
AMENDED AND RESTATED TRUST INDENTURE

between

COUNTY OF CONTRA COSTA

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Trustee

relating to

\$116,000,000
County of Contra Costa
Multifamily Housing Revenue Bonds
(Avalon Walnut Creek at Contra Costa Centre Project)
Series 2006A

and

\$8,500,000
County of Contra Costa
Multifamily Housing Revenue Bonds
(Avalon Walnut Creek at Contra Costa Centre Project)
Taxable Series 2006A-T

and

\$10,000,000
County of Contra Costa
Multifamily Housing Revenue Bonds
(Avalon Walnut Creek at Contra Costa Centre Project)
Series 2008A

Dated as of July 1, 2013

Amending and restating Trust Indenture
dated as of March 1, 2006 and amended as of December 1, 2007
and as of May 1, 2008 and amended and restated as of July 1, 2008

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AMENDED AND RESTATED TRUST INDENTURE

THIS AMENDED AND RESTATED TRUST INDENTURE, dated as of July 1, 2013 (this “Indenture”), is by the **COUNTY OF CONTRA COSTA**, a political subdivision of the State of California (together with its successors and assigns, “Issuer”), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association organized under the laws of the United States of America (together with its permitted successors and assigns, “Trustee”), and amends and restates that certain Trust Indenture, dated as of March 1, 2006, and amended as of December 1, 2007 and May 1, 2008 and amended and restated as of July 1, 2008 (the “Original Indenture”), between the Issuer and The Bank of New York Mellon Trust Company, N.A., as successor trustee.

The meaning of capitalized terms can be determined by reference to Article I of this Indenture.

RECITALS :

A. The Issuer is authorized by the Act to issue revenue bonds for the purpose of financing the development of multifamily rental housing for persons of low and moderate income.

B. The Issuer has issued the Bonds pursuant to the Original Indenture.

C. 2006A Bonds in the aggregate principal amount of \$116,000,000, 2006A-T Bonds in the aggregate principal amount of \$8,500,000 and 2008A Bonds in the aggregate principal amount of \$10,000,000 remain outstanding on the Closing Date.

D. The proceeds of the Bonds were used by the Issuer to fund the Prior Loan in order to provide financing with respect to the Mortgaged Property owned by the Borrower.

E. In order to provide for the remarketing of the Bonds as bonds bearing interest at a Bank Rate, the Borrower has requested that the Issuer amend the Original Indenture as provided herein.

F. The Issuer has determined that the execution and delivery of this Indenture and the remarketing of the Bonds will accomplish a valid public purpose of the Issuer.

G. The Issuer has, pursuant to the Act and the Bond Resolution of the Issuer, authorized (i) the execution and delivery of this Indenture to establish the terms of the Bonds and the security for the Bonds and (ii) the execution and delivery of the Financing Agreement to establish certain terms and conditions of the Loan.

H. The Issuer, the Trustee and the Borrower are concurrently entering into the Financing Agreement.

I. The Loan (i) has been made by the Issuer pursuant to the Financing Agreement, (ii) is evidenced by the Note, (iii) is secured by the Security Instrument and (iv) is otherwise documented, evidenced and secured by the other Loan Documents.

J. The Issuer has determined that all things necessary to make the Bonds the valid, binding and legal special and limited obligations of the Issuer and to constitute this Indenture a valid assignment and pledge of the Trust Estate as security for the payment of the principal of and interest and any premium on, the Bonds, have been done, and the creation, execution and delivery of this Indenture and the creation, execution and delivery of the Bonds, subject to the terms of this Indenture, have been duly authorized by the Issuer.

K. The Trustee has trust powers and the power and authority to enter into this Indenture, to accept trusts generally and to accept and execute the trust created by this Indenture; the Trustee has accepted the trust so created, and to evidence such acceptance, has joined in the execution of this Indenture.

GRANTING CLAUSES

To secure the payment of the principal of and interest and any premium on, and the purchase price of, the Bonds according to their tenor and effect, to secure, on a parity basis, all obligations owed to the Credit Provider, if any, under the Credit Facility Documents and the Loan Documents, and to secure the performance and observance by the Issuer of the covenants expressed or implied in this Indenture and in the Bonds, the Issuer absolutely and irrevocably pledges and assigns the property described in the following paragraphs (1) through (5) to the Trustee for the benefit of the Bondholders and to any Credit Provider, as their interests may appear, subject to the Assignment and the provisions of this Indenture permitting the application of such property for the purposes set forth in this Indenture:

1. All right, title and interest of the Issuer in and to the Loan, including the Note, the Security Instrument and the other Loan Documents and in and to the Financing Agreement, reserving, however, the Reserved Rights;

2. All rights to receive payments on the Note and under the other Loan Documents, including all proceeds of insurance or condemnation awards;

3. All right, title and interest of the Issuer in and to the Revenues, the Net Bond Proceeds and the accrued interest, if any, derived from the sale of the Bonds, and all Funds and Accounts under this Indenture (including, without limitation, moneys, documents, securities, Investments, Investment Income, instruments and general intangibles on deposit or otherwise held by the Trustee) but excluding all moneys in the Fees Account, the Rebate Fund and the Costs of Issuance Fund (including within such exclusion Investment Income retained in the Costs of Issuance Fund and the Rebate Fund);

4. All funds, moneys and securities and any and all other rights and interests in property, whether tangible or intangible, from time to time conveyed, mortgaged, pledged, assigned or transferred by delivery or by writing of any kind to the Trustee as additional security under this Indenture for the benefit of the Bondholders and any Credit Provider; and

5. All of the proceeds of the foregoing, including, without limitation, Investments and Investment Income (except as excluded above);

TO HAVE AND TO HOLD unto the Trustee and any Credit Provider, as their interests may appear;

IN TRUST, NEVERTHELESS, upon the terms set forth in this Indenture for the equal and proportionate benefit, security and protection of (i) all Registered Owners of the Bonds, without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds and (ii) any Credit Provider to secure the payment of all amounts owed to such Credit Provider under the Credit Facility Documents;

PROVIDED, FURTHER, HOWEVER, that if the Issuer or its successors or assigns pay or cause to be paid to the Registered Owners of the Bonds the principal of and interest and any premium to become due on the Bonds at the times and in the manner provided in this Indenture, and if no amount is owing by the Borrower to the Issuer or the Trustee under the Financing Agreement or to any Credit Provider under the Credit Facility Documents, and if the Issuer keeps, performs and observes, or causes to be kept, performed and observed, all of its covenants, warranties and agreements contained in this Indenture, this Indenture and the estate and rights granted by this Indenture shall terminate and be discharged in accordance with its terms, upon which termination the Trustee shall execute and deliver to the Issuer such instruments in writing as shall be necessary to satisfy the lien of this Indenture, and, in accordance with Article IX, shall reconvey to the Issuer any property at the time subject to the lien of this Indenture which may then be in the Trustee's possession, except amounts held by the Trustee for the payment of principal of and interest and any premium on the Bonds, or moneys held in the Rebate Fund for payment to the United States Government or moneys held in the Fees Account for the payment of accrued and unpaid Third Party Fees and Fees and Expenses; otherwise this Indenture shall be and remain in full force and effect, upon the trusts and subject to the covenants and conditions set forth in this Indenture; and

FINALLY, all Bonds issued and secured under this Indenture are to be issued, authenticated and delivered, and all property, rights and interests, including, but not limited to, the amounts payable under the Financing Agreement and any other amounts assigned and pledged by this Indenture are to be dealt with and disposed of under, upon and subject to, the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes expressed in this Indenture, and the Issuer has agreed and covenanted, and agrees and covenants with the Trustee and with the Registered Owners of the Bonds as set forth in this Indenture.

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01. Definitions. All capitalized terms used in this Indenture have the meanings given to those terms in this Section 1.01 or elsewhere in this Indenture unless the context clearly indicates a different meaning.

“*Account*” means an account established within a Fund.

“*Act*” means Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as amended.

“*Act of Bankruptcy*” means any proceeding instituted under the Bankruptcy Code or other applicable insolvency law by or against the Issuer.

