 147(b) of the Code, of the Project.

[SECTION ____]. PROGRAM INVESTMENT. The proceeds of the Bonds are to be used to finance the Project. With respect to the Bonds:

(a) At least 95 percent of all obligations acquired with the proceeds of the Bonds, by amount of cost outstanding, will be evidences of loans to a substantial number of persons

representing the general public, loans to exempt persons, or loans to provide housing and related facilities, or any combination of the foregoing.

(b) At least 95 percent of all amounts received by the Issuer with respect to the Bonds will be used for one or more of the following purposes: to make loans to provide housing, to pay the principal or interest or otherwise to service the debt on the Bonds; to reimburse the Issuer or to pay for administrative costs of issuing such obligations; or to redeem or retire such Bonds of the Issuer at the next earliest possible date of redemption.

(c) Any person or any related party, as defined in section 1.150-1 of the Treasury Regulations, as amended, from whom the Issuer may acquire obligations, shall not, pursuant to an arrangement, formal or informal, purchase the Issuer's bonds in an amount related to the amount of the obligations to be acquired from such person by the Issuer.

(d) The Issuer does not waive the right to treat the Loan Agreement as a program investment.]

SECTION 4.10. CHANGE IN LAW. To the extent that published rulings of the Internal Revenue Service, or amendments to the Code or the Regulations modify the covenants of the Issuer or the Trustee which are set forth in this Indenture or which are necessary for interest on any issue of the Bonds to be excludable from gross income for federal income tax purposes, the Trustee and the Issuer will comply with such modifications to the extent advised by Bond Counsel to do so.

SECTION 4.11. INDEMNIFICATION. THE BORROWER SHALL INDEMNIFY THE TRUSTEE OR ANY PREDECESSOR TRUSTEE AND THEIR AGENTS FOR, AND TO HOLD THEM HARMLESS AGAINST, ANY AND ALL LOSS, DAMAGE, CLAIMS, LIABILITY OR EXPENSE, ARISING OUT OF OR IN CONNECTION WITH THE ACCEPTANCE OR ADMINISTRATION OF THE TRUST OR TRUSTS HEREUNDER, INCLUDING THE COSTS AND EXPENSES OF DEFENDING ITSELF AGAINST ANY CLAIM (WHETHER ASSERTED BY THE BORROWER, OR ANY HOLDER OR ANY OTHER PERSON) OR LIABILITY IN CONNECTION WITH ENFORCING THE PROVISIONS OF THIS SECTION, EXCEPT TO THE EXTENT THAT SUCH LOSS, DAMAGE, CLAIM, LIABILITY, OR EXPENSE IS DUE TO ITS OWN NEGLIGENCE OR WILLFUL MISCONDUCT.

ARTICLE V

FUNDS AND ACCOUNTS

SECTION 5.1. TRUST FUNDS PLEDGED AND ASSIGNED TO THE TRUSTEE; BANK TO ACT AS CUSTODIAN OF FUNDS AND ACCOUNTS IF SOLE BONDHOLDER. All payments, revenues, and income receivable by the Issuer under the Loan Agreement and Note and pledged and assigned by this Indenture to the Trustee, together with the balance of the Trust Estate, are to be paid directly to the Trustee and, subject to the provisions of **Section 8.6** hereof, deposited by it in the Funds and the Accounts described in this **Article V** and held in trust for the purposes set forth herein, and, except as otherwise provided herein, shall not be subject to any lien, levy, garnishment, or attachment by any creditor of the Issuer or the Borrower nor shall they be subject to any assignment or hypothecation by the Borrower. Moneys on deposit in the Funds and the Accounts described in

this **Article 5** shall be maintained and administered by the Trustee in trust, and pending application in accordance with the provisions of this **Article V** shall be subject to a lien and charge in favor of the Holders until applied as hereinafter provided. The Trustee shall at all times maintain accurate records of deposits into and withdrawals from and transfers among such Funds and the day of receipt of such deposits, withdrawals, and transfers. In addition, each Fund shall constitute a segregated trust account or accounts maintained by the Trustee, segregated from all other funds of the Trustee, and shall be established in the name of the Trustee (or the Borrower, as may be applicable), bearing the designation provided below with a qualifier indicating such fund is held with respect to the Bonds. The Trustee shall not deposit into such Funds any moneys other than as provided in this Indenture or the Loan Agreement.

As long as the Bank (or any affiliate of the Bank) is the Holder of all the Bonds, all the Funds and Accounts established under this **Article V**, and all moneys and investments held in such Funds and Accounts, shall be deposited in accounts established at the Bank in the name of the Trustee for the benefit of the Holders of the Bonds, and the Bank shall be the custodian of such Funds and Accounts for and on behalf of the Trustee (which shall control the Funds and Accounts in the manner provided in this Indenture and as detailed in that certain Account Control Agreement between Trustee and Bank). The Bank as custodian shall have no beneficial ownership in the Funds and Accounts. In its capacity as custodian, the Bank shall furnish to the Trustee and the Issuer such reports and statements and other information reasonably requested by the Trustee or the Issuer as shall allow the Trustee and the Issuer to perform their respective duties under the Indenture. In connection with the foregoing, the Bank agrees to execute a custodial agreement with the Trustee on a form agreed to by the Bank, the Issuer and the Trustee. In connection with the full and final payment of the Bonds, at the direction of the Trustee and the Borrower, the Bank shall transfer the Funds and Accounts (and all moneys and investments held therein) to the Trustee. In the event of a default by Bank under the Loan Agreement, which is not cured within in any applicable grace or cure period, upon written request therefor by Trustee or Issuer, the Bank shall immediately transfer the Funds and accounts to the Trustee.

Prior to any sale, transfer or other disposition of any of the Bonds by the Bank (or any affiliate of the Bank that owns Bonds) other than to the Permanent Lender, the Bank shall upon thirty (30) days' written notice to the Trustee, transfer the Funds and Accounts (and all moneys and investments held therein) to the Trustee and shall provide a written certification of such action to the Trustee and the Issuer.

SECTION 5.2. PROJECT FUND; DISBURSEMENT OF PROJECT FUNDS.

(1) A special trust fund is hereby created and designated the Project Fund. The proceeds of the Bonds (less any amounts representing proceeds of the Bonds deposited in the Costs of Issuance Fund) and any other amounts deposited by the Borrower shall be deposited with the Trustee on the date of Bond Closing for deposit in the Project Fund.

(2) No moneys shall be disbursed from the Project Fund until the Trustee shall have received evidence of the recordation of the Mortgage and the Regulatory Agreement in the real property records of Travis County, Texas. The Trustee may conclusively rely upon telephonic or email notice from the Title Company responsible for recording the Mortgage and the Regulatory Agreement as evidence of such recordation.

(3) Upon satisfaction of the requirements of this **Section 5.2** and receipt from the Borrower of (a) a written requisition in the form of **Exhibit A** hereto, which requisition shall include Borrower's certification that not less than 95% of the funds representing proceeds of Bonds, including investment earnings, requisitioned will be expended for Qualified Project Costs that have not previously been paid or reimbursed and (b) written consent to such disbursement by the Bondholder Representative which will be provided according to the provisions regarding disbursement of funds from the Project Fund to the Borrower contained in the Loan Agreement, the Trustee shall promptly disburse all amounts requested in such requisition from funds in the Project Fund to the Borrower; provided, however, that disbursements from the Project Fund that qualify as Qualified Project Costs to pay scheduled interest payments on the Bonds prior to the Completion Date will not require the consent of the Bondholder Representative, until (i) the aggregate of the Disbursements (as defined in the Loan Agreement) from the Project Fund prior to the Construction Term Maturity Date (without giving effect to any extension thereof) for payment of scheduled interest payments payable prior to the Construction Term Maturity Date total the sum of \$1,233,750 or (ii) the Bondholder Representative gives the Trustee written notice that the Bondholder Representative's consent to any further such Disbursement is required, whichever is first.

(4) Neither the Trustee nor the Issuer shall be responsible for the application by the Borrower of moneys disbursed to the Borrower (if any money is disbursed thereto) in accordance with this **Section 5.2**.

(5) All requisitions in the form provided by this Indenture and all other statements, orders, certifications, and approvals received by the Trustee, as required by this Article as conditions of payment from the Project Fund, may be conclusively relied upon by the Trustee, and shall be retained by the Trustee, subject at all reasonable times to examination by the Borrower, the Issuer, the Bondholder Representative, and the agents and representatives thereof.

(6) Without duplication of the terms and requirements of the Loan Agreement, all costs incurred in connection with the requisition and disbursement of funds from the Project Fund, including but not limited to the cost of the Project Engineer and updates to the Title Policy, shall be paid by the Borrower.

(7) On or after the Conversion Date, all amounts remaining on deposit in the Project Fund representing amounts deposited by the Borrower shall be paid to the Borrower upon written request of the Borrower. If the Conversion Date does not occur by the Construction Term Maturity Date, or on such earlier date as the Borrower (with written concurrence of the Bondholder Representative) advises the Trustee no further draws will be made from the Project Fund as provided for in **Section 3.1(1)(c)** hereof, and all amounts remaining on deposit in the Project Fund representing proceeds of the Bonds shall be transferred to the Bond Fund and used to redeem Bonds in accordance with **Section 3.1(1)(c)** hereof.

SECTION 5.3. REVENUE FUND. A special trust fund is hereby created and designated the Revenue Fund.

(1) Deposits to the Revenue Fund. All Basic Payments under the provisions of the Loan Agreement and the Note are assigned by the Issuer to the Trustee pursuant to this Indenture for monthly deposit to the Revenue Fund.

(2) Uses of Revenue Fund. Provided no Event of Default has occurred and is continuing, funds on deposit in the Revenue Fund shall be distributed at least monthly by the Trustee as follows:

(A) Through and including the Conversion Date (or such later date as approved by the Bondholder Representative):

FIRST: to the Principal Account of the Bond Fund in an amount equal to the principal due on the next Payment Date, if any, other than Subordinated Bonds, and to the Interest Account of the Bond Fund in an amount equal to the interest due on the next Payment Date, other than Subordinated Bonds;

SECOND: to the Rebate Fund, the amount calculated as due with respect to a particular Bond Year by the Rebate Analyst (to the extent written notice of such amount has been provided by the Borrower to the Trustee);

THIRD: to the Trustee, the amount of its Ordinary Fees and Expenses then due, if any, and then to the Rebate Analyst, the reasonable fees and expenses as billed and due to it for services hereunder;

FOURTH: to the Administration Account of the Bond Fund, 1/12th of the Rebate Analyst's Fee and 1/12th of the Issuer Administration Fee and to the Trustee and the Issuer, the Additional Charges of the Trustee and the Issuer, as applicable, which have not been paid pursuant to **Section 4.3** of the Loan Agreement;

FIFTH: to the Subordinated Bond Interest Account of the Bond Fund in an amount equal to the interest on the Subordinated Bonds to become due on the next Payment Date (if any).

(B) After Conversion Date (or such later date as approved by the Bondholder Representative):

FIRST: to the Principal Account of the Bond Fund in an amount equal to the principal (including sinking fund installments) of and to the Interest Account of the Bond Fund, the interest on the Bonds other than the Subordinated Bonds to become due on the next Payment Date, provided that in the month next preceding each Payment Date, sufficient amounts shall be transferred to the Bond Fund pursuant to **Section 5.4** hereof on the Business Day next preceding such Payment Date so that the aggregate amount on deposit in the Bond Fund is equal to, but not in excess of, the next required payment of principal (including sinking fund installments) of and interest on the Bonds other than the Subordinated Bonds and provided, further, that when the amount in the Bond Fund is equal to the next required payment of

principal (including sinking fund installments) of and interest on the Bonds other than the Subordinated Bonds no further transfers to the Bond Fund for purposes of debt service on Bonds other than Subordinated Bonds shall be required until the monthly distribution date next following the related Payment Date;

SECOND: to the Rebate Fund, the amount calculated as due with respect to a particular Bond Year by the Rebate Analyst until such amount has been funded in full (to the extent written notice of such amount has been provided by the Borrower to the Trustee);

THIRD: to the Trustee, the amount of its Ordinary Fees and Expenses then due, or past due, if any, and then to the Rebate Analyst, the reasonable fees and expenses, if any, as billed and due to it for services hereunder;

FOURTH: to the Administration Account of the Bond Fund, 1/12th of the Rebate Analyst's Fee and 1/12th of the Issuer Administration Fee;

FIFTH: to the Trustee, the Additional Charges of the Trustee and the Issuer which have not been paid pursuant to **Section 4.3** of the Loan Agreement;

SIXTH: to the Subordinated Bond Interest Account of the Bond Fund, an amount up to the interest on the Subordinated Bonds (if any) to become due on the next succeeding Payment Date until such amount is funded in full; and

SEVENTH: to the Subordinated Bond Principal Account of the Bond Fund, an amount up to the principal of the Subordinated Bonds (if any) to become due on the next succeeding Payment Date until such amount is funded in full.

On December 15 of each year (or such other time as approved by the Bondholder Representative) and provided that sufficient amounts have been deposited in the Revenue Fund to enable the Trustee to make all deposits (or arrears in deposits) required above, amounts on deposit in the Revenue Fund shall be disbursed by the Trustee to the Borrower or at the Borrower's request may be used as a credit against its payment obligations under the Note.

SECTION 5.4. BOND FUND. A special trust fund is hereby created and designated the Bond Fund, which shall contain (i) the Interest Account, (ii) the Principal Account, (iii) the Redemption or Purchase Account, (iv) the Subordinated Bond Interest Account, (v) the Subordinated Bond Principal Account, (vi) the Subordinated Bond Redemption or Purchase Account, and (vii) the Administration Account.

(1) Interest Account. The Trustee shall deposit to the Interest Account moneys transferred from the Revenue Fund as provided in **Section 5.3** hereof. Moneys in the Interest Account shall be used to pay interest on the Bonds other than Subordinated Bonds as due. The Trustee shall also deposit to the Interest Account the proceeds, if any, from the Bonds to be used for interest as provided in **Section 5.2(3)** hereof.

(2) Principal Account. The Trustee shall deposit to the Principal Account moneys transferred from the Revenue Fund as provided in **Section 5.3** hereof. Moneys in the Principal Account shall be used to pay principal of and sinking fund installments on the Bonds other than Subordinated Bonds when due.

(3) Redemption or Purchase Account. The Trustee shall deposit to the Redemption or Purchase Account any amounts of funds transferred or deposited to effect redemption (other than funds used for mandatory sinking fund redemption) or purchase of Bonds other than Subordinated Bonds pursuant to **Article 3** hereof. Moneys on deposit in the Redemption or Purchase Account shall be used for redemption or purchase (other than funds used for mandatory sinking fund redemption pursuant to **Section 3.1(3)** hereof) of Bonds other than Subordinated Bonds pursuant to the provisions of Article 3 hereof.

(4) Subordinated Bond Interest Account. The Trustee shall deposit to the Subordinated Bond Interest Account moneys transferred from the Revenue Fund or any other another Fund as specified herein to the extent available for payment of interest on Subordinated Bonds. Moneys in the Subordinated Bond Interest Account shall be used to pay interest on the Subordinated Bonds when due.

(5) Subordinated Bond Principal Account. The Trustee shall deposit to the Subordinated Bond Principal Account moneys transferred from the Revenue Fund or any other another Fund as specified herein to the extent available for payment of principal (other than on redemption) of Subordinated Bonds. Moneys in the Subordinated Bond Principal Account shall be used to pay principal of the Subordinated Bonds when due.

(6) Subordinated Bond Redemption or Purchase Account. The Trustee shall deposit to the Subordinated Bond Redemption or Purchase Account any amounts of funds transferred or deposited to effect redemption or purchase of Subordinated Bonds pursuant to **Article 2** hereof. Moneys on deposit in the Subordinated Bond Redemption or Purchase Account shall be used for redemption or purchase of Subordinated Bonds pursuant to the provisions of **Article 2** hereof.

(7) Administration Account. The Trustee shall deposit to the Administration Account moneys transferred from the Revenue Fund as provided in **Section 5.3** hereof. Moneys in the Administration Account shall be used to pay the Rebate Analyst's Fee and Issuer Administration Fee when due.