“*Adjustment Date*” means any date on which the interest rate on the Bonds of a Series is adjusted to a different Mode or to a different Reset Rate or Bank Rate. Unless the Bonds bear interest at the Bank Rate, an Adjustment Date may only occur on an Interest Payment Date or, if such date is not a Business Day, the following Business Day. The day following the last day of any Bank Rate Period and any Reset Date and the Fixed Rate Adjustment Date are Adjustment Dates.

“*Administrative Agent*” means SunTrust Bank, Atlanta, Georgia, in its capacity as the administrative agent under the Guaranty Agreement and any successors or assigns thereof.

“*Affiliate*” as applied to any person, means any other person directly or indirectly controlling, controlled by, or under common control with, that person. For the purposes of this definition, “control” (including with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, partnership interests or by contract or otherwise.

“*Alternate Credit Facility*” means a letter of credit (whether or not so named), surety bond, insurance policy, standby bond purchase agreement, credit enhancement instrument, collateral purchase agreement, mortgage backed security or similar agreement, instrument or facility provided in accordance with the Financing Agreement and satisfying the requirements of Section 8.04. For purposes of this definition, “letter of credit” means an irrevocable letter of credit (i) having the characteristics of a “credit” or “letter of credit” set forth in Section 5-103 of the UCC except that a letter of credit (A) may not be revocable and (B) may be issued only by (1) a national bank, (2) any banking institution organized under the laws of any state, territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the state or territorial banking commission or similar officials or (3) a branch or agency of a foreign bank, provided that the nature and extent of federal and/or state regulation and the supervision of the particular branch or agency is substantially equivalent to that applicable to federal or state chartered domestic banks doing business in the same jurisdiction; and (ii) which meets the requirements of a Credit Facility under this Indenture.

“*Alternate Credit Provider*” means the provider of an Alternate Credit Facility.

“*Applicable Margin*” means the respective rates per annum determined at any time, based on the range into which AvalonBay’s Credit Rating then falls, in accordance with the following table (any change in AvalonBay’s Credit Rating causing it to move to a different range on the table shall effect an immediate change in the Applicable Margin):

Range of AvalonBay's Credit Rating (S&P/Moody's or other agency equivalent)	Applicable Margin
Below BBB- or unrated/Below Baa3 or unrated	2.10%

BBB-/Baa3	1.70%
BBB/Baa2	1.35%
BBB+/Baa1	1.20%
A-/A3 or higher	1.10%

“*Assigned Rights*” has the meaning given to that term in the Assignment.

“*Assignment*” means the Intercreditor Agreement, dated as of July 1, 2008, among the Issuer, the Redevelopment Agency, the Trustee and the Credit Provider (and its successors and assigns), and acknowledged and agreed to by the Borrower, as it may be amended, supplemented or restated from time to time, and any similar agreement executed and delivered in connection with the delivery of an Alternate Credit Facility.

“*as their interests may appear*” or “*as its interest may appear*” means, with reference to any of the Assigned Rights, the respective interests, exclusive of the Reserved Rights of the Issuer, of the Credit Provider and of the Trustee to such documents and rights as set forth in the Assignment.

“*Authorized Attesting Officer*” means any Authorized Representative or other officer of the Issuer who, in accordance with the laws of the State, the bylaws or other governing documents of the Issuer, or practice or custom, regularly attests or certifies official acts and records of the Issuer, and includes any assistant or deputy officer to the principal officer or officers exercising such responsibilities.

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

“*Authorized Credit Provider Representative*” means any person from time to time designated to act on behalf of any Credit Provider by written certificate furnished to the Issuer and the Trustee. Such certificate must contain the specimen signature of the person authorized to act on behalf of the Credit Provider by resolution or other appropriate action of the Board of Directors of the Credit Provider or by its bylaws. Such resolution or other appropriate action may designate an alternate or alternates who shall have the same authority, duties and powers as the Authorized Credit Provider Representative. The Trustee may conclusively presume that a person designated in a written certificate filed with the Trustee as an Authorized Credit Provider Representative is an Authorized Credit Provider Representative until such time as such provider

files with it and with the Issuer a written certificate identifying a different person or persons to act in such capacity.

“*Authorized Denomination*” means, (i) during any Bank Rate Period, Daily Variable Rate Period or Weekly Variable Rate Period, \$100,000 or any integral multiple of \$5,000 in excess of \$100,000 and (ii) during any Reset Period or the Fixed Rate Period, \$5,000 or any integral multiple of \$5,000.

“*Authorized Representative*” means the Chair or Vice Chair of the Board of Supervisors, the County Administrator, the Director of the Department Conservation and Development, or the Community Development Bond Program Manager, and any other officer or employee of the Issuer designated by certificate of any of the foregoing as authorized by the Issuer to perform a specified act, sign a specified document or otherwise take action with respect to the Bonds.

“*Available Moneys*” means, as of any date of determination, any of (i) the proceeds of the Bonds; (ii) remarketing proceeds received from the Remarketing Agent or any purchaser of Bonds (other than remarketing or purchase proceeds provided by the Borrower, the Issuer, any Affiliate of either the Borrower or the Issuer or any guarantor of the Loan); (iii) moneys received by the Trustee pursuant to a draw on a Credit Facility; (iv) the proceeds of refunding bonds; (v) any other amounts for which, in each case, the Trustee has received an Opinion of Counsel acceptable to each Rating Agency to the effect that the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code (or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court) or be avoidable as preferential payments under Section 544, 547 or 550 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code; (vi) the price paid by any Credit Provider for the purchase of Bonds in lieu of redemption pursuant to Section 3.07; and (vii) Investment Income derived from the investment of moneys described in clause (i), (ii), (iii), (iv), (v) or (vi); provided, while the Bonds of a Series bear interest at a Bank Rate or at a Fixed Rate without a Credit Facility, “*Available Moneys*” means, with respect to the Bonds of such Series, any amounts available to make payments of such Bonds.

“*AvalonBay Credit Agreement*” means that certain Third Amended and Restated Revolving Loan Agreement, dated as of September 29, 2011, among AvalonBay, Bank of America, N.A., as Lead Bank, and the lenders party thereto from time to time.

“*AvalonBay*” means AvalonBay Communities, Inc., a Maryland corporation.

“*AvalonBay’s Credit Rating*” means the rating assigned from time to time to AvalonBay’s unsecured and unsubordinated long-term indebtedness by, respectively, S&P, Moody’s and/or one or more other nationally-recognized rating agencies reasonably approved by the Administrative Agent. If such a rating is assigned by only one (1) such rating agency, it must be either S&P or Moody’s. If such a rating is assigned by two (2) such rating agencies, at least one (1) must be S&P or Moody’s, and “*AvalonBay’s Credit Rating*” shall be the higher of said ratings, except if the aforesaid ratings are greater than one (1) rating level apart, in which case “*AvalonBay’s Credit Rating*” shall be the average of said ratings. If such a rating is obtained from more than two (2) such rating agencies, “*AvalonBay’s Credit Rating*” shall be the higher of

the lowest two (2) ratings, if at least one (1) of such two (2) is either S&P or Moody's; if neither of the two (2) lowest ratings is from S&P or Moody's, then "AvalonBay's Credit Rating" shall be the lower of the ratings from S&P and Moody's. Unless such indebtedness of AvalonBay is rated by either S&P or Moody's, "AvalonBay's Credit Rating" shall be considered unrated for purposes of this Indenture.

"*Bank Rate*" means an interest rate on the Bonds set under Section 2.08 hereof.

"*Bank Rate Adjustment Rate*" means the date on which the interest rate on the Bonds of a Series adjusts from the Daily Variable Rate, the Weekly Variable Rate or a Reset Rate to the Bank Rate pursuant to Section 2.09.

"*Bank Rate Period*" means (i) the Initial Bank Rate Period or (ii) the period commencing on an Adjustment Date on which the interest rate on the Bonds of a Series is adjusted from the Daily Variable Rate, the Weekly Variable Rate or a Reset Rate to the Bank Rate or from the Bank Rate to another Bank Rate and ending on the day preceding the following Adjustment Date or the Maturity Date.

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

"*Base Rate*" means the higher of (i) the per annum rate which the Administrative Agent publicly announces from time to time to be its prime lending rate, as in effect from time to time and (ii) the Federal Funds Rate, as in effect from time to time, plus 0.50% per annum. Any change in such rates shall be effective as of the date of such change in such rates.

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

"*Bond*" or "*Bonds*" means, collectively, the 2006A Bonds, the 2006A-T Bonds and the 2008A Bonds.

"*2006A Bonds*" means the Issuer's Multifamily Housing Revenue Bonds (Avalon Walnut Creek at Contra Costa Centre Project) Series 2006A.

"*2006A-T Bonds*" means the Issuer's Multifamily Housing Reserve Bonds (Avalon Walnut Creek at Contra Costa Centre Project) Taxable Series 2006A-T.

"*2008A Bonds*" means the Issuer's Multifamily Housing Revenue Bonds (Avalon Walnut Creek at Contra Costa Centre Project) Series 2008A.

"*Bond Counsel*" means (i) on the Closing Date, the law firm delivering the approving opinion with respect to the Bonds, or (ii) after the Closing Date, any law firm selected by the Issuer and acceptable to the Credit Provider, if any, of nationally recognized standing in matters pertaining to the exclusion from gross income for federal income tax purposes of the interest payable on bonds issued by states and political subdivisions.

“*Bond Documents*” means the Assignment, the Bonds, the Credit Facility, if any, the Disclosure Agreement, if any, the Financing Agreement, this Indenture, the Regulatory Agreement (and any other agreement relating to rental restrictions on the Mortgaged Property), the Remarketing Agreement, if any, the Tax Certificate, any Tender Agent Agreement and all other documents, instruments and agreements executed and delivered in connection with the issuance, sale, delivery and/or remarketing of the Bonds, as each such agreement or instrument may be amended, supplemented or restated from time to time.

“*Bond Purchase Fund*” means the Bond Purchase Fund created by Section 5.01.

“*Bond Register*” means the Bond Register maintained by the Trustee pursuant to Section 2.17.

“*Bond Resolution*” means the resolution adopted by the Board of Supervisors of the Issuer on July 9, 2013 authorizing and approving the issuance and sale of the Bonds and the execution and delivery of this Indenture, the Financing Agreement and certain other documents, making certain appointments and determining certain details with respect to the Bonds.

“*Bondholder*,” “*holder*,” “*Holder*,” “*Owner*,” “*owner*,” “*Registered Owner*” or “*registered owner*” means, with respect to any Bond, the owner of the Bond as shown on the Bond Register.

“*Bondholder Tender Notice*” means a written notice meeting the requirements of Section 4.01(a).

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

“*Book-Entry System*” means an electronic system in which the clearance and settlement of securities transactions is made through electronic book-entry changes.

“*Borrower*” means PHVP I, LP, a Delaware limited partnership, or any of its permitted successors or assigns as owner of the Project.

“*Borrower Documents*” means the Bond Documents to which the Borrower is a party, the Credit Facility Documents to which the Borrower is a party and the Loan Documents and all other documents to which the Borrower is a party and which are being executed and delivered by the Borrower in connection with the transactions provided for in the Transaction Documents and the Loan Documents.

“*Business Day*” means, except during the period commencing on the day following the first day of Bank Rate Period and ending on the Business Day following the last day of a Bank Rate Period, any day other than (i) a Saturday or a Sunday, (ii) any day on which banking institutions located in the City of New York, New York are required or authorized by law or executive order to close, (iii) any day on which banking institutions located in the city or cities in which the Designated Office of the Trustee or the Remarketing Agent is located are required or authorized by law or executive order to close, (iv) prior to the Fixed Rate Adjustment Date, a day on which the New York Stock Exchange is closed, or (v) so long as a Credit Facility is in effect,

any day on which the office of the Credit Provider responsible for making payments under the Letter of Credit or the office of the Alternate Credit Facility Provider responsible for making payments under any Alternate Credit Facility is closed.

“*Business Day*” means, during the period commencing at the day following the first day of a Bank Rate Period and ending on the Business Day following the last day of a Bank Rate Period, a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in Atlanta, Georgia, or the state where the principal corporate trust office of the Trustee is located are authorized by law to close, (b) a day on which the New York Stock Exchange or the Federal Reserve Bank is closed, or (c) a day on which the principal office of the Administrative Agent is closed, and with respect to LIBOR, a day on which banks are open for business in the London interbank market.

“*Certificate of Borrower*” means the Certificate of Borrower, dated the Closing Date, as it may be amended, supplemented or restated from time to time.

“*Closing Date*” means [July 15, 2013], the date on which the Bonds were remarketed and delivered to or upon the order of the Purchasers.

“*Code*” means the Internal Revenue Code of 1986; each reference to the Code is deemed to include (i) any successor internal revenue law and (ii) the applicable regulations whether final, temporary or proposed under the Code or such successor law. Any reference to a particular provision of the Code is deemed to include any successor provision of any successor internal revenue law and applicable regulations whether final, temporary or proposed under such provision or successor provision.

“*Conditional Redemption*” means a redemption where the Trustee has stated in the notice of redemption that the redemption is conditioned upon deposit of funds as further described in Section 3.04.

“*Costs of Conversion*” means the fees, costs and expenses of (i) the Issuer, (ii) Public Financial Management, Inc. (the Issuer’s financial advisor), (iii) Goldfarb & Lipman LLP (Issuer’s counsel), (iv) Bond Counsel and (v) the Trustee and the Trustee’s counsel.

“*Costs of Conversion Deposit*” means the deposit to be made by or on behalf of the Borrower with the Trustee on the Closing Date to pay Costs of Conversion, plus any additional amount deposited by the Borrower with the Trustee to pay Costs of Conversion.

“*Costs of Conversion Fund*” means the Costs of Conversion Fund created by Section 5.01.

“*Credit Facility*” means any Letter of Credit or Alternate Credit Facility in effect at any time.

“*Credit Facility Account*” means the Credit Facility Account of the Revenue Fund.

“*Credit Facility Documents*” means, individually and collectively, the Reimbursement Agreement and the Credit Facility and all other documents evidencing, securing or otherwise

relating to the Reimbursement Agreement and the Credit Facility, including, without limitation, the other Reimbursement Documents, and all amendments, supplements and restatements of such documents.

“*Credit Provider*” means the provider of any Credit Facility in effect.

“*Credit Provider Bonds*” means any Bonds purchased and held in accordance with Section 3.07.

“*Credit Provider Rate*” means the interest rate to be paid on Credit Provider Bonds and Pledged Bonds established as provided in the Reimbursement Agreement.

“*Daily Variable Rate*” means the variable rate of interest per annum for the Bonds of a Series determined from time to time during the Daily Variable Rate Period in accordance with Section 2.05.

“*Daily Variable Rate Period*” means the period commencing on the Closing Date or an Adjustment Date on which the interest rate on the Bonds of a Series is adjusted from the Bank Rate, the Weekly Variable Rate or a Reset Rate to the Daily Variable Rate and ending on the day preceding the following Adjustment Date or the Maturity Date.

“*Designated Office*” of the Trustee, the Tender Agent or the Remarketing Agent means, respectively, the office of the Trustee, the Tender Agent or the Remarketing Agent at the respective address set forth in Section 13.04 or at such other address as may be specified in writing by the Trustee, the Tender Agent or the Remarketing Agent, as applicable, as provided in Section 13.04; provided that with respect to the Trustee the presentation of Bonds for payment or for registration of transfer and exchange such term shall mean the office or agency of the Trustee at which, at any particular time, its corporate trust agency business shall be conducted.

“*Determination of Taxability*” means a final decree or judgment of any federal court or a final action of the Internal Revenue Service determining that interest paid or payable on any Bond is or was includable in the gross income of an Owner of the Tax-Exempt Bonds for federal income tax purposes (other than an Owner who is a “substantial user” or “related person” to a “substantial user” within the meaning of Section 147(a) of the Code); provided, that no such decree, judgment, or action will be considered final for this purpose, however, unless the Borrower has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of any Owner of a Tax-Exempt Bond, and until the conclusion of any appellate review, if sought.