Notwithstanding anything contained herein to the contrary, moneys on deposit in the Subordinated Bond Interest Account, the Subordinated Bond Principal Account and the Subordinated Bond Redemption or Purchase Account created herein shall be transferred to accounts created for Bonds other than Subordinated Bonds if funds are insufficient to make payments with respect to Bonds other than Subordinated Bonds as provided herein and disbursements shall only be made from such accounts upon satisfaction of all conditions set forth in **Section 2.13** hereof.

SECTION 5.5. DEPOSIT OF FUNDS WITH PAYING AGENT. (1) If the Trustee is not the Paying Agent, the Trustee shall transfer and remit sums from the Bond Fund to the Paying Agent on or

before the Business Day immediately prior to each Payment Date or Maturity Date, from the balance then on hand in the Bond Fund, sufficient to pay all principal, interest and redemption premiums then due on the Bonds. The Paying Agent shall hold in trust for the Holders of such Bonds all sums so transferred to it until paid to such Holders or otherwise disposed of as herein provided.

(2) The Trustee will cause any Paying Agent which is not the Trustee to execute and deliver to it an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this **Section 5.5** that such Paying Agent will:

(a) hold all sums held by it for the payment of principal of (and premium, if any) or interest on Bonds in trust for the benefit of the Holders of such Bonds until such sums shall be paid to such Holders or otherwise disposed of as herein provided; and

(b) at any time during the continuance of any default in the making of any such payment of principal (and premium, if any) or interest, upon the written request of the Trustee forthwith pay to the Trustee all sums so held in trust by such Paying Agent. The Trustee, acting as Paying Agent, shall also be bound by the terms of the foregoing requirements.

SECTION 5.6. REBATE FUND.

(a) The Trustee shall maintain the Rebate Fund, for the benefit of all Persons who are or have at any time been Holders, at all times prior to the final payment to the United States of America of the amounts described in Subsection (3) of this Section which fund shall be separate from any other fund and shall not be part of the trust estate established hereunder. The money deposited to the Rebate Fund, together with all investments thereof and investment income therefrom, shall be held in trust separately and apart from the other funds held under the Indenture and applied solely as provided in this Section, unless in the opinion of Bond Counsel failure to make such application will not adversely affect any exclusion from gross income of interest on the Bonds under the Code.

(b) The Trustee shall deposit or transfer to the credit of the account of the Rebate Fund each amount delivered to the Trustee by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto. The Trustee shall credit all earnings and debit all losses from the investment of money held for the account of the Rebate Fund to such fund. The Trustee shall furnish to the Borrower all information reasonably requested by the Borrower with respect to the Bonds and investment of funds and accounts maintained by the Trustee hereunder.

(c) (i) Within 30 days after each Computation Date, the Trustee, on behalf of the Issuer, shall withdraw from the Rebate Fund and pay to the United States of America the appropriate portion of the Rebate Amount (determined by the Rebate Analyst on behalf of the Borrower) in the installments, to the place and in the manner required by section 148(f) of the Code, the Regulations, and rulings thereunder as instructed by the Borrower or its legal counsel and as provided in subsection (iii) below.

(ii) Within five days after receipt from the Borrower or the Rebate Analyst of written notification of any amount due to the United States of America pursuant to Section 1.148-3(h) of the Regulations accompanied by relevant IRS forms including IRS Form 8038-T, the Trustee shall withdraw from the Rebate Fund an amount which when added to all prior payments to the United States of America equals the correct appropriate portion of the Rebate Amount, plus any penalties and interest and pay such correction amount to the United States of America.

(iii) All payments to the United States of America pursuant to this subsection shall be made by the Trustee for the account and in the name of the Issuer and shall be paid by draft posted by certified United States Mail (return receipt requested), addressed to the appropriate Internal Revenue Service Center (and, if appropriate, accompanied by the relevant Internal Revenue Service Form, such as Form 8038-T or such other statements, explanations or forms required pursuant to the Regulations or other Internal Revenue Service promulgations).

(4) The Trustee shall preserve all statements, forms, and explanations received from the Borrower, the Rebate Analyst or the Issuer pursuant to this Section and all records of transactions in the Rebate Fund until six years after the discharge of the Bonds.

(5) The Trustee may conclusively rely on the information provided, instructions of and forms prepared by the Borrower or the Rebate Analyst with regard to any actions to be taken by it, including payments to be made, pursuant to this Section and shall have no liability for any consequences of any failure of the Borrower to supply accurate or sufficient instructions or to compute correctly any payment due pursuant to this Section. The Trustee shall have no responsibility or duty to perform any rebate calculation or to expend its own funds to make any rebate payments.

(6) If at any time during the term of this Indenture the Borrower or the Issuer desires to take any action which would otherwise be prohibited by the terms of this Section, such Person shall be permitted to take such action if it shall first obtain and provide at the expense of the Borrower to the other Persons named herein an opinion of Bond Counsel to the effect that such action shall not adversely affect the exclusion of interest on the Bonds from gross income of the owners of any Bond for Federal income tax purposes and shall be in compliance with the laws of the State of Texas.

(7) Notwithstanding any provision of the Bond Documents or Mortgage Loan Documents, the Trustee shall not be liable or responsible for any method of calculation, or any calculation or determination which may be required in connection with or for the purpose of complying with Section 148 of the Code or any successor statute or any regulation, ruling, or other judicial or administrative interpretation thereof, including, without limitation, the calculation of amounts required to be paid the United States of America or the determination of the maximum amount which may be invested in Nonpurpose Investments having a higher yield than the yield on the Bonds, in connection with any such investments. The method of calculation, calculation and determination required by section 148 of the Code shall be accomplished by a Rebate Analyst engaged by the Borrower. The Trustee shall not be liable or responsible for the negligence or misconduct of the Rebate Analyst. The Trustee shall not be liable or responsible for monitoring the compliance by the Borrower or the Issuer of any of the requirements of Section 148 of the

Code or any applicable regulation, ruling, or other judicial or administrative interpretation thereof (except for the administrative functions described in this Section and in this Indenture), it being acknowledged and agreed that the sole obligation of the Trustee in this regard shall be (i) to invest the moneys received by the Trustee pursuant to the written instructions of the Borrower in the specific investments identified by the Borrower or, in the absence of such identification, to make investments as otherwise provided herein and to disburse said moneys in accordance with the terms of this Indenture and (ii) to follow instructions contained in this Section and in this Indenture. The Trustee shall not be liable for the Bonds becoming "arbitrage bonds" within the meaning of the Code, as a result of investments it makes in compliance with the instructions it receives or pursuant to or in compliance with the terms of this Indenture.

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

SECTION 5.7. MORTGAGE RECOVERY FUND. (1) The Trustee shall establish and maintain a special trust fund separate from any other Fund established and maintained hereunder designated as the Mortgage Recovery Fund.

(2) In the event there is damage, destruction, or Condemnation of the Project, the Recovery Proceeds shall be deposited in the Mortgage Recovery Fund and shall be disbursed in the following order of priority: (a) to pay or reimburse the Borrower for the costs of repairing or replacing the Project subject to the requirements provided in paragraph (6) below; (b) to the extent required or permitted by **Section 6.5** of the Loan Agreement (prior to the Conversion Date) or **Section 9.2** of the Loan Agreement (after the Conversion Date), or if the Borrower fails to comply with the requirements of paragraph (6) below, to redeem or purchase Bonds, in whole or in part, or to pay the principal of and interest on the Bonds upon the acceleration of the maturity thereof; (c) to pay or reimburse the Trustee for any outstanding Ordinary Fees and Expenses or Additional Charges then due and owed; (d) to make payments of principal and interest on the Bonds; and (e) to pay any other Additional Charges and the amount of the Issuer Administration Fee due and owing. The Trustee's use of Recovery Proceeds is further subject to the provisions of paragraph (4) below. No such amounts (except proceeds of business interruption or rental loss insurance) shall be allocated to pay Subordinated Bonds until all Bonds other than Subordinated Bonds have been paid in full or are no longer Outstanding.

(3) In the event of a foreclosure of the Mortgage, the Net Proceeds realized from the foreclosure sale shall be deposited in the Mortgage Recovery Fund and shall be disbursed by the Trustee to: (a) redeem Bonds, in whole; (b) pay or reimburse the Trustee for any outstanding Ordinary Fees and Expenses or Additional Charges then due and owed; (c) make payments of principal and interest on the Bonds or other amounts due under the Loan Documents; or (d) pay any other Additional Charges and the amount of the Issuer Administration Fee due and owing. The Trustee's use of Net Proceeds pursuant to clause (c) is subject to the provisions of paragraph (4) below. No such amounts shall be allocated to pay Subordinated Bonds until all Bonds other than Subordinated Bonds have been paid in full or are no longer Outstanding.

(4) Moneys in the Mortgage Recovery Fund shall be transferred by the Trustee to the Bond Fund to pay principal of, premium and interest on the Bonds when due to the extent funds

are not otherwise available to make payment on the Bonds when due. No such amounts shall be allocated to pay Subordinated Bonds until all Bonds other than Subordinated Bonds have been paid in full or are no longer Outstanding.

(5) In the event moneys (other than Recovery Proceeds) are deposited in the Mortgage Recovery Fund pursuant to the Mortgage, such moneys shall be disbursed in the manner set forth in paragraph (3) above.

(6) (a) Amounts in the Mortgage Recovery Fund shall be applied to pay or reimburse the Borrower for the costs of repairing or replacing the Project only if the following conditions are satisfied:

(i) The Trustee shall have been furnished a written confirmation from the Bondholder Representative that the conditions contained in **Section 6.4** of the Loan Agreement have been satisfied or waived;

(ii) The Borrower shall have provided a construction statement itemizing the full cost of the repair or restoration (the "*Construction Statement*");

(iii) The Recovery Proceeds to be deposited in the Mortgage Recovery Fund to pay for such repair or restoration must be sufficient to complete such repair or restoration, or the Borrower must deposit in the Mortgage Recovery Fund the net difference prior to commencing repair or restoration;

(iv) Disbursements from the Mortgage Recovery Fund to pay the cost of such repair or restoration shall be made not more frequently than twice a month for restoration work completed and in place pursuant to the construction lending procedures and conditions contained in **Sections 6.4** and **6.5** of the Loan Agreement; and

(v) The Borrower submits a written requisition in the form of **Exhibit A** hereto and the Bondholder Representative gives its written approval of such requisition.

(b) All requisitions in the form attached as **Exhibit A** hereto and all other statements, orders, certifications, and approvals received by the Trustee, as required by this Article as conditions of payment from the Mortgage Recovery Fund, may be conclusively relied upon by the Trustee, and shall be retained by the Trustee, subject at all reasonable times to examination by the Borrower (so long as the Loan Agreement shall remain in force and effect), the Issuer, and the agents and representatives of each of them.

(c) In the event that the Borrower does not deliver a Completion Certificate within ninety (90) days of the date of completion of repair or replacement of the Project in accordance with the terms and schedule set forth above, the Trustee shall, after thirty (30) days' written notice from the Bondholder Representative to the Borrower of such failure and continuance of such failure at the end of such period, either disburse moneys in the Mortgage Recovery Fund, including retainage for the payment of costs of repairing or replacing the Project or disburse moneys in the Mortgage Recovery Fund in accordance with written instructions from Bondholder Representative.

(d) Upon the completion of the repair or replacement of the Project (as evidenced by a certificate of the Borrower), the accumulated retainage shall be disbursed to the Borrower and the balance in the Mortgage Recovery Fund, shall be disbursed to the Borrower.

SECTION 5.8. RESERVED.

SECTION 5.9. COSTS OF ISSUANCE FUND. A special trust fund is hereby created and designated the Costs of Issuance Fund. There shall be deposited to the credit of the Costs of Issuance Fund on Bond Closing amounts provided by the Borrower other than proceeds of the Bonds. The Trustee shall first disburse proceeds of the Bonds; including investment earnings, and second disburse Borrower's equity contribution in such Fund upon written direction of the Issuer and receipt of written approval by the Bondholder Representative to pay or reimburse the Borrower for Costs of Issuance. Any proceeds of the Bonds, including investment earnings, in the Costs of Issuance Fund on the ninetieth (90th) day following the Bond Closing shall be transferred to the Project Fund, and any balance of the Borrower's equity contribution shall be returned to the Borrower free and clear of any lien thereon or pledge thereof created by this Indenture upon receipt by the Trustee of a written certification from the Bondholder Representative that all of the conditions to the Conversion Date have been satisfied.

SECTION 5.10. INTEREST EARNED ON FUNDS. The interest earned from the investment of money held by the Trustee in each of the Funds and the Accounts created under this **Article 5** (other than the Rebate Fund) shall inure to the benefit of the Borrower and shall be retained in such separate Fund or Account and applied as a credit against the payment next due into such separate Fund or Account.

SECTION 5.11. FINAL BALANCES. Upon the deposit with the Trustee of moneys sufficient to pay all principal of, premium, if any, and interest on the Bonds, and upon satisfaction of all claims against the Issuer hereunder and under the Loan Documents, including any rebate obligation, and all fees, charges, and expenses of the Trustee, the Bond Registrar, the Issuer, and any Paying Agent which are properly due and payable hereunder, or upon the making of adequate provisions for the payment of such amounts as permitted hereby, all moneys remaining in all Funds, except: (1) moneys necessary to pay principal of, premium, if any, and interest on the Bonds, or the purchase price of Bonds due in accordance with **Section 3.1(3)** which moneys shall be held by the Trustee to be paid to the Holders; and (2) moneys, if any, set aside pursuant to **Section 5.6** hereof, shall be remitted to the Borrower.

ARTICLE VI

INVESTMENTS

SECTION 6.1. INVESTMENTS BY THE TRUSTEE.

(1) Moneys held hereunder by the Trustee in the Funds shall, as nearly as may be practicable, be invested by the Trustee: (a) unless an Event of Default has occurred and is continuing under the Loan Agreement or other Loan Documents, upon the written direction of the Borrower and be approved in writing by the Bondholder Representative if required by (x) of the definition of Permitted Investments (which direction shall specify the amount thereof to be so invested), in Permitted Investments maturing on or before the Business Day immediately prior to the day such amounts are required and in the amounts required, to enable the Trustee to make

payments due hereunder on the Bonds or otherwise, but in no event longer than 180 days (unless approved in writing by the Bondholder Representative) or (b) if an Event of Default has occurred and is continuing under the Loan Agreement or the other Loan Documents, in the investments in Permitted Investments of the type described in clause (v) of the definition of Permitted Investments. If no direction is provided to the Trustee pursuant to (1) (a) above, the Trustee will invest such moneys in _____. In this regard the Trustee may use its automatic cash management system. The Trustee shall not be responsible for any funds held by the Bank pursuant to **Section 5.1**.

(2) The Trustee shall sell and reduce to cash a sufficient portion of investments under the provisions of this **Section 6.1** whenever the cash balance in the Fund for which the investment was made is insufficient for its current requirements. Securities so purchased as an investment of money shall be held by the Trustee, shall be registered in the name of the Trustee or its nominee if registration is required, and shall be deemed at all times a part of the applicable Fund, and the interest accruing thereon and any profit realized from such investments shall be credited to the Fund from which the investment was made, subject to any transfer to another Fund as herein provided. Any loss resulting from such investment shall be charged to the Fund from which the investment was made, and in the event such loss reduces the amount held in such Fund below the amount required to be deposited in such Fund, the Trustee shall request the Borrower to transfer to the Trustee for deposit into such Fund the amount required to restore amounts in such Fund to the required amount. The Trustee shall not be liable for any loss incurred from the purchase or sale of any investment in accordance with directions given by the Borrower or the Bondholder Representative under this **Section 6.1** or in accordance with subparagraph (1)(b) above, except for any loss resulting from the gross negligence or willful misconduct of the Trustee or its employees.

(3) The Trustee may purchase from or sell to itself, or through any affiliated company, as principal or agent, securities herein authorized so long as such purchase or sale is at fair market value.