“*Disposition and Development Agreement*” means the Disposition and Development Agreement, dated as of December 19, 2005 and amended on February 25, 2008, between The Pleasant Hill BART Station Leasing Authority and Pleasant Hill Transit Village Associates, LLC, as amended.

“*Draw*” means a payment under a Letter of Credit or any Alternate Credit Facility.

“*DTC*” means The Depository Trust Company and any successor to it or any nominee of it.

“*DTC Participant*” has the meaning given to that term in Section 2.16(b).

“*Electronic Means*” means a facsimile transmission or any other electronic means of communication approved in writing by the Credit Provider.

“*Event of Default*” means, as used in any Transaction Document, any event described in that document as an Event of Default. Any “Event of Default” as described in any Transaction Document is not an “Event of Default” in any other Transaction Document unless that other Transaction Document specifically so provides.

“*Extension Date*” means, with respect to a Letter of Credit or any Alternate Credit Facility, the date that is five Business Days prior to the date of expiration of the Letter of Credit or the Alternate Credit Facility, as applicable.

“*Extraordinary Items*” means, with respect to the Trustee, reasonable compensation for extraordinary services and/or reimbursement for reasonable extraordinary costs and expenses including reasonable fees and expenses of its counsel.

“*Facility Fee*” means the fees owed to the Credit Provider by the Borrower pursuant to a Reimbursement Agreement.

“*Federal Funds Rate*” shall mean, for any day, the rate per annum (rounded upwards, if necessary, to the next 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with member banks of the Federal Reserve System arranged by Federal funds brokers, as published by the Federal Reserve Bank of New York on the next succeeding Business Day or if such rate is not so published for any Business Day, the Federal Funds Rate for such day shall be the average rounded upwards, if necessary, to the next 1/100th of 1% of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by the Administrative Agent.

“*Fees Account*” means the Fees Account of the Revenue Fund.

“*Fees and Expenses*” means the fees, advances, out-of-pocket expenses, costs and other charges payable by the Borrower from time to time pursuant to Section 2.05(c) of the Financing Agreement.

“*Financing Agreement*” means the Amended and Restated Financing Agreement, dated as of the date of this Indenture, among the Issuer, the Trustee and the Borrower, as amended, supplemented or restated from time to time.

“*Fixed Rate*” means the rate of interest borne by the Bonds of a Series as determined in accordance with Section 2.07.

“*Fixed Rate Adjustment Date*” means the date on which the interest rate on the Bonds of a Series adjusts from the Bank Rate, the Daily Variable Rate, the Weekly Variable Rate or a Reset Rate to the Fixed Rate pursuant to Section 2.09.

“*Fixed Rate Period*” means the period beginning on the Fixed Rate Adjustment Date and ending on the Maturity Date.

“*Fund*” means any fund created by Section 5.01.

“*Ground Sub-lease*” means the ground sub-leases entered into by the Borrower, as sub-lessee, and Pleasant Hill BART Station Leasing Authority, a joint powers agency, established and existing pursuant to the joint powers agency law of the State of California, as sub-lessor, with respect to the real property underlying the Mortgaged Property, as amended.

“*Guaranty Agreement*” means the Guaranty and Covenants Agreement, of even date herewith, between AvalonBay and the Administrative Agent and the Purchasers from time to time parties thereto.

“*Government Obligations*” means direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, the full faith and credit of the United States of America.

“*Highest Rating Category*” has the meaning, with respect to an Investment, given in this definition. If the Bonds are rated by a Rating Agency, the term “Highest Rating Category” means, with respect to an Investment, that the Investment is rated by each Rating Agency in the highest rating given by that Rating Agency for that general category of security. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the term “Highest Rating Category” means, with respect to an Investment, that the Investment is rated by S&P or Moody’s in the highest rating given by that rating agency for that general category of security. By way of example, the Highest Rating Category for tax-exempt municipal debt established by S&P is “A-1+” for debt with a term of one year or less and “AAA” for a term greater than one year, with corresponding ratings by Moody’s of “MIG-1” (for fixed rate) or “VMIG-1” (for variable rate) for one year or less and “Aaa” for greater than one year. If at any time (i) the Bonds are not rated, (ii) both S&P and Moody’s rate an Investment and (iii) one of those ratings is below the Highest Rating Category, then such Investment will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency. For example, an Investment rated “AAA” by S&P and “Aa3” by Moody’s is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that rating agency, then the Investment will be deemed to be rated below the Highest Rating Category. For example, an Investment rated “AAA” by S&P and “A1” by Moody’s is not rated in the Highest Rating Category.

“*Indenture*” means this Amended and Restated Trust Indenture, as amended, supplemented or restated from time to time.

“*Initial Bank Rate Period*” means the date commencing on the Closing Date and ending on the earlier of the day preceding the following Adjustment Date for a Series of Bonds or July 14, 2018.

“*Interest Account*” means the Interest Account of the Revenue Fund.

“Interest Payment Date” means (i) during any Daily Variable Rate Period or Weekly Variable Rate Period, the fifteenth day of each calendar month following the Adjustment Date; (ii) during any Reset Period and during the Fixed Rate Period, each April 15 and October 15 following the Adjustment Date, provided that the first Interest Payment Date during any such period may only occur on a date which is at least 30 days after the Adjustment Date; (iii) during any Bank Rate Period, the first Business Day of each month, commencing [August 1, 2013]; (iv) each Adjustment Date; (v) for Bonds subject to redemption in whole or in part on any date, the date of such redemption; (vi) the Maturity Date and (vii) for all Bonds any date determined pursuant to Section 10.10(c).

“Interest Requirement” means (i) during any Daily Variable Rate Period or Weekly Variable Rate Period, 34 days interest on the Bonds at the Maximum Rate on the basis of a 365- or 366-day year, as applicable, for the actual number of days elapsed, and (ii) during a Reset Period or the Fixed Rate Period, 210 days interest at, respectively, the Reset Rate or the Fixed Rate, as the case may be, on the basis of a year of 360 days of twelve 30-day months; or, in the case of either (i) or (ii), such other number of days as may be required by the Rating Agency.

“Investment” means any Permitted Investment and any other investment held under this Indenture that does not constitute a Permitted Investment.

“Investment Agreement” means a Permitted Investment described in paragraph (g) of the definition of the term “Permitted Investments.”

“Investment Income” means the earnings, profits and accreted value derived from the investment of moneys pursuant to Article VI.

“Issuer” means the County of Contra Costa, a political subdivision of the State of California, and its successors and assigns.

“Issuer Documents” means the Assignment, the Bonds, the Financing Agreement, this Indenture, the Loan Documents to which the Issuer is a party, the Regulatory Agreement and the Tax Certificate.

“Issuer’s Fee” means \$75,000, payable on the Closing Date, plus the Issuer’s annual fee payable by the Borrower under the Regulatory Agreement.

“Letter of Credit” means an irrevocable direct pay letter of credit issued and delivered by a Credit Provider on an Adjustment Date, for the benefit of the Trustee, to provide credit enhancement and liquidity support for the Bonds, any amendment, modification, or restatement of such letter of credit, any replacement letter of credit, any confirming letter or credit and any renewal(s) or extension(s) of any such letter of credit. If an Alternate Credit Facility is then in effect, each reference to the Letter of Credit shall mean such Alternate Credit Facility.

“Letter of Credit Expiration Date” means the expiration date specified in the Letter of Credit, subject to extension in accordance with the Reimbursement Agreement.

“Letter of Representations” means when all the Bonds are Book-Entry Bonds, the Letter of Representations executed by the Issuer and the Trustee and delivered to the Securities

Depository, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

“*LIBOR*” means, that rate per annum which is equal to the quotient of: (i) the rate per annum equal to the offered rate for deposits in U.S. dollars for a one month period, which rate appears on that page of Bloomberg reporting service, or such similar service as determined by the Administrative Agent, that displays British Bankers' Association interest settlement rates for deposits in U.S. Dollars, as of 11:00 A.M. (London, England time) two Business Days prior to (a) the effective date of this Resolution, and (b) thereafter, the first day of each month while the Bonds bear interest at the Bank Rate (the “Rate Determination Date”); provided, that if no such offered rate appears on such page, the rate used for such month will be the per annum rate of interest determined by the Administrative Agent to be the rate at which U.S. dollar deposits for the month, are offered to the Administrative Agent in the London Inter-Bank Market as of 11:00 A.M. (London, England time), on the day which is two Business Days prior to the Rate Determination Date, divided by (ii) a percentage equal to 1.00 minus the maximum reserve percentages (including any emergency, supplemental, special or other marginal reserves) expressed as a decimal (rounded upward to the next 1/100th of 1%) in effect on any day to which the Administrative Agent is subject with respect to any LIBOR loan pursuant to regulations issued by the Board of Governors of the Federal Reserve System with respect to eurocurrency funding (currently referred to as “eurocurrency liabilities” under Regulation D). This percentage will be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“*Loan*” means the loan made by the Issuer to the Borrower on the Escrow Break Date pursuant to the Financing Agreement for the purpose of providing funds to the Borrower to finance the acquisition and construction of the Mortgaged Property.

“*Loan Documents*” means, collectively, the Note, the Guaranty Agreement, the Security Instrument and all other documents, agreements and instruments evidencing, securing or otherwise relating to the Loan, as each such document, agreement or instrument may be amended, supplemented or restated from time to time. Neither the Financing Agreement nor the Regulatory Agreement is a Loan Document and neither document is secured by the Security Instrument.

“*Loan Fund*” means the Loan Fund created by Section 5.01.

“*Mandatory Tender Date*” means any date on which Bonds are required to be tendered pursuant to Section 4.02, including any Adjustment Date, proposed Adjustment Date, Substitution Date or Extension Date on or prior to which the Trustee has not been furnished with an extension of the Letter of Credit or Alternate Credit Facility then in effect or date specified by the Trustee as provided in Section 4.02(b).

“*Margin Rate Factor*” means the product of (a) one minus the Maximum Federal Corporate Tax Rate multiplied by (b) 1.53846. The Margin Rate Factor shall be 1.0 so long as the Maximum Federal Corporate Tax Rate shall be 35% and thereafter shall increase from time to time effective as of the effective date of any decrease in the Maximum Federal Corporate Tax

Rate and shall decrease from time to time effective as of the effective date of any increase in the Maximum Federal Corporate Tax Rate.

“*Maturity Date*” means, with respect to each Series of Bonds, March 15, 2046, or in the event the Bonds of a Series are adjusted to the Fixed Rate Mode and a Sinking Fund Schedule is established, the maturity date of all serial Bonds of such Series, if any.

“*Maximum Federal Corporate Tax Rate*” means the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect from time to time (or, if as a result of a change in the Code the rate of income taxation imposed on corporations shall not be applicable to the Administrative Agent, the maximum statutory rate of federal income taxation which could apply to the Administrative Agent).

“*Maximum Rate*” means 12% per annum; provided, however, that the Maximum Rate may be increased if the Trustee receives (i) the written consent of the Credit Provider and the Borrower to a specified higher Maximum Rate not to exceed the lesser of the maximum rate permitted by law to be paid on the Bonds and the maximum rate chargeable on the Loan, (ii) an opinion of Bond Counsel to the effect that such higher Maximum Rate is permitted by law and will not adversely affect either the validity of the Bonds or the exclusion of the interest payable on the Bonds from gross income for federal income tax purposes and (iii) a new or amended Credit Facility in an amount equal to the sum of (A) the then outstanding principal amount of the Bonds and (B) the new Interest Requirement calculated using the new Maximum Rate.

“*Mode*” means any of the Bank Rate, the Daily Variable Rate, the Weekly Variable Rate, the Reset Rate and the Fixed Rate.

“*Moody’s*” means Moody’s Investors Service, Inc., and its successors and assigns, or if it is dissolved or no longer assigns credit ratings, then any other nationally recognized statistical rating agency, designated by the Credit Provider, as assigns credit ratings.

“*Mortgaged Property*” has the meaning given to that term in the Security Instrument.

“*Net Bond Proceeds*” means the total proceeds derived from the remarketing of the Bonds of a Series on the Closing Date, representing the total purchase price of the Bonds of such Series paid by the initial Purchasers of such Bonds.

“*Net Proceeds*” means the proceeds from insurance or from actual or threatened condemnation or eminent domain action with respect to the Mortgaged Property, less any costs reasonably expended by the Borrower to receive such proceeds.

“*Note*” means the Multifamily Note (together with all addenda thereto) executed by the Borrower on or prior to the Closing Date in favor of the Issuer, as it may be amended, supplemented or restated from time to time or any mortgage note executed in substitution therefor in accordance with the Bond Documents, as such substitute note may be amended, supplemented or restated from time to time.

“*Opinion of Counsel*” means a written opinion of legal counsel, acceptable to the recipient(s) of such opinion. If the opinion is with respect to an interpretation of federal tax laws

or regulations or bankruptcy matters, such legal counsel also must be an attorney or firm of attorneys experienced in such matters.

“*Original Financing Agreement*” means the Financing Agreement, dated as of March 1, 2006 and amended and restated as of July 1, 2008, among the Issuer, The Bank of New York Mellon Trust Company, N.A., as successor trustee, and the Borrower.

“*Original Indenture*” means the Trust Indenture, dated as of March 1, 2006 and amended as of December 1, 2007 and as of May 1, 2008 and amended and restated as of July 1, 2008, between the Issuer and The Bank of New York Mellon Trust Company, N.A., as successor trustee.

“*Outstanding*” means, when used with reference to the Bonds at any date as of which the amount of Outstanding Bonds is to be determined, all Bonds which have been authenticated and delivered under this Indenture except:

- (a) Bonds cancelled or delivered for cancellation at or prior to such date;
- (b) Bonds deemed to be paid in accordance with Article IX; and
- (c) Bonds in lieu of which others have been authenticated under Article II.

In determining whether the owners of a requisite aggregate principal amount of Outstanding Bonds have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions of this Indenture, Bonds which are owned or held by or for the account of the Borrower and Pledged Bonds will be disregarded and deemed not to be Outstanding under this Indenture for the purpose of any such determination unless all Bonds are Pledged Bonds, Bonds owned or held by or for the account of the Borrower or a combination of Pledged Bonds and Bonds owned by or held for the account of the Borrower. In determining whether the Trustee will be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which are registered in the name of or known by the Trustee to be held for the account of the Borrower, including Pledged Bonds, will be disregarded.

“*Permitted Investments*” means, to the extent authorized by law for investment of moneys of the Issuer:

- (a) Government Obligations;
- (b) Direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, any agency or instrumentality of the United States of America (other than the Federal Home Loan Mortgage Corporation) or direct obligations of the World Bank, which obligations are rated in the Highest Rating Category;
- (c) Obligations, in each case rated in the Highest Rating Category, of (i) any state or territory of the United States of America, (ii) any agency, instrumentality, authority or political subdivision of a state or territory or (iii) any public benefit or

municipal corporation the principal of and interest on which are guaranteed by such state or political subdivision;

(d) Any written repurchase agreement entered into with a Qualified Financial Institution whose unsecured short-term obligations are rated in the Highest Rating Category;

(e) Commercial paper rated in the Highest Rating Category;

(f) Interest-bearing negotiable certificates of deposit, interest-bearing time deposits, interest-bearing savings accounts and bankers' acceptances, issued by a Qualified Financial Institution if either (i) the Qualified Financial Institution's unsecured short-term obligations are rated in the Highest Rating Category or (ii) such deposits, accounts or acceptances are fully insured by the Federal Deposit Insurance Corporation;