(4) Although the Issuer and the Borrower each recognizes that it may obtain a broker confirmation with respect to the investment of monies in any fund or account (or a written statement containing comparable information) at no additional cost, the Issuer and the Borrower hereby agree that confirmations of Permitted Investments are not required to be issued by the Trustee for any month in which a monthly statement is rendered. No statement need be rendered for any fund or account for any month if no activity occurred in such fund or account during such month.

(5) The Trustee may rely on the directions of the Borrower or the Bondholder Representative given as provided above as to the suitability, the legality and the compliance with the terms of this Indenture of the investments so directed.

SECTION 6.2. COMPUTATION OF BALANCES IN FUNDS. In computing the assets of any Fund established hereunder, investments and accrued but unpaid interest thereon shall be deemed a part thereof, and, such investments shall be valued at market value, or at the redemption price thereof, if then redeemable at the option of the obligor, whichever is lower.

SECTION 6.3. DOWNGRADE OF INVESTMENTS. If any rating of a Permitted Investment actually controlled by the Trustee during the term of this Indenture falls below such rating that is required pursuant to the definition of "*Permitted Investments*" then the Trustee shall within two (2) Business Days after the Trustee or a Responsible Agent's having actual written knowledge of the downgrade of the rating of an investment and that funds are held by the Bank in such investment shall deliver written notice thereof to the Borrower and the Bondholder Representative in writing of such downgrade. The Borrower shall within five (5) Business Days of the receipt of the downgrade notice from the Trustee, direct the Trustee in writing to reinvest such downgraded investment in other Permitted Investments. The Trustee shall not have a duty or obligation to monitor the investment grade of Permitted Investments.

ARTICLE VII

DISCHARGE OF LIEN

SECTION 7.1. PAYMENT OF BONDS; SATISFACTION, DEFEASANCE, AND DISCHARGE OF BONDS, AND OBLIGATION TO HOLDERS. Whenever the conditions specified in either clause (A) or clause (B) of the following subsection (1) and the conditions specified in the following subsections (2), (3), (4), and (5) to the extent applicable, shall exist, namely:

(1) either:

(A) all Bonds have become due and payable and all principal or premium, if any, and interest on the Bonds shall have been paid in full, or all Bonds have been canceled by the Trustee or delivered to the Trustee for cancellation, except for:

(i) Bonds for which funds have theretofore been deposited in trust or segregated and held in trust by the Paying Agent or the Trustee (even if thereafter repaid to the Issuer or discharged from such trust, as provided in **Section 2.10** hereof); and

(ii) Bonds alleged to have been destroyed or lost which have been replaced or paid as provided in **Section 2.7** hereof, and (1) which, prior to the satisfaction and discharge of this Indenture as hereinafter provided, have not been presented to the Paying Agent or the Trustee with a claim of ownership and enforceability by the Holder hereof, or (2) whose enforceability by the Holder thereof has been determined adversely to the Holder by a court of competent jurisdiction or other competent tribunal; or

(B) the Borrower has deposited or caused to be deposited, as trust funds, with the Trustee cash and/or Permitted Investments of the type described in clause (i) of the definition of that term which do not permit the redemption thereof at the option of the issuer thereof, the principal of, premium, if any, and interest on which when due (or upon the redemption thereof at the option of the holder), will, without reinvestment, provide cash, which together with the cash, if any, deposited with the

Trustee at the same time, shall be sufficient, to pay and discharge the entire indebtedness on Bonds (excluding Bonds described in clauses (i) and (ii) of paragraph (A) above) not theretofore canceled by the Trustee or delivered to the Trustee for cancellation at their stated maturity or redemption date, as the case may be (the "*Defeasance Collateral*"), and has made arrangements satisfactory to the Trustee for the giving of notice of redemption, if any, by the Trustee at the expense of the Borrower in the same manner as is provided by **Section 3.2** hereof;

(2) the Issuer or Borrower has paid, caused to be paid or made arrangements satisfactory to the Trustee for the payment of all other sums due and payable by or on behalf of the Borrower hereunder, including any rebate obligation and Ordinary Fees and Expenses, Issuer Administration Fee, Prepayment Fees and Additional Charges due and owed under the Loan Documents;

(3) if discharge is to be effected under paragraph (B) of subsection (1), the Borrower has delivered to the Trustee and the Issuer a report of an Independent Accountant stating that the payments to be made on any securities, together with the cash, if any, deposited pursuant to paragraph (B) of subsection (1) of this **Section 7.1** will be sufficient to pay when due the principal of, premium, if any, and interest on the Bonds to be defeased;

(4) if discharge is to be effected under paragraph (B) of subsection (1) of this **Section 7.1**, an opinion of Bond Counsel is delivered to the Borrower, the Trustee and the Issuer stating in effect that such discharge will not impair the exclusion of interest on the Bonds from gross income for federal income tax purposes; and

(5) if discharge is to be effected under paragraph (B) of subsection (1) of this **Section 7.1**, the Borrower has delivered to the Trustee and the Issuer an opinion of Independent Counsel which opinion may contain, and be subject to, conditions, exceptions or qualifications as are then customarily included in such opinions, to the effect that (i) the Defeasance Collateral has been duly and validly assigned and delivered to the Trustee, (ii) the security interest of the Trustee for the ratable benefit of the Holders, with respect to Defeasance Collateral, is a first priority perfected security interest as security for payment of the Bonds, (iii) making the payment which accompanies such opinion would not constitute an avoidable preference under Section 547 of the Bankruptcy Code or under applicable state law in the event of a filing of a petition for relief under the Bankruptcy Code or such applicable state law by or against the Borrower, and (iv) the Defeasance Collateral would not be part of the bankruptcy estate under Section 541 of the Bankruptcy Code or be subject to the automatic stay under Section 362 of the Bankruptcy Code in the event of a filing of a petition for relief under the Bankruptcy Code by or against the Borrower; then, except as otherwise provided in **Section 7.5** hereof, the rights of the Holders shall be limited to the cash or cash and securities deposited as provided in subsection (1)(A) or (1)(B) of this **Section 7.1**, the rights and interest hereby granted or granted by the Loan Documents to or for the benefit of the Trustee or the Holders shall cease and terminate, and the Issuer and the Trustee shall, at the expense of the Borrower and upon the Borrower's request, execute and deliver such instruments of satisfaction and transfer as may be necessary, and forthwith the estate, right, title and interest of the Trustee and all rights under this Indenture and the Loan Documents (except the moneys or securities or both deposited as required above and rebatable arbitrage and except as may otherwise be provided in **Section 7.5** hereof) shall thereupon be discharged and satisfied;

except that in any event the obligations of the Borrower under **Sections 4.3, 7.3, 11.4, 12.16, and 12.17** of the Loan Agreement shall survive.

SECTION 7.2. CANCELLATION OF SURRENDERED BONDS. The Issuer or the Borrower may at any time surrender to the Trustee for cancellation by the Trustee any Bonds previously authenticated and delivered hereunder which the Issuer or Borrower acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

SECTION 7.3. PAYMENT OF BONDS. Any Bonds shall be deemed paid if the conditions set forth in **Section 7.1** hereof have been satisfied with respect thereto, even though other Bonds may remain Outstanding.

SECTION 7.4. APPLICATION OF DEPOSITED MONEY. All money, securities, and income thereon deposited with the Trustee pursuant to **Section 7.1** hereof for the purpose of paying the principal, premium, if any, and interest on Bonds shall be applied by the Trustee solely for such purpose.

SECTION 7.5. SURVIVAL OF CERTAIN PROVISIONS. Notwithstanding satisfaction of the conditions set forth in **Section 7.1(1)(B)** hereof, the provisions contained in **Sections 4.7, 4.8, and 5.6** hereof shall survive the discharge of this Indenture pursuant to **Section 7.1(1)(B)** hereof.

ARTICLE VIII

DEFAULT PROVISIONS AND REMEDIES

SECTION 8.1. EVENTS OF DEFAULT. Subject to the provisions of **Section 8.10** hereof and the cure periods set forth below, each of the following events is hereby defined as and declared to be and to constitute an Event of Default (whatever the reason for such an Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule, or regulation of any administrative or governmental body):

(1) Failure to make payment of any interest on any Outstanding Bond other than a Subordinated Bond on the due date thereof; or

(2) Failure to make payment of the principal or purchase price of any Outstanding Bond other than a Subordinated Bond, on the stated maturity thereof, on the date fixed for redemption or purchase thereof or upon acceleration, or failure to timely pay any redemption premium, if any, on the Bonds other than Subordinated Bonds; or

(3) Failure to pay any other moneys required to be paid to the Trustee due on the Bonds otherwise under the provisions of this Indenture and such default shall have continued for a period of five (5) days after written notice thereof, specifying such default, shall have been given by the Trustee to the Issuer and the Borrower, or to the Issuer, the Borrower and the Trustee by the Holders of not less than 25% in aggregate principal amount of the Bonds then Outstanding; or

(4) Failure by Issuer to perform or observe any other of the covenants, agreements, or conditions on the part of the Issuer contained in this Indenture or in the Bonds, and such default shall have continued for a period of thirty (30) days after written notice thereof given in the manner provided in clause (3) above; or

(5) The occurrence of any Event of Default under and as defined in the Loan Agreement.

The Trustee shall provide the Bondholder Representative, the Holders, the Borrower, and the Issuer notice of any default or Event of Default as provided in **Section 9.3** hereof.

If no Bonds other than Subordinated Bonds are Outstanding, the Events of Default stated in clauses (1) and (2) above shall be construed as applicable to any Subordinated Bonds then Outstanding.

Notwithstanding anything to the contrary contained herein or in the Bond Documents, the Trustee and the Issuer hereby agree that any cure of any default made or tendered by the Investor Member shall be deemed a cure by the Borrower and accepted or rejected on the same basis as if made or tendered by the Borrower. The Investor Member shall have a period of thirty (30) days after receipt of notice or such longer period of time as is set forth herein or in the Bond Documents to cure a default prior to exercise of remedies by the Trustee or the Issuer hereunder or any of the Bond Documents.

SECTION 8.2. ACCELERATION. If an Event of Default has occurred and is continuing, the Trustee shall upon written direction of the Bondholder Representative, and by notice in writing delivered to the Issuer and the Borrower, declare the principal of all of the Bonds Outstanding and the unpaid interest accrued thereon immediately due and payable. The Trustee shall give notice of acceleration to Holders in the same manner as notice of redemption is given under **Section 3.2** hereof (except as to the timing thereof) stating the accelerated date upon which the Bonds are due and payable, provided that the Trustee shall not be required to delay the effective date of acceleration until such notice is given.

SECTION 8.3. REMEDIES. (1) During the continuance of an Event of Default, the Trustee shall only take such actions as the Bondholder Representative shall direct (subject to receipt of indemnity acceptable to it pursuant to **Section 9.1** hereof) to enforce any and all rights available to the Issuer (other than the Unassigned Issuer's Rights) or Holders under this Indenture, the Loan Agreement, the Regulatory Agreement, and the Mortgage or otherwise, and, in this regard, is specifically authorized to transfer funds from any Fund created pursuant to **Article 5** hereof (except rebatable arbitrage whether or not deposited in the Rebate Fund), and moneys held in trust for the payment of principal, premium, purchase or redemption price, or interest with respect to the Bonds which has matured or otherwise become payable prior to such Event of Default to the Bond Fund for its use in paying principal and interest on the Bonds. The Bondholder Representative may take any such action for and on behalf of the Trustee.

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

shall be cumulative and shall be in addition to any other remedy (i) given to the Trustee or to the Holders hereunder or (ii) now or hereafter existing at law or in equity or by statute.

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

(4) No waiver of any Event of Default hereunder, whether by the Trustee or the Holders, shall extend to or shall affect any subsequent Event of Default or impair any rights or remedies consequent thereon (and in any event no waiver of an Event of Default shall be effective unless joined in or consented to by the Bondholder Representative).

SECTION 8.4. DIRECTION OF PROCEEDINGS BY BONDHOLDER REPRESENTATIVE. Anything in this Indenture to the contrary notwithstanding, but subject to the Unassigned Issuer's Rights, the Bondholder Representative shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee and subject to receipt by the Trustee of indemnity acceptable to it pursuant to **Section 9.1** hereof, to direct the method, time, and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, the Loan Agreement, the Regulatory Agreement, and the Mortgage or for the appointment of a receiver or any other proceedings hereunder, provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, the Loan Agreement, the Regulatory Agreement, and the Mortgage.

SECTION 8.5. WAIVER OF STAY OR EXTENSION LAWS. If an Event of Default has occurred and is continuing, to the extent that such rights may then lawfully be waived, neither the Issuer nor anyone claiming through it or under it shall or will set up, claim, or seek to take advantage of any appraisement, valuation, stay, extension, or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement of this Indenture, but the Issuer, for itself and all who may claim through or under it, hereby waives to the extent that it lawfully may do so the benefit of all such laws and all right of appraisement and redemption to which it may be entitled under the laws of the State.

SECTION 8.6. PRIORITY OF PAYMENT AND APPLICATION OF MONEYS. All Bonds issued hereunder and secured hereby shall be equally and ratably secured by and payable from the Bond Fund, without priority of one Bond over any other, except payment of any Subordinated Bond shall be subordinate to payment of the Bonds other than Subordinated Bonds and as otherwise expressly provided herein. During the continuation of an Event of Default, all moneys collected pursuant to action taken under the Loan Agreement, the Regulatory Agreement, or the Mortgage (other than sums payable directly to the Issuer in connection with Unassigned Issuer's Rights), after payment of the costs and expenses (including court costs and reasonable attorneys' fees) of the proceedings resulting in the collection of such moneys (including any such costs and expenses incurred by the Issuer) and of the expenses, liabilities, and advances (provided that the Trustee shall not be required to make any advances, as set forth in **Section 9.1(12)** hereof) incurred or made by the Trustee, and any amounts needed to be deposited into the Rebate Fund, and after any other prior application of such moneys has been made as is required by law, or required or permitted by the Loan Documents, shall be deposited in such Fund or Funds described in **Article 5**

hereof as the Trustee deems appropriate; and all moneys in the Bond Fund and, at the discretion of the Trustee except when otherwise required hereunder, any other Fund described in **Article 5** hereof (except rebatable arbitrage, whether or not deposited in the Rebate Fund, and moneys held in trust for the payment of principal, premium, purchase price or interest with respect to Bonds which have matured or otherwise become payable prior to such Event of Default) shall be applied as follows:

(1) Subject to the written direction by the Bondholder Representative pursuant to the Agreement, unless the principal of all the Bonds other than Subordinated Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST: To reimburse and/or pay to the Trustee in full for costs, expenses, and fees (including, without limitation, all amounts payable as Additional Charges pursuant to the Loan Agreement). Trustee is to be paid or have reimbursed pursuant to the terms hereof and the other Bond Documents that are not described in the first unnumbered paragraph of this **Section 8.6**. Notwithstanding any right of the Bondholder Representative to change the payment priority, the Trustee shall still be paid in full for costs, expenses and fees;

SECOND: To the payment to the Persons entitled thereto of first all installments of interest and late payment charges, if any, then due on the Bonds other than Subordinated Bonds other than interest which has become payable prior to such Event of Default and moneys for the payment of which are held in trust pursuant to the provisions of this Indenture, in the order of the maturity of the installments of such interest 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 installment, to the Persons entitled thereto, without any discrimination or privilege, and second unpaid principal on the Bonds other than Subordinated Bonds which shall have become due (other than Bonds which have matured or have otherwise become payable prior to such Event of Default and moneys for the payment of which are held in trust pursuant to the provisions of this Indenture) in the order of their due dates and, if the amount available shall not be sufficient to pay in full the unpaid principal on such Bonds due on any particular due date, then to the payment ratably, according to the amount of principal due on such date, to the Persons entitled thereto; and

THIRD: To reimburse and/or pay to the Issuer in full for costs, expenses or fees (including without limitation, the Issuer Administration Fee and all amounts payable as the Additional Charges pursuant to the Loan Agreement) Issuer is to be paid or have reimbursed pursuant to the terms hereof and the other Bond Documents that are not described in the first unnumbered paragraph of this **Section 8.6**; and

FOURTH: To pay, first, interest and late payment charges, if any, on Subordinated Bonds then due, other than interest which has become payable prior to such Event of Default and moneys for the payment of which are held in trust pursuant to the provisions of this Indenture, 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 installment, to the Persons entitled thereto, without any discrimination or privilege and, second, unpaid principal on Subordinated Bonds which shall have become due (other than

Subordinated Bonds which have matured or have otherwise become payable prior to such Event of Default and moneys for the payment of which are held in trust pursuant to the provisions of this Indenture) in the order of their due dates and, if the amount available shall not be sufficient to pay in full the unpaid principal on such Subordinated Bonds due on any particular due date, then to the payment ratably, according to the amount of principal due on such date, to the Persons entitled thereto; and

(2) If the principal of any Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied first to reimburse and/or pay to the Trustee in full for costs, expenses, or fees (including, without limitation, all amounts payable as Additional Charges pursuant to the Loan Agreement) not described in the first unnumbered paragraph of this **Section 8.6**, second to the payment of the principal, interest, and late payment charges, if any, on the Bonds, other than principal and interest which has become payable prior to such Event of Default and moneys for the payment of which are held in trust pursuant to the provisions of this Indenture, 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 (other than Subordinated Bonds) of the same series, ratably, according to the amounts due respectively for principal and interest to the Persons entitled thereto, without any discrimination or privilege; third to reimburse the Issuer for any portion of the Issuer Administration Fee or any Additional Charges not described in the first unnumbered paragraph of this **Section 8.6**; and fourth to pay interest and principal of the Subordinated Bonds other than principal, interest, and late payment charges, if any, which has become payable prior to such Event of Default and moneys for the payment of which are held in trust pursuant to the provisions of this Indenture, 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 Subordinated Bond over any other Subordinated Bond of the same series, ratably, according to the amounts due respectively for principal and interest to the Persons entitled thereto, without any discrimination or privilege.