(g) an agreement held by the Trustee for the investment of moneys at a guaranteed rate with (i) the Credit Provider or (ii) a Qualified Financial Institution whose unsecured long-term obligations are rated in the Highest Rating Category or the Second Highest Rating Category, or whose obligations are unconditionally guaranteed or insured by a Qualified Financial Institution whose unsecured long-term obligations are rated in the Highest Rating Category or Second Highest Rating Category, provided that such agreement is in a form acceptable to the Credit Provider; and provided further that such agreement includes the following restrictions:

(i) the invested funds will be available for withdrawal without penalty or premium, at any time that (A) the Trustee is required to pay moneys from the Fund(s) established under this Indenture to which the agreement is applicable or (B) any Rating Agency indicates that it will lower or actually lowers, suspends or withdraws the rating on the Bonds on account of the rating of the Qualified Financial Institution providing, guaranteeing or insuring, as applicable, the agreement;

(ii) the agreement, and if applicable the guarantee or insurance, is an unconditional and general obligation of the provider and, if applicable, the guarantor or insurer of the agreement, and ranks pari passu with all other unsecured unsubordinated obligations of the provider, and if applicable, the guarantor or insurer of the agreement;

(iii) the Trustee receives an Opinion of Counsel, which may be subject to customary qualifications, that such agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms and, if applicable, an Opinion of Counsel that any guaranty or insurance policy provided by a guarantor or insurer is legal, valid, binding and enforceable upon the guarantor or insurer in accordance with its terms; and

(iv) the agreement provides that if during its term the rating of the Qualified Financial Institution providing, guaranteeing or insuring, as applicable, the agreement, is withdrawn, suspended by any Rating Agency or falls below the

Second Highest Rating Category, the provider must, within 10 days, either: (A) collateralize the agreement (if the agreement is not already collateralized) with Permitted Investments described in paragraph (a) or (b) by depositing collateral with the Trustee or a third party custodian, such collateralization to be effected in a manner and in an amount sufficient to maintain the then current rating of the Bonds, or, if the agreement is already collateralized, increase the collateral with Permitted Investments described in paragraph (a) or (b) by depositing collateral with the Trustee or a third party custodian, so as to maintain the then current rating of the Bonds, (B) at the request of the Trustee or the Credit Provider, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium unless required by law or (C) transfer the agreement, guarantee or insurance, as applicable, to a replacement provider, guarantor or insurer, as applicable, then meeting the requirements of a Qualified Financial Institution and whose unsecured long-term obligations are then rated in the Highest Rating Category or the Second Highest Rating Category. The agreement may provide that the down-graded provider may elect which of the remedies to the down-grade (other than the remedy set out in (B)) to perform.

(h) Subject to the ratings requirements set forth in this definition, shares in any money market mutual fund (including those of the Trustee or any of its affiliates) registered under the Investment Company Act of 1940, as amended, that have been rated “AAAm-G” or “AAAm” by S&P or “Aaa” by Moody’s so long as the portfolio of such money market mutual fund is limited to Government Obligations and agreements to repurchase Government Obligations. If approved in writing by the Credit Provider, a money market mutual fund portfolio may also contain obligations and agreements to repurchase obligations described in paragraphs (b) or (c). If the Bonds are rated by a Rating Agency, the money market mutual fund must be rated “AAAm-G” or “AAAm” by S&P, if S&P is a Rating Agency, or “Aaa” by Moody’s, if Moody’s is a Rating Agency. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the money market mutual fund must be rated “AAAm-G” or “AAAm” by S&P or “Aaa” by Moody’s. If at any time (i) the Bonds are not rated, (ii) both S&P and Moody’s rate a money market mutual fund and (iii) one of those ratings is below the level required by this paragraph, then such money market mutual fund will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency; and

(i) Any other investment authorized by the laws of the State, if such investment is approved in writing by the Credit Provider.

Permitted Investments shall not include any of the following:

(i) Except for any investment described in the next sentence, any investment with a final maturity or any agreement with a term greater than one year from the date of the investment. This exception (i) shall not apply to any obligation that provides for the optional or mandatory tender, at par, by the holder of such obligation at least once within one year of the date of purchase, Government Obligations irrevocably deposited with the Trustee for payment of

Bonds pursuant to Section 9.03, and Permitted Investments listed in paragraphs (g) and (i);

(ii) Except for any obligation described in paragraph (a) or (b), any obligation with a purchase price greater or less than the par value of such obligation;

(iii) Any asset-backed security, including mortgage-backed securities, real estate mortgage investment conduits, collateralized mortgage obligations, credit card receivable asset-backed securities and auto loan asset-backed securities;

(iv) Any interest-only or principal-only stripped security;

(v) Any obligation bearing interest at an inverse floating rate;

(vi) Any investment which may be prepaid or called at a price less than its purchase price prior to stated maturity;

(vii) Any investment the interest rate on which is variable and is established other than by reference to a single index plus a fixed spread, if any, and which interest rate moves proportionately with that index;

(viii) Any investment described in paragraph (d) or (g) with, or guaranteed or insured by, a Qualified Financial Institution described in clause (iv) of the definition of Qualified Financial Institution if such institution does not agree to submit to jurisdiction, venue and service of process in the United States of America in the agreement relating to the investment; and

(ix) any investment to which S&P has added an “r” or “t” highlighter.

“*Person*” means a natural person, estate, trust, corporation, partnership, limited liability company, association, public body or any other organization or entity (whether governmental or private).

“*Pledge Agreement*” means that certain Pledge and Security Agreement executed by the Borrower in favor of a Credit Provider with respect to the Pledged Bonds.

“*Pledged Bond*” means any Bond during the period from and including the date of its purchase by the Trustee on behalf of and as agent for the Borrower with the proceeds of a Draw under a Letter of Credit or Draw under an Alternate Credit Facility, as applicable, to, but excluding, the date on which the amount of the Draw made by a Credit Provider on account of such Pledged Bond is reinstated under the Letter of Credit.

“*Potential Default*” means, as used in any Transaction Document, any event that has occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default as described in that document. Any “Potential Default” as described in any

Transaction Document is not a “Potential Default” in any other Transaction Document unless that other Transaction Document specifically so provides.

“*Preference Claim*” has the meaning given that term in Section 8.08.

“*Principal Amount*” means, with respect to the 2006A Bonds, \$116,000,000, with respect to the 2006A-T Bonds, \$8,500,000, and with respect to the 2008A Bonds, \$10,000,000.

“*Principal Reserve Amount*” means 20% of the aggregate principal amount of the Bonds; provided, while the Bonds bear interest at a Bank Rate, “*Principal Reserve Amount*” means \$0.

“*Principal Reserve Fund*” means the Principal Reserve Fund created by Section 5.01.

“*Principal Reserve Schedule*” means the Schedule of Monthly Sinking Fund Payment Amounts required to be made in accordance with a Reimbursement Agreement, as such schedule may be amended, supplemented or restated from time to time a copy of which amendment or supplement will be delivered to the Trustee.

“*Purchaser*” means each purchaser of the Bonds that is a party to the Guaranty Agreement from time to time.

“*Qualified Financial Institution*” means any of: (i) bank or trust company organized under the laws of any state of the United States of America, (ii) national banking association, (iii) savings bank, a savings and loan association, or an insurance company or association chartered or organized under the laws of any state of the United States of America, (iv) federal branch or agency pursuant to the International Banking Act of 1978 or any successor provisions of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, (v) government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, (vi) securities dealer approved in writing by the Credit Provider the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation and (vii) any other entity which is acceptable to the Credit Provider. With respect to an entity which provides an agreement held by the Trustee for the investment of moneys at a guaranteed rate as set out in paragraph (g) of the definition of the term “Permitted Investments” or an entity which guarantees or insures, as applicable, the agreement, a “Qualified Financial Institution” may also be a corporation or limited liability company organized under the laws of any state of the United States of America.

“*Qualified Institutional Buyer*” means a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933.

“*Rate Determination Date*” means (i) with respect to the Weekly Variable Rate, Wednesday of each week, or if such Wednesday is not a Business Day, the following day or if such day is not a Business Day, then the first Business Day before such Wednesday; provided, however, that upon any adjustment to the Weekly Variable Rate Mode from a Reset Rate, the first Rate Determination Date shall be the Business Day prior to the Adjustment Date, (ii) with respect to the Daily Variable Rate, each Business Day, and (iii) with respect to any Reset Rate

and the Fixed Rate, the date selected by the Remarketing Agent which date must be a Business Day not less than five Business Days prior to the Adjustment Date.