(3) If the principal of any Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled for all Bonds under the provisions of this **Article 8**, then, subject to the provisions of paragraph (2) of this **Section 8.6** in the event that the principal of any Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (1) of this **Section 8.6**.

Whenever moneys are to be applied by the Trustee pursuant to the provisions of this **Section 8.6**, such moneys shall be applied by it 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 (i) fix the date (which shall be a 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 shall cease to accrue and (ii) on or before such date set aside the moneys necessary to effect such application. The Trustee, at the expense of the Borrower, shall give to the Holders mailed notice of the deposit with it of any such moneys and of the fixing of any such date. Neither the Trustee nor any Paying Agent shall be required to make payment of principal or redemption premium to the Holder of any

Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all Bonds and premium and interest and late payment charges, if any, thereon have been paid or provided for under the provisions of this **Section 8.6**, all expenses and charges of the Trustee and the Issuer have been paid and rebatable arbitrage has been paid or provided for, any balance remaining shall be paid to the Person entitled to receive the same pursuant to **Section 5.11** hereof.

SECTION 8.7. REMEDIES VESTED IN THE TRUSTEE. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as the Trustee without the necessity of joining as plaintiffs or defendants any Holders, and any recovery or judgment shall be first for the equal benefit of the Holders of the Outstanding Bonds and second for the equal benefit of the Holders of the Outstanding Subordinated Bonds, to the extent and in the manner provided herein. The Issuer and Trustee hereby agree, without in any way limiting the effect and scope thereof, that the pledge and assignment hereunder to the Trustee of all rights included within the Trust Estate shall constitute an agency appointment coupled with an interest on the part of the Trustee which, for all purposes of this Indenture, shall be irrevocable and shall survive and continue in full force and effect notwithstanding the bankruptcy or insolvency of the Issuer or its default hereunder or on the Bonds.

SECTION 8.8. RIGHTS AND REMEDIES OF HOLDERS. No Holder shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or any Loan Document or for the execution of any trust hereof or any remedy hereunder or thereunder or for the appointment of a receiver, unless: (i) a default thereunder shall have become an Event of Default, which is continuing, and the Bondholder Representative shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereunder granted or to institute such action, suit, or proceeding in its own name; (ii) the Bondholder Representative shall have offered furnished indemnity in an amount satisfactory to the Trustee as provided in **Section 9.1** hereof; and (iii) the Trustee shall thereafter fail or refuse to exercise within sixty (60) days the remedies hereunder granted, or to institute such action, suit or proceeding in its own name. Such notification, request, and furnishing of indemnity are hereby declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture or any Loan Document, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Holders shall have any right in any manner whatsoever to affect, disturb, or prejudice the lien of this Indenture or any Loan Document, by its, his, her, or their action or to enforce any right thereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided and for the equal benefit of the Holders of all Bonds then Outstanding (subject to the provisions hereof as to subordination of Subordinated Bonds); provided, however, that nothing herein shall be construed to preclude any Holder from enforcing, or impair the right of any Holder to enforce, the payment by the Trustee of principal of, and interest and premium, if any, on any Bond of such Holder at or after its date of maturity, if and

to the extent that such payment is required to be made to such Holder by the Trustee from available funds in accordance with the terms hereof.

SECTION 8.9. TERMINATION OF PROCEEDINGS. In case the Trustee shall have proceeded to enforce any right under this Indenture or any Loan Document by the appointment of a receiver, by entry and possession, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Issuer and the Trustee shall be restored to their former positions and rights hereunder with respect to the property herein conveyed, and all rights, remedies, and powers of the Trustee shall continue as if no such proceedings had been taken.

SECTION 8.10. WAIVER OF AN EVENT OF DEFAULT. The Trustee shall waive any Event of Default hereunder and if it does so meet the consequences of such Event of Default shall rescind any declaration of acceleration of maturity or principal, upon written direction of the Bondholder Representative.

SECTION 8.11. DEFAULTS AND REMEDIES FOR HOLDERS OF SUBORDINATED BONDS. As long as any Bonds other than Subordinated Bonds are Outstanding, the Trustee shall not, without the prior written authorization and direction of the Bondholder Representative, declare a default with respect to the Subordinated Bonds or otherwise enforce the provisions hereof relating to the Subordinated Bonds. The Holders of the Subordinated Bonds, by acceptance thereof, expressly agree to and acknowledge that until the conditions set forth in the preceding sentence are met, (x) whether or not the Issuer or the Borrower is insolvent, no payments will be made on the Subordinated Bonds, if the Trustee does not hold sufficient moneys in the Interest Account, Principal Account, or the Redemption or Purchase Account of the Bond Fund to make payments then due with respect to Bonds other than Subordinated Bonds then Outstanding and (y) no Holder of an Subordinated Bond will institute against, or join any other Person in instituting against, the Issuer, the Borrower, or the Managing Member, or any affiliate of any of them under any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding, or other collection or enforcement proceeding under any law, until the date on which no Bonds other than Subordinated Bonds remain Outstanding.

- (i) Upon any distribution of all or any part of the property or assets of the Borrower,
 - (A) in the event of any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization, or other similar case or proceeding in connection therewith, relative to the Borrower or to any of its creditors, as such, or to its assets;
 - (B) in the event of any liquidation, dissolution, or other winding up of the Borrower, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy;
 - (C) in the event of any assignment for the benefit of creditors or any other marshaling of assets and liabilities of the Borrower; or
 - (D) in any manner inconsistent with the provisions of **Section 2.13** hereof and this **Section 8.11**;

then in any such event the Holders of the Bonds other than Subordinated Bonds shall receive payment in full of all amounts due or to become due (whether or not an Event of Default has occurred or the Bonds have been declared due and payable prior to the date on which they would otherwise have become due and payable) on or in respect of the Bonds other than Subordinated Bonds, including any post-petition interest thereon (whether or not such interest is an allowable claim under any applicable Federal or state bankruptcy law) before the Holders of the Subordinated Bonds are entitled to receive any moneys.

(ii) If any proceeding or event referred to in subsection (i) above is commenced by or against or occurs relating to the Borrower, (A) the Bondholder Representative is hereby irrevocably authorized and empowered (in its own name or in the name of the Issuer or any Holder), but shall have no obligation to, demand, sue for, collect and receive every payment or distribution referred to in subsection (i) or otherwise seek judicial enforcement of the Bonds and take such action as it may deem necessary or advisable for the exercise or enforcement of any of the rights or interest of the Bondholder Representative, the Issuer, or the Holders, provided that the Bondholder Representative shall apply all proceeds received in the manner required by this Indenture; and (B) the Trustee shall duly and promptly take such action as the Bondholder Representative may request (x) to collect all payments made on account of the Subordinated Bonds (in which case the proceeds so collected shall be applied as provided in (i) above), (y) to execute and deliver to the Bondholder Representative such instruments as the Bondholder Representative may request with respect to the Subordinated Bonds and (z) to collect and receive any and all payments or distributions which may be payable or deliverable with respect to the Subordinated Bonds.

(iii) If any payments are received by the Holders of Subordinated Bonds on account of the Subordinated Bonds contrary to the provisions hereof, such payments shall be held in trust by such Holders for the Trustee's benefit and the benefit of Holders of Bonds other than Subordinated Bonds and shall be delivered to the Trustee in kind, to be applied to, or held as collateral for, the payment of the Bonds other than Subordinated Bonds to the extent of amounts due and payable on such Bonds and all other amounts due hereunder and under the Loan Agreement.

Subject to the forgoing and upon satisfaction of all conditions contained in **Section 2.13** hereof and this **Section 8.11**, Events of Default with respect to Subordinated Bonds shall include all Events of Default set forth in **Section 8.1** hereof after substituting "*Subordinated Bonds*" for "*Bonds other than Subordinated Bonds*" each place such term occurs and Holders of Subordinated Bonds shall have all rights and remedies set forth in **Sections 8.2** through and including **8.10** hereof after substituting "*Subordinated Bonds*" for "*Bonds other than Subordinated Bonds*" each place such term occurs.

ARTICLE IX

THE TRUSTEE

SECTION 9.1. ACCEPTANCE OF THE TRUSTEE. The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default that may have occurred, 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. In case an Event of Default has occurred and is continuing, the Trustee agrees to follow the written instructions of the Bondholder Representative as provided herein and shall be accountable only for the failure to follow such instructions or, in absence of such instructions during the continuance of an Event of Default, the Trustee agrees to exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs, but in any event, only upon and subject to the following express terms and conditions:

(1) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, accountants, agents, receivers or employees, including, but not limited to, the duties set forth in **Section 5.8** hereof, and shall not be liable for any misconduct or negligence on the part of any agent or attorney appointed with due care, and shall be entitled to advice of counsel concerning all matters of trusts hereof and duties hereunder, and may in all cases pay such reasonable compensation to any attorney, accountant, agent, or receiver retained or employed by it in connection herewith and shall be entitled to reimbursement from the Borrower for such payment. The Trustee may act upon the written opinion or written advice of any attorney, surveyor, engineer, or accountant selected by it in the exercise of reasonable care or, if selected or retained by the Issuer, acceptable to the Trustee in the exercise of such care, provided that the only legal advice or opinion that the Trustee may rely upon for purposes of securing advice or an opinion relating to the exclusion from gross income for federal income tax purposes of interest on the Bonds is advice or an opinion given by Bond Counsel. The Trustee shall not be responsible for any loss or damage resulting from any action in reliance upon such legal opinion or advice.

(2) The Trustee shall not be responsible for any recital herein, or in the Bonds or for the investment of moneys as herein provided (except as provided in **Section 6.1** or **Section 6.3** hereof), or for collecting any property insurance proceeds, or for the validity of the execution by the Issuer of this Indenture, or of any supplemental indentures or instruments of further assurance, or for the sufficiency of any security for the Bonds, or for the value of title of the property herein conveyed, if any, or otherwise as to the maintenance of the security hereof; except as otherwise provided in **Section 4.4** hereof and except that in the event the Trustee enters into possession of a part or all of the property conveyed pursuant to any provisions of this Indenture or the Mortgage, it shall use due diligence in preserving such property. The Trustee may, but shall be under no duty to, require of the Borrower full information and advice as to the performance of the covenants, conditions, and agreements in the Loan Agreement, the Regulatory Agreement, and the Mortgage as to the condition of any Mortgaged Property and the performance of all other obligations thereunder.

(3) The Trustee shall not be accountable for the use or application of any of the Bonds or the proceeds thereof (except as herein expressly provided) or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Indenture or for the use and application of money received by any Paying Agent or for

money not controlled by the Trustee. The Trustee may become the owner of Bonds secured hereby with the same rights it would have if it were not the Trustee.

(4) The Trustee shall be protected in acting in accordance with the standard of care otherwise required hereunder upon any written notice, order, requisition, request, consent, certificate, opinion (including an opinion of Independent Counsel or Bond Counsel), affidavit, letter, telegram, or other paper or document believed by it in good faith to be genuine and correct and to have been signed or sent by the proper person or persons, and the Trustee shall be under no duty to make an investigation or inquiry into any statement contained therein. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Holder of any Bond, shall be conclusive and binding upon all future Holders of the same Bond and upon Bonds issued in exchange therefor, upon transfer thereof, or in place thereof.

(5) As to the existence or non-existence of any fact or as to the sufficiency or authenticity of any instrument, paper, or proceeding, the Trustee shall be entitled to rely upon a certificate of the Issuer signed by its Representative as sufficient evidence of the facts stated therein as the same appear from the books and records under the Secretary's or the Assistant Secretary's custody or control or are otherwise known to such officer. The Trustee may accept a certificate of the Secretary or the Assistant Secretary of the Issuer to the effect that a motion, resolution, or ordinance in the form therein set forth has been adopted by the governing body of the Issuer as conclusive evidence that such motion or resolution has been duly adopted, and is in full force and effect, and may accept such motion, resolution, or ordinance as sufficient evidence of the facts stated therein and the necessity or expediency of any particular dealing, transaction or action authorized or approved thereby, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(6) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which it may be in possession of or managing the real and tangible personal property as in this Indenture provided.

(7) Upon the occurrence and continuance of an Event of Default at any and all reasonable times, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants, and representatives, shall have the right fully to inspect any and all of the property comprising the Mortgaged Property, and all books, papers, and records of the Issuer pertaining to the Mortgaged Property and the Bonds, and to photocopy such memoranda from and with regard thereto as may be desired.

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

(9) Notwithstanding anything contained elsewhere in this Indenture, the Trustee shall have the right, but shall not be required, to demand, with respect to the

authentication of any Bonds, the withdrawal of any cash, other than as required expressly by the terms hereof, the release of any property or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions (including opinions of Independent Counsel), appraisals, environmental reports, or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or the taking of any other action by the Trustee.

(10) Neither the Issuer nor the Sponsor shall be liable for the payment of sums due hereunder or for providing for the indemnification of the Trustee.

(11) Notwithstanding any provision of this Indenture to the contrary, before taking any action hereunder, the Trustee may require that it be furnished indemnity satisfactory to it for the reimbursement of all expenses to which it may be put and to protect it against all liability (except liability which is adjudicated to have resulted from the gross negligence or willful misconduct of the Trustee) by reason of any action so taken by the Trustee.

(12) No provision of this Indenture or any Loan Document shall require the Trustee to expend or risk its own funds, make advances, or otherwise incur any financial liability in the performance of any of its duties, or the exercise of its rights and powers hereunder.

(13) Notwithstanding anything to the contrary contained in this Indenture, in the event the Trustee is entitled or required to commence an action or otherwise exercise remedies to acquire control or possession of any or all of the Project under, but not limited to, the provisions of the Mortgage, the Trustee shall not be required to commence any such action or exercise any such remedy if the Trustee has determined in good faith that it may incur liability under an Environmental Law (as defined below) as the result of the presence at, or release on or from the Project of any Hazardous Substances unless the Trustee has received security or indemnity, from a person, in an amount and in a form all satisfactory to the Trustee in its sole discretion, protecting the Trustee from all such liability. To determine if it may incur liability under an Environmental Law, the Trustee, with the consent of the Bondholder Representative (which consent shall not be unreasonably withheld) may (but shall not be required to) obtain (at Borrower's expense) an appropriate environmental study with respect to the Project. The term "*Environmental Laws*" shall mean all federal, state, and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances, and codes relating to the protection of the environment or governing the use, storage, treatment, generation, transportation, processing, handling, production, or disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders, and directives of federal, state, and local governmental agencies and authorities with respect thereto.

(14) The Trustee is under no obligation to monitor the receipt of rents by the Borrower.

(15) The Trustee shall not be deemed to have notice of any Event of Default under subsections (3), (4), and (5) of **Section 8.1** hereof unless the Trustee or a Responsible Agent has actual knowledge or shall be specifically notified in writing of such Event of Default by the Issuer, the Bondholder Representative, the Borrower, or the Holders of at least fifty-one percent (51%) in aggregate principal amount of Bonds Outstanding, delivered to the Trustee at the Principal Office of the Trustee, and, in the absence of such notice so delivered, the Trustee may conclusively assume there is no such Event of Default.

(16) The Trustee will not be liable for any error in judgment made in good faith by a Responsible Agent, unless it is proven that the Trustee was negligent in ascertaining the pertinent facts.

(17) Except during the continuance of an Event of Default, and unless expressly provided in this Indenture, the Regulatory Agreement, or in the Mortgage, the Trustee does not have a duty or obligation to ascertain or inquire as to the performance or observance of any covenants, conditions, or agreements on the part of the Issuer or on the part of the Borrower in such agreements.

(18) The permissive rights of the Trustee under this Indenture shall not be construed as duties of the Trustee.

(19) The Trustee shall not be liable for any action taken or omitted to be taken in accordance with the direction of the Bondholder Representative.

(20) The Trustee's right to immunities and protection from liability hereunder will survive its resignation or removal and the final payment or defeasance of the Bonds.

SECTION 9.2. THE TRUSTEE'S FEES, CHARGES, AND EXPENSES. (1) The Trustee and any Paying Agent shall be entitled to payment and/or reimbursement for Ordinary Fees and Expenses and, during the existence of an Event of Default, all advances, counsel fees, and other expenses reasonably made or incurred by the Trustee in and about the execution of the trusts created by this Indenture in connection with the Event of Default and in and about the exercise and performance of the powers and duties of the Trustee hereunder in connection with the Event of Default and for the reasonable and necessary costs and expenses incurred in defending any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the negligence or willful misconduct of the Trustee or Paying Agent) in connection with the Event of Default. In this regard, provisions have been made in **Section 4.3** of the Loan Agreement for the payment of said fees, advances, counsel fees, costs, and expenses, and reference is hereby made to the Loan Agreement for the provisions so made; and the Issuer shall not otherwise be liable for the payment of such sums.

(2) As security for the performance of the Borrower's obligations under this **Section 9.2** and under the Loan Agreement to pay the Trustee its fees and expenses as provided herein and therein, during the occurrence and continuance of an Event of Default, the Trustee shall have a lien, prior to the lien securing the Bonds, which it may exercise through a right of set off, upon all property or funds held or collected by the Trustee pursuant to this Indenture (other than the Rebate

Fund); provided, however, nothing contained in this sentence shall in any way affect the right of the Bondholder Representative to give directions to the Trustee as provided herein (or the application of any amounts set off which shall be as provided in **Section 8.6**). The obligations of the Borrower to make the payments described in this **Section 9.2** shall survive discharge of this Indenture, the resignation or removal of the Trustee, and payment in full of the Bonds.

(3) The compensation of the Trustee shall not be limited by any provision of law which limits the compensation of a Trustee of an express trust.

(4) When the Trustee incurs expenses or renders services in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally.

SECTION 9.3. NOTICE TO HOLDERS OF DEFAULT. The Trustee (at the direction of the Bondholder Representative) or, in the alternative, the Bondholder Representative shall give to the Borrower, the Investor Member, the Holders, and the Issuer written notice of all defaults and Events of Default known to the Trustee, within five (5) days after the Trustee has actual knowledge or receives written notice of such default or Event of Default. The failure of the foregoing persons to receive such notice or failure of the Trustee to give such notice shall not affect any of the proceedings under **Article 8** hereof.

SECTION 9.4. INTERVENTION BY THE TRUSTEE. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Holders, the Trustee may intervene on behalf of Holders and shall, subject to being indemnified as provided herein, so do if requested in writing by the Bondholder Representative. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction in the premises.

SECTION 9.5. SUCCESSOR TRUSTEE. Any corporation, association, or agency into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation, or transfer to which it is a party, ipso facto, shall be and become successor Trustee and paying agent under this Indenture and vested with all of the title to the Trust Estate, and all the trusts, powers, discretions, immunities, privileges, and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 9.6. RESIGNATION BY THE TRUSTEE. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty (30) days' written notice to the Issuer, the Bondholder Representative, and the Borrower and by first-class mail to each Holder as shown on the Bond Register, and such resignation shall take effect upon the appointment of a successor Trustee as provided in **Section 9.8** hereof. Such notice to the Issuer, the Bondholder Representative, or the Borrower may be served personally or sent by registered or certified mail, or overnight courier. In the event no successor Trustee is appointed, the Trustee may petition a court of competent jurisdiction to appoint a successor Trustee.

SECTION 9.7. REMOVAL OF THE TRUSTEE. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee, Borrower, and/or Issuer, and signed by (i) the Issuer so long as no Event of Default has occurred and is continuing and (ii) the Issuer and the Bondholder Representative during such time as an Event of Default has occurred and is continuing.

SECTION 9.8. APPOINTMENT OF SUCCESSOR TRUSTEE. In case the Trustee hereunder shall resign or be removed, or be dissolved or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor Trustee may be appointed by the Issuer with the consent of the Bondholder Representative, by an instrument or concurrent instruments in writing signed by the Issuer. Nevertheless, in case of such vacancy the Issuer by resolution of its governing body may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be approved by the Bondholder Representative in the manner above provided; and any such temporary Trustee so appointed by the Issuer shall immediately and without further act be superseded by the successor Trustee so approved by the Bondholder Representative. Every such Trustee appointed pursuant to the provisions of this **Section 9.8** must be a trust company or bank having trust powers and having a reported capital and surplus not less than \$50,000,000. In the event that 60 days following the resignation or removal of the Trustee, no successor Trustee has been appointed and accepted its obligations under this Indenture, the Trustee shall have the right to petition a court of competent jurisdiction for the appointment of a successor (any costs incurred by Trustee shall be reimbursed in the same manner as other expenses of the Trustee are to be paid under this Indenture).

SECTION 9.9. ACCEPTANCE BY SUCCESSOR TRUSTEES. Every successor Trustee appointed hereunder shall execute, acknowledge, and deliver to its predecessor, to the Borrower and also to the Issuer, an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed, or conveyance shall become fully vested with all the estates, properties, rights, powers, trusts, duties, and obligations of its predecessors as the Trustee and Paying Agent; but such predecessor shall, nevertheless, on the written request of the Issuer, or of its successor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers, and trusts of such predecessor hereunder, and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estates, rights, powers, and duties hereby vested or intended to be vested in the predecessor Trustee, any and all such instruments in writing shall, on request, be executed, acknowledged, and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be forthwith filed or recorded or both by the successor Trustee in each recording office where this Indenture or the Mortgage shall have been filed or recorded or both.

SECTION 9.10. RIGHT OF THE TRUSTEE TO PAY TAXES AND OTHER CHARGES. In case any tax, assessment, or governmental or other charge upon any part of the Project is not paid, to the extent, if any, that the same is legally payable, the Trustee may, but shall be under no duty to, pay such tax, assessment, or governmental or other charge, without prejudice, however, to any rights of the Trustee or Holders hereunder arising as a consequence of such failure; and any amount at

any time so paid under this **Section 9.10, Section 4.3** of the Loan Agreement, or under the Mortgage, with interest thereon as provided in **Section 4.3** of the Loan Agreement at the Default Rate, shall be repaid to the Trustee upon demand out of Additional Charges under the Loan Agreement, and shall become so much additional indebtedness secured by this Indenture, and the same shall be given a preference in payment over any of the Bonds, except with respect to the payment of any principal, interest, or premium on the Bonds which is then due but not paid, but the Trustee shall be under no obligation to make such payment of taxes, assessments, or governmental charges unless it shall have been requested to do so by the Bondholder Representative and shall have been provided with adequate indemnity for the purpose of such payment. Any such payment shall be made upon five days' prior written notice to the Borrower unless the delay occasioned by any such written notice could result in the forfeiture or termination of any right.

SECTION 9.11. THE TRUSTEE PROTECTED IN RELYING UPON RESOLUTIONS. The resolutions, orders, requisitions, opinions, certificates, and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection, and authority to the Trustee.

SECTION 9.12. SUCCESSOR TRUSTEE AS CUSTODIAN OF FUNDS AND PAYING AGENT. In the event of a change in the office of the Trustee, the predecessor Trustee which has resigned or been removed shall cease to be custodian of the Funds described in **Article 5** hereof and shall cease to act as a Paying Agent for principal and interest on the Bonds, and the successor Trustee shall be and become such custodian and a Paying Agent.

SECTION 9.13. CO-TRUSTEE. (1) At any time or times upon the consent of the Bondholder Representative, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Trust Estate may at the time be located, the Trustee shall have the power to appoint, and, upon the request of the Trustee, the Issuer shall for such purpose join with the Trustee in the execution, delivery, and performance of all instruments and agreements necessary or proper to appoint one or more persons either to act as co-Trustee or co-Trustees, jointly with the Trustee, of all or any part of the Trust Estate, or to act as separate Trustee or separate Trustees of all or any part of the Trust Estate, and to vest in such person or persons, in such capacity, such right to the Trust Estate or any part thereof, and such rights, powers, duties, trusts or obligations as the Trustee may consider necessary or desirable, subject to the remaining provisions of this **Section 9.13**. Every such co-Trustee or separate Trustee appointed pursuant to the provisions of this **Section 9.13** must be a trust company or bank having trust powers and having a reported capital and surplus not less than \$50,000,000, if there be such an institution willing, qualified, and able to accept the trust upon reasonable or customary terms.

(2) The Issuer shall execute, acknowledge, and deliver all such instruments as may be required by any such co-Trustee or separate Trustee for more fully confirming such title, rights, powers, trusts, duties, and obligations to such co-Trustee or separate Trustee.

(3) Every co-Trustee or separate Trustee shall, to the extent permitted by law but to such extent only, be appointed subject to the following terms, namely:

(a) All rights, powers, trusts, duties, and obligations conferred by this Indenture upon the Trustee with respect to the custody, control or management of moneys, papers, securities, and other personal property shall be exercised solely by the Trustee.

(b) All rights, powers, trusts, duties, and obligations conferred or imposed upon the Trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-Trustee or co-Trustees or separate Trustee or separate Trustees jointly, as shall be provided in the instrument appointing such co-Trustee or co-Trustees or separate Trustee or separate Trustees; provided, however, the Trustee shall remain responsible for exercising all rights and powers, maintaining all trusts and performing all duties and obligations conferred or imposed upon the Trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-Trustee or co-Trustees or separate Trustee or separate Trustees.

(c) Any request in writing by the Trustee to any co-Trustee or separate Trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-Trustee or separate Trustee.

(d) Any co-Trustee or separate Trustee may delegate to the Trustee the exercise of any right, power, trust, duty, or obligation, discretionary or otherwise.

(e) The Trustee at any time, by an instrument in writing, may accept the resignation of or remove any co-Trustee or separate Trustee appointed under this **Section 9.13**. Upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-Trustee or separate Trustee so resigned or removed may be appointed in the manner provided in this **Section 9.13**.

(f) No Trustee hereunder shall be personally liable by reason of any act or omission of any other Trustee hereunder.

(g) Any demand, request, direction, appointment, removal, notice, consent, waiver, or other action in writing delivered to the Trustee shall be deemed to have been delivered to each co-Trustee or separate Trustee.

(h) Any moneys, papers, securities, or other items of personal property received by any such co-Trustee or separate Trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee promptly.

(4) Upon the acceptance in writing of such appointment by any such co-Trustee or separate Trustee, such co-Trustee or separate Trustee shall be vested with such interest in and to the Trust Estate or any part thereof, and with such rights, powers, duties or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as local law

makes it necessary for any such co-Trustee or separate Trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee. Any co-Trustee or separate Trustee may, at any time by an instrument in writing, constitute the Trustee its attorney-in-fact and agent, with full power and authority to do all acts and things and to exercise all discretion on its behalf and in its name.

(5) In case any co-Trustee or separate Trustee shall become incapable of acting, resign or be removed, the title to the Trust Estate and all rights, powers, trusts, duties, and obligations of said co-Trustee or separate Trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-Trustee or separate Trustee shall be appointed in the manner herein provided.

SECTION 9.14. OBLIGATIONS AS TO REPORTING. The Trustee shall provide to the Issuer, the Bondholder Representative, and the Borrower monthly reports of the balances in the Funds and the Accounts held under **Article 5** hereof, including summaries of the deposits to and withdrawals from and transfers among such Funds and Accounts.

SECTION 9.15. APPOINTMENT OF BOND REGISTRAR AND PAYING AGENT. The Issuer at the direction of the Borrower hereby appoints the Trustee as Bond Registrar and Paying Agent under this Indenture.

SECTION 9.16. SUCCESSOR PAYING AGENT OR BOND REGISTRAR. The provisions of **Sections 9.5** through **9.9** hereof with respect to removal, resignation, and appointment of a successor Trustee shall be equally applicable to the removal, resignation, and appointment of a successor to the Paying Agent and the Bond Registrar. If permissible under applicable law, the Trustee shall be eligible for appointment as successor to the Paying Agent and Bond Registrar if the Trustee is not then already serving in such capacity.

SECTION 9.17. CONFIRMATION OF THE TRUSTEE. (1) At any time while Bonds remain Outstanding under this Indenture, if the Trustee reasonably questions whether it has proper authority to take certain actions hereunder, the Trustee may proceed in accordance with an opinion of counsel which may be Bond Counsel.

(2) In construing and interpreting this Indenture and any other Loan Document, the objective shall always be to ascertain and effectuate the intention of the parties.

(3) The Trustee or successor Trustee shall not be answerable for actions taken in compliance with any non-appealable final order of the court. The Trustee or successor Trustee shall not be entitled to require an indemnity bond pursuant to **Section 9.1** hereof, prior to taking any action directed by non-appealable final order of the court.

SECTION 9.18. CERTAIN REPRESENTATIONS OF THE TRUSTEE. The Trustee represents that:

(1) The Trustee will take possession of the Note in accordance with the terms of this Indenture in the ordinary course of its business.

(2) The Trustee is a bank which in the ordinary course of its business maintains security accounts for its customers and is acting in that capacity pursuant to the terms of

this Indenture and it will maintain the accounts hereunder as custody accounts and shall administer such accounts in the same manner it administers similar accounts established for the same purpose.

(3) The Trustee or a nominee within the control of the Trustee is and will at all relevant times be a "*Member Bank*" (as such term is used in 31 C.F.R. section 115(g)) of the Federal Reserve Bank of New York and maintains a book-entry securities account with the Federal Reserve Bank of New York and is a participant in each clearing corporation (as defined in § 8-102(5) of the Uniform Commercial Code) in which securities are held or will be held hereunder and any book-entry securities and physical securities in the custody of a clearing corporation credited to the accounts hereunder will be represented in accounts at the book-entry system maintained at the Federal Reserve Bank of New York and the appropriate clearing corporation in the name of the Trustee or its nominee which include only assets held by the Trustee for customers, including, but not limited to, accounts in which the Trustee acts in an agency capacity.

(4) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of any such loss or damage and regardless of the form of action.

(5) The Trustee shall not be liable or responsible for the failure of the Borrower to maintain insurance on the Project as provided in the Loan Agreement, nor shall it be responsible for any loss due to the insufficiency of such insurance or by reason of the failure of any insurer to pay the full amount of any loss against which it may have insured to the Issuer, the Borrower, the Trustee or any other person.