“*Rating Agency*” means any nationally recognized statistical rating agency then maintaining a rating on the Bonds.

“*Rebate Analyst*” means a Person that is (i) qualified and experienced in the calculation of rebate payments under Section 148 of the Code and compliance with the arbitrage rebate regulations promulgated under the Code, (ii) chosen by the Borrower and (iii) engaged for the purpose of determining the amount of required deposits, if any to the Rebate Fund.

“*Rebate Analyst’s Fee*” means the annual continuing fee of the Rebate Analyst, if any, for its rebate calculation services.

“*Rebate Fund*” means the Rebate Fund created by Section 5.01.

“*Record Date*” means, with respect to any Interest Payment Date, (i) if the Bonds bear interest at the Daily Variable Rate or Weekly Variable Rate, the Business Day before the Interest Payment Date (ii) if the Bonds bear interest at a Reset Rate or the Fixed Rate, the first day of the month in which the Interest Payment Date occurs; and (iii) if the Bonds bear interest at a Bank Rate, the last Business Day of the month preceding the applicable Interest Payment Date.

“*Redemption Account*” means the Redemption Account of the Revenue Fund.

“*Redemption Date*” means any date upon which Bonds are to be redeemed pursuant to this Indenture.

“*Redevelopment Agency*” means _____.

“*Regulatory Agreement*” means, collectively, the Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants (Lots 2 and 3) and the Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants (Lot 5) relating to the Mortgaged Property, each dated as of July 1, 2008, among the Issuer, the Contra Costa County Redevelopment Agency, the Trustee and the Borrower, as it may be amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

“*Reimbursement Agreement*” means any reimbursement agreement associated with a Credit Facility.

“*Reimbursement Documents*” has the meaning given to that term in a Reimbursement Agreement.

“*Remarketing Agent*” means any Remarketing Agent designated in accordance with Section 4.03.

“*Remarketing Agent’s Fee*” means the continuing fees of the Remarketing Agent for its remarketing services as provided in the Remarketing Agreement.

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

“*Remarketing Notice Parties*” means the Borrower, the Issuer, the Trustee, the Tender Agent, the Remarketing Agent and the Credit Provider.

“*Reserved Rights*” means those certain rights of the Issuer under the Financing Agreement to indemnification and to payment or reimbursement of fees and expenses of the Issuer, its right to receive notices and to enforce notice and reporting requirements, its right to inspect and audit the books, records and premises of the Borrower and of the Mortgaged Property, its right to collect attorneys’ fees and related expenses, its right to specifically enforce the Borrower’s covenant to comply with applicable federal tax law and State law (including the Act and the rules and regulations of the Issuer, if any), and its right to give or withhold consent to amendments, changes, modifications and alterations to the Financing Agreement relating to the Reserved Rights.

“*Reset Date*” means any date upon which the Bonds of a Series begin to bear interest at a Reset Rate for the Reset Period then beginning.

“*Reset Period*” means each period of 10 years or more selected by the Borrower, or such shorter period as may be selected by the Borrower with the prior written consent of the Credit Provider, during which the Bonds of a Series bear interest at a Reset Rate.

“*Reset Rate*” means the rate or rates of interest borne by the Bonds of a Series as determined in accordance with Section 2.06.

“*Revenue Fund*” means the Revenue Fund created by Section 5.01.

“*Revenues*” means all (i) payments made under a Credit Facility, (ii) Investment Income (excluding Investment Income earned from moneys on deposit in the Principal Reserve Fund, the Rebate Fund, the Fees Account and the Costs of Issuance Fund, but including Investment Income earned on Net Bond Proceeds deposited into the Costs of Issuance Fund and Investment Income on such Investment Income) and (iii) payments made under the Note.

“*S&P*” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and its successors and assigns, or if it is dissolved or no longer assigns credit ratings, then any other nationally recognized statistical rating agency, designated by the Credit Provider, as assigns credit ratings.

“*Second Highest Rating Category*” means, with respect to an Investment, that the Investment is rated by each Rating Agency in the second highest rating category given by that Rating Agency for that general category of security. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the term “Second Highest Rating Category” means, with respect to an Investment, that the Investment is rated by S&P or Moody’s in the second highest rating category given by that rating agency for that general category of security. By way of example, the Second Highest Rating Category for tax-exempt municipal debt established by S&P is “AA” for a term greater than one year, with corresponding ratings by

Moody's of "Aa." If at any time (i) the Bonds are not rated, (ii) both S&P and Moody's rate an Investment and (iii) one of those ratings is below the Second Highest Rating Category, then such Investment will not be deemed to be rated in the Second Highest Rating Category. For example, an Investment rated "AA" by S&P and "A" by Moody's is not rated in the Second Highest Rating Category.

"*Securities Depository*" means, initially, DTC and its successors and assigns, and any replacement securities depository appointed under this Indenture.

"*Security*" means the Trust Estate and the Credit Facility, if any.

"*Security Instrument*" means, together, the First Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, together with all riders and exhibits, securing the Note and the obligations of the Borrower to the Issuer under the Bond Documents, as executed by the Borrower with respect to the Mortgaged Property, and, if applicable, any Second Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, together with all riders and exhibits, securing the obligations of the Borrower to the Credit Provider under the Credit Facility Documents, as executed by the Borrower with respect to the Mortgaged Property, as each may be amended, supplemented or restated from time to time, or any security instrument executed in substitution therefor, as such substitute security instrument may be amended, supplemented or restated from time to time.

"*Series*" means the 2006A Bonds, the 2006A-T Bonds or the 2008A Bonds.

"*SIFMA Index Rate*" means the Securities Industry and Financial Markets Association Municipal Swap Index, announced by Municipal Market Data, a Thomson Financial Services Company, or its successors.

"*Sinking Fund Payment*" means, as of any particular date of calculation, the amount required to be paid by the Issuer on a single future date for the retirement of Outstanding Bonds which mature after such future date, but excluding any amount payable by the Issuer by reason of the maturity of a Bond or by optional redemption at the election of the Issuer.

"*Sinking Fund Payment Date*" means any of the dates on which any of the Bonds matures or is subject to redemption through the application of Sinking Fund Payments as set out in a Sinking Fund Schedule.

"*Sinking Fund Schedule*" means a schedule of principal amounts of Bonds to mature or be subject to redemption through the application of Sinking Fund Payments on the specified dates and/or a schedule of principal amounts of Bonds maturing as serial Bonds.

"*State*" means the State of California.

"*Substitution Date*" means the date upon which an Alternate Credit Facility is to be substituted for the Credit Facility then in effect, which date must be (i) an Interest Payment Date during a Daily Variable Rate Period or Weekly Variable Rate Period or an Adjustment Date which immediately follows a Reset Period and (ii) a date on which the Credit Facility for which

substitution is being made is available to be accessed or drawn upon. An extension of any Extension Date by reason of the extension of a Credit Facility is not a Substitution Date.

“*Tax Certificate*” means, collectively, the Tax Certificate and Agreement, dated the Closing Date, executed and delivered by the Issuer and the Borrower, as amended, supplemented or restated from time to time.

“*Tax Event*” has the meaning given to that term in Section 10.01(c).

“*Tax-Exempt Bonds*” means, collectively, the 2006A Bonds and the 2008A Bonds.

“*Tender Agent*” means the Tender Agent named in Article XI or its successor as Tender Agent under this Indenture named in accordance with such Article.

“*Tender Agent Agreement*” means any Tender Agent Agreement entered into by the Issuer, the Trustee and the Tender Agent in the event that the Trustee does not serve as Tender Agent under this Indenture, as such agreement may be amended, supplemented or restated from time to time.

“*Tender Agent’s Annual Fee*” means the continuing fee of the Tender Agent payable by the Borrower as provided in the Financing Agreement.