ARTICLE X

SUPPLEMENTAL INDENTURES

SECTION 10.1. SUPPLEMENTAL INDENTURES NOT REQUIRING CONSENT OF HOLDERS. The Issuer and the Trustee may, from time to time and at any time with the prior written consent of the Bondholder Representative and the Borrower, but without the consent of, or notice to, any of the other Holders, and when so required by this Indenture shall, enter into an indenture or indentures supplemental to this Indenture (which supplemental indenture or indentures shall thereafter form a part hereof), so as to thereby (1) cure any ambiguity or formal defect or omission in this Indenture or in any supplemental indenture, (2) grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers, authority, or security that may lawfully be granted to or conferred upon the Holders or the Trustee, (3) more precisely identify the Trust Estate, or any other property which may become a part of the Trust Estate, (4) subject to the lien and pledge of this Indenture additional revenues, properties, or collateral, (5) evidence the appointment of a separate Trustee or a co-Trustee or the succession of a new Trustee, Bond Registrar, or Paying Agent or both hereunder, (6) modify, eliminate, and/or add to the provisions of this Indenture to such extent as shall be necessary to prevent any interest on the Bonds from becoming includable in gross income for federal income tax purposes or to effect the qualification of this Indenture

under the Trust Indenture Act of 1939, as then amended, or under any similar federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by said Trust Indenture Act of 1939, as then amended, excluding however the provisions referred to in section 316(a)(2) of said Trust Indenture Act of 1939, as then amended, (7) make any other change which is required by any provision of this Indenture or which is deemed by the Trustee necessary to reconcile this Indenture with the Loan Documents, or any amendments thereto, or (8) make any other change which in the judgment of the Trustee, based upon an opinion of Bond Counsel, is necessary or desirable and will not materially prejudice any Holder.

SECTION 10.2. SUPPLEMENTAL INDENTURES REQUIRING CONSENT OF HOLDERS. Exclusive of supplemental indentures covered by **Section 10.1** hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Trustee, upon receipt of an instrument evidencing the consent to the below-mentioned supplemental indenture by the Bondholder Representative or the Holders of not less than 51% of the aggregate principal amount of Bonds Outstanding and the Borrower, shall join with the Issuer in the execution of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable for the purpose of modifying, altering, amending, adding to, or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided, however, that nothing herein contained shall permit or be construed as permitting without the consent of the Holders of 100% of the principal amount of all Bonds adversely affected thereby: (1) an extension of the date when the principal or the interest on or any premium on any Bond is due; (2) a reduction in the principal amount of any Bond or the rate of interest thereon, or any premium; (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds except as may be otherwise expressly provided herein; (4) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indenture; or (5) the modification of any of the provisions of this **Section 10.2.**

If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this **Section 10.2.**, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be mailed by first class mail, postage prepaid, to the Borrower and the Holders at the addresses shown on the Bond Register. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the Principal Office of the Trustee for inspection by the Borrower and all Holders. The Trustee shall not, however, be subject to any liability to any Holder by reason of its failure to mail such notice to any particular Holder if notice was generally mailed to Holders, and any such failure shall not affect the validity of such supplemental indenture when consented to and approved as provided in this **Section 10.2.** If the Borrower and the Bondholder Representative or the Holders of not less than the applicable percentage (as referenced above) in aggregate principal amount of the Bonds then Outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no Holder shall have any right to object to any of the terms and provisions contained herein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this **Section 10.2** permitted and provided, this Indenture shall be and is deemed to be modified and amended in accordance herewith.

SECTION 10.3. OPINION OF BOND COUNSEL. Any supplemental indenture governed by this Article shall be accompanied by an opinion of Bond Counsel, at the expense of the Borrower, delivered to the Borrower, the Issuer and the Trustee, stating that such supplemental indenture is permitted hereunder, is valid and enforceable, and does not impair or adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

SECTION 10.4. RIGHTS OF THE TRUSTEE. The Trustee shall not be obligated to enter into any supplemental indenture which may adversely affect the Trustee's own rights, duties, or immunities under this Indenture. The Trustee shall not consent to any supplemental indenture referred to in this Article unless it has first received an opinion of Bond Counsel that such supplemental indenture is authorized or permitted by this Indenture. In executing a supplemental indenture, the Trustee shall be fully protected in relying upon such opinion.

ARTICLE XI

AMENDMENTS TO LOAN DOCUMENTS

SECTION 11.1. AMENDMENTS NOT REQUIRING HOLDER CONSENT. The Issuer or the Trustee or both may, with the prior written consent of the Bondholder Representative, but without the consent of or notice to the Holders, consent to any amendment, change, or modification of any of the Loan Documents:

- (1) which may be required or permitted with the consent of the Bondholder Representative, but without Holder consent, by the provisions of the Loan Documents or this Indenture;
- (2) for the purpose of curing any ambiguity or formal defect or omission;
- (3) in connection with additional land, equipment, or improvements which may be acquired and which constitute a part of the Mortgaged Property, so as to (A) more precisely identify the same, (B) substitute or add additional land or additional equipment, or (C) sell or remove such land or equipment, all as provided in the Mortgage; provided, however, that any such amendment, change, or modification of any of the Loan Documents as provided in this **Section 11.1(3)** shall not be effective until notice of such action is given to the Holders of the Bonds;
- (4) to reconcile any Loan Documents with any amendment or supplement to this Indenture; or
- (5) to effect any other change in a Loan Document which will not materially prejudice any Holder.

SECTION 11.2. AMENDMENTS REQUIRING HOLDER CONSENT. Except for (1) amendments, changes, or modifications as provided in **Section 11.1** hereof and (2) amendments, changes, or modifications permitted by any Loan Document, neither the Issuer nor the Trustee shall consent to any other amendment, change, or modification of any Loan Document without the giving of notice and the written approval or consent of the Bondholder Representative or the Holders of not less than fifty-one percent (51%) of the principal amount of the Bonds then Outstanding given and

procured as provided in this **Section 11.2**; provided that in no event shall such amendment, change, or modification relieve the Borrower of the obligation under any Loan Documents to make when and as due any payments required for the payment of principal, interest, and any premium due or to become due on the Bonds unless the consent of the Holders of one hundred percent (100%) of the principal amount of all Bonds adversely affected thereby is first secured. If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change, or modification of any Loan Documents to which the Issuer is a party or the Borrower shall request consent of the Trustee to any such proposed amendment, change, or modification of any other Loan Document to which the Issuer is not a party, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change, or modification to be given in the same manner as provided in **Section 10.2** hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change, or modification and shall state that copies of the instrument embodying the same are on file at the Principal Office of the Trustee for inspection by all Holders. The Trustee shall not, however, be subject to any liability to any Holder by reason of its failure to mail such notice to any particular Holder if notice was generally mailed to Holders, and any such failure shall not affect the validity of such amendment, change or modification when consented as provided in this **Section 11.2**. If the Bondholder Representative or the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding at the time of the execution of any such amendment shall consent to the execution thereof as herein provided, no Holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such amendment, the applicable Loan Document thereby amended shall be deemed to be modified and amended in accordance therewith.

SECTION 11.3. OPINION OF BOND COUNSEL. Any amendment governed by this Article shall be accompanied by an opinion of Bond Counsel, addressed to the Borrower, the Issuer and the Trustee and, provided at the expense of the Borrower, that such amendment is permitted hereunder and does not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

SECTION 11.4. RIGHTS OF THE TRUSTEE. The Trustee shall not consent to any amendment referred to in this Article unless it has first received an opinion of Bond Counsel that such amendment is authorized or permitted by this Indenture. In consenting to any such amendment, the Trustee shall be fully protected in relying upon such opinion.

ARTICLE XII

MISCELLANEOUS PROVISIONS

SECTION 12.1. CONSENT OF HOLDERS. Any consent, request, direction, approval, objection, or other instrument required by this Indenture to be signed and executed by the Holders may be in any number of concurrent writings of similar tenor and must be signed or executed by such Holders 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:

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

(2) The fact of the ownership by any person of Bonds and the amounts and numbers of such Bonds, and the date of the holding of the same, may be proved only by reference to the Bond Register.

SECTION 12.2. RIGHTS UNDER INDENTURE. Nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give any person or company other than the parties hereto, the Borrower, and the Holders, any legal or equitable right, remedy, or claim under or with respect to this Indenture or any covenants, conditions, and provisions herein contained; this Indenture and all of the covenants, conditions, and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Borrower, and the Holders of the Bonds hereby secured as herein provided.

SECTION 12.3. SEVERABILITY. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of 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 provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

SECTION 12.4. NOTICES. All notices, certificates, or other communications hereunder shall be given to all parties identified below, shall be in writing (except as otherwise expressly provided herein) and shall be sufficiently given and shall be deemed given (i) when delivered by hand delivery, electronic mail, or facsimile or (ii) two (2) Business Days after such notice is served by depositing the same with the United States Postal Service, or any official successor thereto, designated as Registered or Certified Mail, Return Receipt Requested, bearing adequate postage, or (iii) upon delivery by reputable private courier such as Federal Express, Airborne, DHL, United Parcel Service or similar overnight delivery service, and addressed as hereinafter provided. Notices, except to the Trustee, shall be deemed given when mailed as provided herein. Notices to the Trustee shall be deemed given only when received by the Trustee. All parties identified below may, by written notice given by each to the others, designate any address or addresses to which notices, certificates, or other communications to them shall be sent when required as contemplated by this Indenture. Any notice, certificate, report, financial statement, or other communication properly provided by legal counsel on behalf of any party hereunder shall be deemed properly provided by the party represented by such counsel. Until otherwise provided by the respective parties, all notices, certificates, and communications to each of them shall be addressed as follows:

To the Issuer: Austin Housing Finance Corporation
1000 E. 11th Street
Austin, Texas 78702
Attn: James May
Telephone: 512-974-3100
Email: james.may@austintexas.org

With a copy to: McCall, Parkhurst & Horton L.L.P.
717 N. Harwood, Suite 900
Dallas, Texas 75201
Attn: Mark Malveaux
Telephone: 214-754-9221
Email: mmalveaux@mphlegal.com

To the Borrower: AGC RBJ, LLC
600 Congress Avenue, Suite 2100
Austin, Texas 78701
Attn: Clarke Heidrick
Telephone: 512-495-6014

with copies to: DMA Development Company.
4101 Parkstone Heights Dr, Suite 310
Austin, Texas 78746
Attn: Janine Sisak
Telephone: 512-328-3232
Email: janines@dmacompanies.com

Lock Lorde LLP
600 Congress Avenue, Suite 2200
Austin, Texas 78701
Attn: Cynthia Bast
Telephone: 512-305-4707
Email: cbast@lockelord.com

NEF Assignment Corporation, as nominee
NEF FRE Affordable Housing Fund, LP
10 South Riverside Plaza, Suite 1700
Attn: General Counsel

To the Trustee: BOKF, NA
801 Cherry Street
Suite 3325, Unit 27
Fort Worth, Texas 76102
Attn: Pamela Black, Senior VP
Telephone: 817-348-5797
Email: pblack@bankoftexas.com

With a copy to: Naman, Howell, Smith & Lee, P.L.L.C.
8310 Capital of Texas Hwy. N., Suite 490
Austin, Texas 78731
Attn: William C. "Cliff" Blount, Esq.
Email: blount@namanhowell.com

To the initial
Bondholder Representative: JPMorgan Chase Bank, N.A.
Community Development Group
221 West 6th Street, Floor 2
Austin, Texas 78701
Attn: David H. Saling
Telephone: (512) 479-2218
Email: david.h.saling@chase.com

With a copy to: JPMorgan Chase Bank, N.A.
Legal Department
237 Park Avenue, 12th Floor
Mail Code: NY1-R065
New York, New York 10017
Attention: Michael R. Zients, Executive Director
and Assistant General Counsel
Email: michael.r.zients@chase.com

If to Permanent Lender, at the following addresses:

Massachusetts Mutual Life Insurance Company
c/o Barings LLC
One Financial Plaza
Hartford, CT 06103
Attention: Finance Group Loan Servicing
Mortgage Loan No.: _____

With a copy to: Massachusetts Mutual Life Insurance Company
c/o Barings LLC
One Financial Plaza
Hartford, CT 06103
Attention: Legal Department
Mortgage Loan No.: _____

With a copy to: Barings Multifamily Capital LLC
5800 Tennyson Parkway, Suite 200
Plano, TX 75024
Attention: Loan Administration
Mortgage Loan No.: _____

With a copy to: Holland & Knight
10 St. James Avenue
Boston, Massachusetts 02116
Attn: Suanne C. St. Charles, Esq.
Email: suanne.stcharles@hklaw.com

To the Tax Credit Provider: NEF Assignment Corporation
c/o National Equity Fund, Inc.
10 S. Riverside Plaza, Suite 1700
Chicago, Illinois 60606
Attention: General Counsel

SECTION 12.5. REQUIRED APPROVALS. Consents and approvals required by this Indenture to be obtained from the Borrower, the Issuer, the Bondholder Representative, or the Trustee shall be in writing and shall not be unreasonably withheld or delayed.

SECTION 12.6. COUNTERPARTS. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this instrument as to the parties hereto and may be used in lieu of the original instrument for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

SECTION 12.7. LIMITATION OF LIABILITY.

(1) No covenant, agreement, or obligation contained herein shall be deemed to be a covenant, agreement, or obligation of any present or future member, officer, employee, or agent of the Issuer or the Sponsor in his/her individual capacity, and neither the members or directors of the Issuer nor any officer thereof executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. No member, officer, employee, or agent of the Issuer or the Sponsor shall incur any personal liability with respect to any other action taken by him pursuant to this Indenture or the Act, provided such member, officer, employee, or agent acts in good faith.

(2) No agreements or provisions contained in this Indenture nor any agreement, covenant, or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project, or the issuance, sale, and delivery of the Bonds shall give rise to any pecuniary liability

of the Issuer or the Sponsor or a charge against the general credit of the Issuer or the Sponsor, or shall obligate the Issuer or the Sponsor financially in any way except as may be payable from the payments by the Borrower under the Loan Agreement or Note and the proceeds of the Bonds and the other amounts held as part of the Trust Estate under this Indenture. No failure of the Issuer to comply with any term, condition, covenant, or agreement herein or in any document executed by the Issuer in connection with the issuance and sale of the Bonds shall subject the Issuer or the Sponsor to liability for any claim for damages, costs, or other financial or pecuniary charge except to the extent that the same can be paid or recovered from the payments by the Borrower under the Loan Agreement or proceeds of the Bonds or the other amounts held as part of the Trust Estate under this Indenture. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant, or agreement herein, provided that no costs, expenses, or other monetary relief shall be recoverable from the Issuer except as may be payable from the Trust Estate or from the proceeds of the Bonds or from the other amounts held as part of the Trust Estate under this Indenture.

(3) No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant, or agreement contained in this Indenture against any past, present or future officer, director, member, employee, or agent of the Issuer or the Sponsor, or of any successor public corporation of the Issuer, as such, either directly or through the Issuer or any successor public corporation, under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, directors, members, employees, or agents, as such, is hereby expressly waived and released as a condition of, and consideration for, the execution of this Indenture and the issuance of such Bonds.

(4) Anything in this Indenture to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that (a) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice, or other instrument furnished to the Issuer by the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer; (b) the Issuer shall not be under any obligation hereunder to perform any record keeping or to provide any legal services; and (c) none of the provisions of this Indenture shall require the Issuer to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless it shall first have been adequately indemnified to its satisfaction against the cost, expenses, and liability which may be incurred thereby.

(5) Neither the members of the Issuer nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds are issued pursuant to the Act, and the Bonds shall so state on their face, and shall state that the Bonds shall not be a debt of the Issuer, the Sponsor, or the State, or any political subdivision thereof; and neither the Issuer, the Sponsor, nor the State nor any political subdivision thereof, shall be liable thereon; nor in any event shall such Bonds or obligations be payable out of any funds or properties other than those of the Issuer identified herein.

SECTION 12.8. SUBORDINATION TO EXTENDED USE AGREEMENT. The Borrower has informed the Trustee that the Borrower intends that the Project qualify for an allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code ("*Tax Credits*"). In order to receive an allocation of Tax Credits, the Borrower will be required to record in the real property records of Travis County, Texas, an "*extended low-income housing commitment*" (as defined in section 42(h)(6)(B) of the Code) (the "*Extended Use Agreement*"). If requested by the Borrower, the Trustee is directed to execute, or cause to be executed by the appropriate parties a subordination agreement, in form and substance satisfactory to the Trustee and the Bondholder Representative, wherein the lien of the Mortgage is subordinated to the Extended Use Agreement in such manner as is required for Tax Credit purposes.

SECTION 12.9. GOVERNING LAW. This Indenture shall be governed by and construed in accordance with the laws of the State of Texas, excluding its conflict and choice of law principles.

SECTION 12.10. COMPLETE AGREEMENT. The Issuer and the Trustee understand that oral agreements or commitments to loan money, extend credit, or forbear from enforcing repayment of a debt, including promises to extend or renew such debt, are not enforceable. To protect the Issuer and the Trustee from misunderstanding, any agreements the Issuer and the Trustee reach covering such matters are contained in this Indenture, which is the complete and exclusive statement of the agreement between the Issuer and the Trustee, except as the Issuer and the Trustee may later agree in writing to modify this Indenture as more particularly provided herein.

[SIGNATURE PAGE FOLLOWS]

Doc #02-426558.3

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be signed in its name and behalf by its duly authorized officer, and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Indenture to be signed in its name and behalf by its duly authorized officer, all as of the date first above written.

AUSTIN HOUSING FINANCE CORPORATION

By: _____

Name: Rosie Truelove

Title: Treasurer

BOKF, NA

By: _____

Name: Pamela M. Black

Title: Senior Vice President

EXHIBIT A
(FORM OF REQUISITION CERTIFICATE)

_____ **FUND**

Re: Austin Housing Finance Corporation
Multifamily Housing Revenue Bonds (RBJ Apartments)
Series 2019

Gentlemen:

You are requested to disburse funds from the _____ Fund pursuant to Section ____ of the Indenture and Section ____ of the Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the "*Requisition*"). The terms used in this Requisition shall have the meanings given to those terms in the Trust Indenture (the "*Indenture*"), dated as of June 1, 2019, by and between Austin Housing Finance Corporation, as Issuer, and BOKF, NA, as Trustee, securing the above-referenced Bonds or in the Regulatory Agreement (as defined in the Indenture).

1. REQUISITION NO.: _____

2. PAYMENT DUE TO ADDRESS:

WIRING INSTRUCTIONS:

SPECIAL INSTRUCTIONS:

3. AMOUNT OF DRAW REQUESTED (before retainage withheld): \$

LESS RETAINAGE: \$

AMOUNT TO BE DISBURSED: \$

4. The amount requested to be disbursed pursuant to this Requisition will be used to pay or reimburse the Borrower for those Qualified Project Costs detailed in **Schedule I** attached to this Requisition.

5. The undersigned Borrower certifies that:

(i) the amounts included in Section 3 above were made or incurred or financed and were necessary for the Project and were made or incurred in accordance with the construction contracts, plans, and specifications heretofore in effect;

(ii) the amount paid or to be paid, as set forth in this Requisition, represents a part of the funds due and payable for Qualified Project Costs, such funds were not paid in advance of the time, if any, fixed for payment and such funds are due in accordance with the terms of any contracts applicable to the Project and in accordance with usual and customary practice under existing conditions;

(iii) the expenditures for which amounts are requisitioned represent proper charges against the _____ Fund, have not been included in any previous requisition, have been properly recorded on the Borrower's books and are set forth in **Schedule I** attached hereto;

(iv) the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the Borrower for its funds actually advanced for Qualified Project Costs and do not represent a reimbursement to the Borrower for working capital;

(v) the amount remaining in the _____ Fund, together with expected investment income on the _____ Fund, in addition to other funds available to the Borrower for the payment of Qualified Project Costs, will, after payment of the amount requested by this Requisition, be sufficient to pay the costs of completing the Project substantially in accordance with the construction contracts, plans, and specifications and building permits therefor, if any, currently in effect;

(vi) all of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Indenture, the Loan Agreement, and the Regulatory Agreement;

(vii) not less than ninety-five percent (95%) of the sum of:

(A) the amounts requisitioned by this Requisition allocable to Bonds;
plus

(B) all amounts previously requisitioned and disbursed from the _____ Fund allocable to Bonds;

have been or will be applied by the Borrower to pay Qualified Project Costs;

(viii) no event of default exists under the Loan Agreement, the Regulatory Agreement, or the Mortgage and nothing has occurred to the knowledge of the Borrower that would prevent the performance of its obligations under the Loan Agreement, the Regulatory Agreement, or the Mortgage;

(ix) no amounts being requisitioned by this Requisition are to pay or reimburse Costs of Issuance;

(x) to the best of the undersigned's knowledge, there has not been filed with or served upon the Issuer or the Borrower notice of any lien, right, or attachment upon, or claim affecting the right of any such persons, firms, or corporations to receive payment of, the respective amounts stated in this Requisition which has not been released or will not be released simultaneously with the payment of such obligation;

(xi) (A) obligations as stated on this Requisition have been properly incurred, (B) such work was actually performed or such materials or supplies were actually furnished or installed in or about or delivered to the Project, and (C) either such materials or supplies are not subject to any lien or security interest other than the lien evidenced by the Mortgage or any such lien or security interest will be released or discharged upon payment of this Requisition or is being contested by Borrower in accordance with the Loan Documents; and

(xii) all rights, title, and interest to any and all personal property acquired with the proceeds of this Requisition is vested or upon payment therefor will become vested in the Borrower.

AGC RBJ, LLC,
a Texas limited liability company

By: AGC RBJ MM, LLC,
a Texas limited liability company,
its Managing Member

By: The Austin Geriatric Center, Inc.,
a Texas non-profit corporation,
its member

By: _____
Clarke Heidrick, President

Agreed and Acknowledged by the Special
Member of the Borrower.

AGC RBJ MM, LLC,

a Texas limited liability company,

**By: The Austin Geriatric Center, Inc.,
a Texas non-profit corporation,
its member**

**By: _____
Clarke Heidrick, President**

Approved this _____ day of _____,
201_.

The Bondholder Representative is not making
any certification as to the matters certified to
by the Borrower in this Requisition.

"Bondholder Representative"

JPMORGAN CHASE BANK, N.A.

By: _____

Name: _____

Title: _____

EXHIBIT B

FORM OF BOND

THIS BOND IS A RESTRICTED SECURITY AND MAY BE TRANSFERRED ONLY AS PROVIDED HEREIN AND IN THE HEREIN DESCRIBED INDENTURE.

**UNITED STATES OF AMERICA
STATE OF TEXAS**

\$ _____

**AUSTIN HOUSING FINANCE CORPORATION
MULTIFAMILY HOUSING REVENUE BONDS
(RBJ APARTMENTS) SERIES 2019**

No. I-1

THIS BOND IS BEING ISSUED UNDER THE PROVISIONS OF THE TEXAS HOUSING FINANCE CORPORATIONS ACT, CHAPTER 394, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED. THIS BOND AND THE ISSUE OF WHICH IT FORMS A PART ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE LIMITED OBLIGATIONS PAYABLE SOLELY FROM THE MONEYS AND PROPERTIES PLEDGED FOR PAYMENT THEREOF.

INTEREST RATE

MATURITY DATE

DATED DATE

Prior to the Conversion Date,
at the Fixed Rate

June 1, 2019

On and after the Conversion
Date at _____% per annum

REGISTERED HOLDER:

JPMORGAN CHASE BANK, N.A.

PRINCIPAL AMOUNT:

\$ _____

Austin Housing Finance Corporation (the "*Issuer*"), a housing finance corporation duly organized and existing under the laws of the State of Texas, and empowered to issue revenue bonds pursuant to the provisions of the Act, for value received, promises to pay to the Registered Holder specified above, or registered assigns, but only from the Bond Fund established under the Indenture described below (the "*Bond Fund*") the Principal Amount specified above, on the Maturity Date specified above, or, if this Bond is redeemable as stated below, on a prior date on

which it shall have been duly called for redemption, and to pay interest as specified above (and hereafter further provided) on said Principal Amount to the Record Date Holder hereof, as defined below, solely from the Bond Fund, until the Principal Amount is paid or discharged.

Notwithstanding the foregoing, (a) during any period of time that the Note bears interest at the Default Rate, the Bonds shall also bear interest at the Default Rate; and (b) during any period of time that the Note bears interest at the rate described in **Section 7.14** of the Loan Agreement, the Bonds shall also bear interest at such after-tax equivalent rate (or the Maximum Lawful Rate, if less). Interest hereon shall accrue from the date of the Bond Closing and shall be calculated on the basis of a 360 day year for the actual number of days elapsed. Interest shall be payable on the fifth (5th) day of each month commencing _____, through and including the Conversion Date ("as defined in the Indenture"), and thereafter, principal and interest shall be payable as described in the Indenture (each a "*Payment Date*"). The "*Record Date Holder*" is the person in whose name this Bond is registered (the "*Holder*" hereof) in the Bond Register maintained by BOKF, NA, as Bond Registrar, or its successor either (i) on the close of business on the first (1st) day of the month (whether or not a Business Day) of each Payment Date (the "*Record Date*"), irrespective of any transfer or exchange of such Bond subsequent to such Record Date and prior to such Payment Date, or (ii) if there shall be a default in payment of principal and/or interest due on such Payment Date, at the close of business on a date (the "*Special Record Date*") for the payment of such defaulted principal and/or interest established by notice mailed by the Trustee. Notice of the Special Record Date shall be mailed not less than fifteen (15) days before the Special Record Date, to the Holder at the close of business on the fifth Business Day next preceding the date of mailing. Interest shall be payable by check mailed on the Payment Date to the Holder at his, her, or its address as it last appears on the Bond Register on the Record Date or the Special Record Date, as the case may be, except as otherwise provided in the Indenture. Notwithstanding the foregoing, any Holder of at least \$1,000,000 principal amount of any Bonds (or a lesser amount of such Bonds if such Bonds constitute all the Bonds at the time Outstanding), upon payment to the Trustee by the Holder of the costs of such wire transfers, may file with the Trustee an instrument satisfactory to the Trustee not less than five (5) days prior to the applicable Payment Date requesting the amounts payable by the Trustee to such Holder be paid by transferring by wire transfer in immediately available funds, on the day such payment is due, the amount to be distributed to such Holder to a designated account maintained by such Holder at any bank in the United States. Notwithstanding the foregoing, all payments of principal of and interest and/or premium on the Bonds payable on the Maturity Date or a Purchase Date shall only be payable upon presentation of the Bonds being purchased or redeemed, at the Operations Office of the Trustee. The principal of and interest and premium, if any, on this Bond are payable in lawful money of the United States of America.

The Bonds are issued under the provisions of and in full compliance with the Act, and a resolution duly adopted by the Issuer pursuant to which this Bond is issued and which authorizes the execution and delivery of the Loan Agreement (as herein defined) and the Indenture. This Bond and the issue of which it is a part are special limited obligations of the Issuer, and the principal and premium, if any, and interest thereon are payable solely and only from revenues, and other amounts derived by the Issuer from the Loan Agreement pledged and assigned by the Issuer

to the Trustee under the Indenture to secure payment of the principal of, premium, if any, and interest on this Bond.

THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES, INCOME AND RECEIPTS OF THE ISSUER PLEDGED TO THE PAYMENT THEREOF. THE BONDS DO NOT CONSTITUTE, WITHIN THE MEANING OF ANY STATUTORY OR CONSTITUTIONAL PROVISION, AN INDEBTEDNESS, AN OBLIGATION OR A LOAN OF CREDIT OF THE STATE, THE SPONSOR, OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. THE BONDS DO NOT CREATE A MORAL OBLIGATION ON THE PART OF THE STATE, THE SPONSOR OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE AND EACH OF SUCH ENTITIES IS PROHIBITED BY THE ACT FROM MAKING ANY PAYMENTS WITH RESPECT TO THE BONDS. THE ISSUER HAS NO TAXING POWER.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM OR INTEREST ON THIS BOND AGAINST ANY PAST, PRESENT, OR FUTURE OFFICER, DIRECTOR, MEMBER, EMPLOYEE, OR AGENT OF THE ISSUER, OR OF ANY SUCCESSOR TO THE ISSUER, AS SUCH, EITHER DIRECTLY OR THROUGH THE ISSUER OR ANY SUCCESSOR TO THE ISSUER, UNDER ANY RULE OF LAW OR EQUITY, STATUTE, OR CONSTITUTION OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, OR AGENTS, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THIS BOND.

All capitalized terms used in this Bond and not defined herein shall have the meaning ascribed thereto in the Indenture and the Loan Agreement (as hereafter defined).

This Bond is one of a duly authorized issue of bonds of the Issuer, issued in the initial aggregate principal amount of \$_____, known as the Multifamily Housing Revenue Bonds (RBJ Apartments) Series 2019 (the "*Bonds*"), issued in accordance with a Trust Indenture dated as of June 1, 2019 (the "*Indenture*"), by and between the Issuer and BOKF, NA, as the Trustee (the "*Trustee*"), setting forth the terms upon which such Bonds are issued. The Bonds are issued by the Issuer for the purpose of making a loan of the proceeds thereof (the "*Loan*") to AGC RBJ, LLC, a Texas limited liability company (the "*Borrower*"), under the provisions of a Loan Agreement dated as of June 1, 2019 (the "*Loan Agreement*"), by and among the Issuer, the Borrower, and the initial Bondholder Representative to finance the acquisition, construction, rehabilitating, and equipping of a multifamily residential rental housing development to be located in the City of Austin, Texas (the "*Project*"). The loan made pursuant to the Loan Agreement (the "*Loan*") is evidenced by a promissory note from the Borrower to the Issuer and assigned by the Issuer to the Trustee (the "*Note*"). The Borrower has agreed under the Loan Agreement to repay the Loan, together with interest thereon, in amounts and at times sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable.

Under certain circumstances described in the Indenture certain Bonds may become subordinated (the "*Subordinated Bonds*") in priority and in right and time of payment to all amounts due on the Bonds other than the Subordinated Bonds. Interest on Subordinated Bonds shall be payable on each Payment Date. Payment of the Subordinated Bonds shall be made by the

Trustee only from funds, if any, not required to be used for payment on the Bonds other than Subordinated Bonds, and the Holders of the Subordinated Bonds, by acceptance of the Subordinated Bonds, expressly agree and acknowledge that (A) no payment shall be due and payable or made on the Subordinated Bonds if the Trustee does not hold sufficient funds in the Subordinated Bond Interest Account, Subordinated Bond Principal Account or the Subordinated Bond Redemption or Purchase Account of the Bond Fund to make such payment and (B) no remedy shall be had for any default in payment on the Subordinated Bonds so long as any Bonds other than Subordinated Bonds remain Outstanding.

Pursuant to the Indenture, the Issuer has assigned and pledged to the Trustee, for the equal and ratable benefit of the Holders, all revenues and receipts derived by the Borrower from the operation of the Project. Pursuant to a Construction and Permanent Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing filed with respect to the Project (the "*Mortgage*") of even date herewith and executed by the Borrower for the benefit of the Issuer, the Borrower has granted to the trustee identified in the Mortgage, for the equal and ratable benefit of the Holders of the Bonds, a first priority mortgage lien on and a security interest in the Project and the rents and leases thereof. The Mortgage may be released or modified in any respect upon compliance with certain conditions in the Mortgage and the Indenture.

Reference is hereby also made to the Loan Agreement, the Indenture, and the Mortgage, including all supplements thereto, for a description of the property encumbered and assigned, the provisions, among others, with respect to the nature and extent of the security, the rights of the Issuer, and the rights, duties, and obligations of the Borrower, the Trustee, and the Holders of the Bonds, and the terms upon which the Bonds are issued and secured, redeemed and any Prepayment Fee assessed.

CONSTRUCTION INTEREST RATE PROVISIONS

The following terms as provided shall be applicable under this Bond prior to the Conversion Date:

DEFINITIONS

"*Business Day*" means any day that is not a Saturday, Sunday, or other day on which commercial banks in Austin, Texas, and in New York City are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Drawing, the term "*Business Day*" shall also exclude any day on which banks are not open for dealings in U.S. dollar deposits in the London interbank market.

"*Drawing*" means each disbursement from the Project Fund pursuant to a requisition approved by the Bondholder Representative as recorded by the Trustee in the records of the Trustee.

"*Fixed Rate*" means _____ percent (____%) per annum, provided, however, if the Conversion Date has not occurred within thirty-six (36) months of the Bond Closing, the Fixed Rate shall be reset to a rate equivalent to the six-month Swap Rate plus one percent..

INTEREST RATE

During the Construction Term, interest on the principal balance shall be calculated at the Fixed Rate.

INTEREST ACCRUALS

(a) Notwithstanding the foregoing, if any principal of or interest on the Loan, or any fee or other amount payable by the Borrower hereunder, is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to three percent (3.0%) plus the Fixed Rate.

(b) Notwithstanding anything in this Bond, the Indenture, or the Loan Agreement to the contrary, accrued interest shall be payable in arrears on each Payment Date for all unpaid and accrued interest on the first day of the month preceding that Payment Date and upon maturity of the Loan for all unpaid accrued interest then due; provided that (i) default interest which has accrued pursuant to paragraph (a) above shall be payable on demand, and (ii) in the event of any repayment or prepayment, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(c) Notwithstanding anything herein to the contrary, all interest hereunder shall be computed on the basis of 360 days, and in each case shall be payable for the actual number of days elapsed (including the first day, but excluding the last day).

PAST DUE PAYMENT.

If any payment required under this Bond is not paid within ten (10) days after such payment is due, then, at the option of the Bondholder Representative, the Borrower shall pay a late charge equal to three percent (3.0%) of the amount of such payment or \$25.00, whichever is greater, up to the maximum amount of \$1,500.00 per late charge to compensate the Bondholder Representative for administrative expenses and other costs of delinquent payments. This late charge may be assessed without notice, shall be immediately due and payable and shall be in addition to all other rights and remedies available to the Bondholder Representative.

PERMANENT TERM INTEREST RATE PROVISION

Interest will accrue on this Bond on and after the Conversion Date at a fixed rate per annum equal to ____%.

REDEMPTION AND PURCHASE PROVISIONS

This Bond is subject to redemption or purchase prior to maturity as provided for in the Indenture.

MISCELLANEOUS PROVISIONS

1. Business Day Payments. If the date for payment of the principal of, premium, if any, or interest on this Bond shall be a day which is not a Business Day, then the date for such payment shall be the next succeeding day which is a Business Day, and payment on such later date shall have the same force and effect as if made on the nominal date of payment.

2. Enforcement; Modification of Indenture and Loan Documents. The Holder of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. Modifications or alterations of the Indenture, of any indenture supplemental thereto or of Loan Documents, may be made only to the extent and in the circumstances permitted by the Indenture and may be made in certain cases without the consent of the Holders of the Bonds.

3. Consent to Modifications. With the consent of the Issuer, Borrower, Bondholder Representative, and the Trustee, as appropriate, and to the extent permitted by and as provided in the Indenture, the terms and provisions of the Indenture and the Loan Documents or any instrument supplemental thereto may be modified or altered by the consent of the Holders of the requisite percentage of Bonds Outstanding required by the Indenture. Supplemental indentures may also be executed and delivered, without consent of or notice to any Holders, for the purpose of curing any ambiguity or formal defect or omission in the Indenture or in any supplemental indenture, granting for the benefit of the Holders additional rights, remedies, powers, authority, or security, more precisely identifying the Trust Estate, subjecting to the lien and pledge of the Indenture

additional rights, preventing the interest on the Bonds from becoming includable in gross income for federal income tax purposes, qualifying the Indenture under the Trust Indenture Act of 1939, evidencing appointment of a co-Trustee or successor Trustee, bond registrar, or successor paying agent, reconciling the Indenture with Loan Documents, or making any other change which in the judgment of the Trustee based upon an opinion of Bond Counsel is necessary or desirable and will not materially prejudice any non-consenting Holders. Every Holder hereof is deemed by the Holder's purchase and retention of this Bond to consent to be bound by every supplemental indenture and every modification and amendment adopted in accordance with the provisions of the Indenture, whether or not noted or endorsed hereon or incorporated herein.

4. **Waiver or Consent Conclusive.** The Indenture also contains provisions permitting the Trustee, on behalf of all the Holders, to waive any Event of Default as defined under the Indenture and rescind any acceleration of the Bonds.

5. **Denomination; Exchange; Treatment of Registered Holder.** The Bonds are issued as fully registered bonds without coupons in the minimum denominations of \$100,000 or any integral multiple of \$1,000 in excess of \$100,000 minimum per Holder thereof of a single maturity or series; except that a Bond may be exchanged after redemption or purchase for a Bond in the denomination of less than \$100,000 to the extent necessary to represent the unredeemed portion of any Bond. The Bonds may be exchanged by the Holder for other Bonds of any authorized denominations and of a like aggregate principal amount, series, and stated maturity, upon surrender thereof by the Holder at the Operations Office of the Bond Registrar or, in the case in which the Trustee is the Bond Registrar, at the Operations Office of the Trustee, in the manner and subject to the limitations provided in the Indenture. The Issuer, the Trustee, the Bond Registrar, and the Paying Agent may deem and treat the Holder of this Bond as the absolute owner of this Bond (whether or not this Bond shall be overdue) for the purpose of receiving payment on this Bond (except as otherwise herein above provided with respect to the Record Date and special Record Date) and for all other purposes, and the Issuer (or any agent thereof), the Trustee, the Bond Registrar, and the Paying Agent shall not be affected by any notice to the contrary.

6. **Registration of Transfer.** The transfer of this Bond is subject to certain restrictions as provided in the Indenture and described below and to registration by the Holder or by the Holder's attorney hereof upon surrender of this Bond at the designated corporate trust office of the Bond Registrar or, in the case in which the Trustee is the Bond Registrar, at the Operations Office of the Trustee, duly endorsed or accompanied by a written instrument or instruments of transfer in the form printed on this Bond or in another form satisfactory to the Bond Registrar and duly executed and with guaranty of signature of the Holder hereof or his, her, or its attorney duly authorized in writing, containing written instructions as to the details of the registration of the transfer of the Bond. Thereupon the Issuer shall execute (if necessary) and the Bond Registrar shall authenticate and deliver in the name of the designated transferee or transferees (but not registered in blank or to "bearer" or a similar designation), one or more new Bonds of any Authorized Denomination or Denominations, of a like series and aggregate principal amounts having the same stated maturity and interest rate.

THE TRUSTEE SHALL NOT REGISTER ANY TRANSFER OR EXCHANGE OF ANY BONDS UNLESS ALL REQUIREMENTS OF **SECTION 2.12** OF THE INDENTURE ARE MET AND, IF REQUIRED BY THE INDENTURE, SUCH HOLDER'S PROSPECTIVE TRANSFEREE DELIVERS TO THE TRUSTEE AN INVESTOR'S LETTER SUBSTANTIALLY IN THE FORM SET FORTH IN **EXHIBIT C** TO THE INDENTURE.

The Bond Registrar shall not be required (a) to transfer or exchange any Bond during a period beginning at the opening of business fifteen (15) days before the day of the mailing of a notice of redemption or purchase of Bonds under the Indenture and ending at the close of business on the day of such mailing or (b) to transfer or exchange any Bond so selected for redemption or purchase in whole or in part.

7. Service Charges, Taxes. No service charge shall be made to the Holder for any registration, transfer, or exchange herein before referred to, but the Bond Registrar and the Trustee shall require payment of a sum sufficient to cover any tax, fee, or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, other than exchanges expressly provided in the Indenture to be made without expense or without charge to Holders, and any legal or unusual costs of transfers and lost Bonds.

8. Acceleration. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds then Outstanding under the Indenture may become or may be declared due and payable before the stated maturities thereof, together with the interest accrued thereon.

9. Governing Law. This Bond shall be governed by and construed in accordance with the laws of the State of Texas.

10. Indenture Controlling. The terms of this Bond are subject in all respects to the terms of the Indenture. If there is a conflict between the provisions of this Bond and the Indenture, the Indenture shall control.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture until it shall have been authenticated by the execution by the Bond Registrar on the certificate of authentication endorsed hereon.

This Bond shall be subject to mandatory and optional redemption subject to and as provided in Article 3 of the Indenture.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions, and things required to exist, happen, and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened, and have been performed in due time, form, and manner as required by law.

IN WITNESS WHEREOF, Austin Housing Finance Corporation has caused this Bond to be executed with the facsimile or manual signature of an authorized officer and attested by facsimile or manual signature of an authorized officer.

AUSTIN HOUSING FINANCE CORPORATION

By: _____

Name: Rosie Truelove

Title: Treasurer

Attest:

By: _____

Name: _____

Title: Secretary

FORM OF CERTIFICATE OF AUTHENTICATION

CERTIFICATE OF AUTHENTICATION

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

Date of Authentication: _____, _____.

BOKF, NA, as Bond Registrar

By: _____

Authorized Signature

DRAFT

[Form of Comptroller's Registration to be included on initial Bond only]

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO. _____

I hereby certify that this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Bond has been registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS MY SIGNATURE AND SEAL this _____.

Comptroller of Public Accounts of the State of Texas
(SEAL)

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto _____ (Please Print or Typewrite Name and Address) (Please Insert Social Security or Other Identifying Number of Assignee: _____) the within Bond and all rights and title therein, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

(Registered Owner)

NOTICE: The signature(s) to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Signature guaranteed

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

As an alternative to the above "Signature Guaranty" the following or functionally equivalent Secretary Certificate may be executed:

AUTHORIZED SIGNER CERTIFICATION

I, the undersigned, DO HEREBY CERTIFY that I hold the following title: ☐ Secretary, ☐ Assistant Secretary, ☐ Chief Financial Officer, ☐ President, ☐ Vice President, ☐ Treasurer, ☐ Managing Member, ☐ Manager, or Other _____ and I am authorized to certify on behalf of the Holder, as of the date of this Authorized Signer Certification, that the person(s) named above presently holds the office set forth below such person's name, and below the office designation is the genuine signature of such person.

That such person named above (an "Authorized Officer"), is authorized on behalf of the Holder to enter into or execute and deliver this request to transfer the Bonds including the above terms and conditions included in such request for an assignment of the Series 2019B Bond.

IN WITNESS WHEREOF, I have hereunto subscribed my name this _____ day of _____, 20__.

By: _____

(Signature)

Name: _____

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM

as tenants in common

TEN ENT

as tenants by the entirety

JT TEN

as joint tenants with rights of survivorship
common

and not as tenants in

UNIF GIFT MIN ACT _____

Custodian _____

(Minor)

(Cust)

Under Uniform Gifts to Minors Act

(State)

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

EXHIBIT C

INVESTOR'S LETTER

Austin Housing Finance Corporation

Austin, Texas

BOKF, NA

Fort Worth, Texas

Re: Austin Housing Finance Corporation
Multifamily Housing Revenue Bonds
(RBJ Apartments) Series 2019

Ladies and Gentlemen:

The undersigned representative of _____ (the "*Purchaser*"), being the [initial] purchaser of \$_____ of the aggregate principal amount of the Austin Housing Finance Corporation Multifamily Housing Revenue Bonds (RBJ Apartments) Series 2019 (the "*Bonds*") does hereby certify, represent and warrant for the benefit of Austin Housing Finance Corporation (the "*Issuer*"), BOKF, NA, as the Trustee (the "*Trustee*"), and AGC RBJ, LLC (the "*Borrower*") that the Purchaser is an Accredited Investor (as defined in Rule 501(a)(1), (2), (3), (7) or (8) of Regulation D promulgated under the Securities Act of 1933, as amended) or a Qualified Institutional Buyer (as defined in Rule 144A promulgated under the Securities Act of 1933, as amended). Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Trust Indenture dated as of June 1, 2019 (the "*Indenture*"), between the Issuer and the Trustee.

The Purchaser hereby acknowledges, represents, and warrants to, and agrees with, the Issuer and the Trustee, as follows:

(1) The Purchaser is purchasing such Bonds with its own funds (or with funds from accounts over which it has sole investment authority) and not the funds of any other person, and for its own account (or for accounts over which it has sole investment authority) and not as nominee or agent for the account of any other person and not with a view to any distribution thereof.

(2) The Purchaser has such knowledge and experience in business and financial matters and with respect to the purchase and ownership of Multifamily Housing Revenue Bonds, tax exempt securities, and other investment vehicles similar in character to the Bonds so as to enable it to understand and evaluate the risks of such investments and form an investment decision with respect thereto, the Purchaser has no need for liquidity in such

investment and the Purchaser is (or any account for which it is purchasing is) able to bear the risk of such investment for an indefinite period and to afford a complete loss thereof.

(3) The Purchaser understands that no offering document has been prepared in connection with the sale of the Bonds and acknowledges that it has been provided with, and has had the opportunity to review, all documents relating to the issuance of the Bonds by the Issuer. The Purchaser either has been supplied with or has had access to information, including financial statements and other financial information, and has had the opportunity to ask questions and receive answers from individuals concerning the Issuer, the Borrower, the credit standing of the Borrower, the Project, the Loan Agreement, dated as of June 1, 2019, among the Issuer, the Borrower, and the Bondholder Representative (the "*Loan Agreement*"), the Indenture, and the Bonds so that, as a sophisticated investor, the Purchaser has been able to make its decision to purchase the Bonds.

(4) The Purchaser has had the opportunity to ask questions of the Issuer and the Borrower or other Person and receive answers concerning the terms and conditions of the offering and to obtain any additional information it may request.

(5) THE PURCHASER UNDERSTANDS THAT:

(i) NEITHER THE STATE OF TEXAS NOR ANY POLITICAL SUBDIVISION OR AGENCY OF THE STATE OF TEXAS, SHALL BE LIABLE OR OBLIGATED (GENERALLY, SPECIALLY, MORALLY OR OTHERWISE) TO PAY THE PRINCIPAL OF THE BONDS OR THE PREMIUM, IF ANY, OR INTEREST THEREON, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS, OR ANY OTHER POLITICAL SUBDIVISION OR AGENCY THEREOF, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS; AND

(ii) THE ISSUER HAS NO TAXING POWER AND PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE BONDS ARE PAYABLE SOLELY OUT OF THE MONEYS TO BE RECEIVED BY THE TRUSTEE ON BEHALF OF THE ISSUER UNDER THE INDENTURE AND AMOUNTS ON DEPOSIT IN THE FUNDS AND ACCOUNTS ESTABLISHED AND PLEDGED UNDER THE INDENTURE.

(6) The Purchaser understands that, in connection with any proposed transfer of the Bonds, such transfer must be limited to an Eligible Purchaser. "*Eligible Purchaser*" means a prospective transferee that can make representations with respect to itself to substantially the same effect as the representations set forth herein and that meets requirements of Section 2.12 of the Indenture.

(7) The Purchaser also understands that it shall provide indemnification to Borrower, the Issuer, the Sponsor, the Trustee and the Bond Registrar from and against any and all liability, cost, or expense (including attorneys' fees) that may result if the representations contained in this Letter are false in any material respect.

(8) The Purchaser has conducted its own investigation to the extent it deemed necessary. The Purchaser has been offered an opportunity to have made available to it any and all such information it might request from the Issuer, the Borrower and the guarantor(s). On the basis, the Purchaser agrees that the Purchaser is not relying on any other party or person to undertake the furnishing or verification of information related to the referenced transaction.

This letter and the representations and agreements contained herein are made for your benefit.

IN WITNESS WHEREOF, I have hereunto set my hand the _____ day of _____.

PURCHASER

Name: _____

Title: _____

MUST BE SIGNED BY ACTUAL PURCHASER.

MAY NOT BE SIGNED BY NOMINEE OR AGENT.

EXHIBIT D

SINKING FUND INSTALLMENTS

DATE

PRINCIPAL AMOUNT

DRAFT