“*Tender Date*” means any Mandatory Tender Date or any other date on which Bondholders are permitted under this Indenture to tender their Bonds for purchase.

“*Tendered Bond*” means any Bond which has been tendered for purchase pursuant to Section 4.01 or 4.02.

“*Third Party Fees*” means the Issuer’s Fee, the Rebate Analyst’s Fee, the Remarketing Agent’s Fee, the Tender Agent’s Fee and the Trustee’s Annual Fee. Neither the Fees and Expenses nor the Facility Fee is a Third Party Fee.

“*Transaction Documents*” means the Bond Documents, the Loan Documents and the Credit Facility Documents.

“*Trust Estate*” means the property, interests, rights, money, securities and other amounts pledged and assigned pursuant to this Indenture and the property, rights, money, securities and other amounts pledged and assigned by the Issuer to the Trustee and any Credit Provider pursuant to the Assignment.

“*Trustee*” means The Bank of New York Mellon Trust Company, N.A., a national banking association, duly organized and existing under the laws of the United States of America, or its successors or assigns, or any other corporation or association resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at any time serving as successor trustee under this Indenture.

“*Trustee’s Annual Fee*” means the annual continuing trust administration fee of the Trustee equal to [\$4,000] per annum payable by the Borrower as provided in the Financing Agreement.

“*UCC*” means the Uniform Commercial Code of the State as in effect now or in the future, whether or not such Uniform Commercial Code is applicable to the parties or the transactions.

“*Week*” means any seven-day period during a Daily Variable Rate Period or Weekly Variable Rate Period beginning on Thursday and ending on and including the following Wednesday; except that:

(a) the first Week will begin on the Escrow Break Date and end on and include the second following Wednesday;

(b) the first Week of a Daily Variable Rate Period or Weekly Variable Rate Period immediately following an Adjustment Date will begin on such Adjustment Date and end on and include the following Wednesday;

(c) any Week ending immediately before an Adjustment Date will begin on a Thursday and end on the day before such Adjustment Date;

(d) the final Week will begin on a Thursday and end on the earlier of an Adjustment Date or the Maturity Date; and

(e) the first and last Weeks of a Daily Variable Rate Period or Weekly Variable Rate Period may consist of more (but not more than 13) or less than seven days.

“*Weekly Variable Rate*” means the variable rate of interest per annum for the Bonds of a Series determined from time to time during the Weekly Variable Rate Period in accordance with Section 2.05.

“*Weekly Variable Rate Period*” means the period commencing on an Adjustment Date on which the interest rate on the Bonds of a Series is adjusted from the Bank Rate, the Daily Rate, or a Reset Rate to the Weekly Variable Rate and ending on the day preceding the following Adjustment Date or the Maturity Date.

“*Wrongful Dishonor*” means an uncured failure by the Credit Provider to pay a Draw to the Trustee upon proper presentation of documents which conform to the terms and conditions of the Credit Facility then in effect.

Section 1.02. Rules of Construction. The rules of construction set forth in this Section 1.02 apply to this Indenture.

(a) The singular form of any word includes the plural, and vice versa, unless the context otherwise requires. The use of a pronoun of any gender includes correlative words of the other genders.

(b) All references to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or other subdivisions of this Indenture; and the words “in this Indenture,” “of this Indenture,” “under this Indenture” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision.

(c) Any captions, headings or titles of the several Articles, Sections and other subdivisions, and the table of contents are solely for convenience of reference and do not limit or otherwise affect the meaning, construction or effect of this Indenture or describe the scope or intent of any provision.

(d) All accounting terms not otherwise defined have the meanings assigned to them in accordance with applicable generally accepted accounting principles as in effect from time to time.

(e) Every “request,” “order,” “demand,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent” or similar action under this Indenture by any party must be in writing and signed by a duly authorized representative of such party with a duly authorized signature.

(f) All references in this Indenture to “counsel fees,” “attorneys fees” or the like mean and include fees and disbursements allocable to 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 proceedings.

(g) Whenever the word “includes” or “including” is used, such word means “includes or including by way of example and not limitation.”

ARTICLE II

THE BONDS

Section 2.01. Authorized Amount of Bonds. No Bonds may be issued under this Indenture except as provided in this Article. The total principal amount of Bonds that may be issued and outstanding under this Indenture is expressly limited to the Principal Amount.

Section 2.02. Issuance and Delivery of Bonds. The Bonds are authorized to be issued pursuant to and in accordance with this Indenture, substantially in the form set forth in Exhibit A (Exhibit B if the Bonds of a Series bear interest at a Bank Rate) with such appropriate variations, legends, omissions and insertions as permitted by this Indenture. The Bonds shall (i) be issued in three Series designated “County of Contra Costa Multifamily Housing Revenue Bonds (Avalon Walnut Creek at Contra Costa Centre Project) Series 2006A”, “County of Contra Costa Multifamily Housing Revenue Bonds (Avalon Walnut Creek at Contra Costa Centre Project) Taxable Series 2006A-T” and “County of Contra Costa Multifamily Housing Revenue Bonds (Avalon Walnut Creek at Contra Costa Centre Project) Series 2008A”, respectively (the words “Variable Rate Demand” may be added as needed), (ii) be outstanding on the Closing Date in the applicable Principal Amount, (iii) be dated the date of original issuance thereof, (iv) bear interest from the Closing Date at the rate or rates determined as provided in Sections 2.05, 2.06, 2.07 and

2.08 and independently for each Series, payable on each Interest Payment Date; provided that any Credit Provider Bonds or Pledged Bonds shall bear interest at the Credit Provider Rate; and (v) mature on the Maturity Date, subject to prior redemption as provided in Article III. The Bonds of each Series shall, from the Closing Date until adjusted to another Mode, bear interest at a Bank Rate. The Bonds shall be issued as registered bonds without coupons in Authorized Denominations. The Bonds shall be issued on the Closing Date. The Bonds shall be numbered consecutively within each Series from R-1 upwards. The Bonds shall be delivered on the Closing Date to the Purchasers thereof in exchange for the payment by the Purchasers of the purchase prior therefor, such price being an amount equal to 100% of the Principal Amount thereof.

Section 2.03. Payment of Principal and Interest. The principal of and the interest and any premium on the Bonds are payable in lawful money of the United States of America to the Registered Owners at the close of business on the applicable Record Date. Payment of interest on the Bonds shall be made on each Interest Payment Date by check drawn upon the Trustee and mailed by first class mail on the applicable Interest Payment Date, postage prepaid, to the addresses of the Registered Owners as they appear on the Bond Register or to such other address as may be furnished in writing by any Registered Owner to the Trustee prior to the applicable Record Date. Payment of the principal of any Bond and premium, if any, together with interest (other than interest payable on a regularly scheduled Interest Payment Date) shall be made by check only upon presentation and surrender of the Bond on or after its maturity date or date fixed for purchase, redemption or other payment at the office of the Trustee designated for that purpose. Notwithstanding the foregoing, payment of principal of and interest and any premium on any Bond shall be made by wire transfer to any account within the United States of America designated by a Registered Owner owning \$1,000,000 or more in aggregate principal amount of Bonds if a written request for wire transfer in form and substance satisfactory to the Trustee is delivered to the Trustee by any such Registered Owner not less than five Business Days prior to the applicable payment date. A request for wire transfer that specifies that it is effective with respect to all succeeding payments of principal, interest and any premium will be so effective unless and until rescinded in writing by the Registered Owner at least five Business Days prior to a Record Date. If interest on the Bonds is in default, the Trustee, prior to the payment of interest, shall establish a special record date (“Special Record Date”) for such payment. A Special Record Date may not be more than 15 nor less than 10 days prior to the date of the proposed payment. Payment of defaulted interest shall then be made by check or wire transfer, as permitted above, mailed or remitted to the Registered Owners in whose names the Bonds are registered on the Special Record Date.

Section 2.04. Limited Obligations. The Bonds are special, limited obligations of the Issuer, payable solely from the Security. The Bonds are not a debt of the State or of any other political subdivision of the State, and neither the State nor any other political subdivision of the State will be liable for the payment of the Bonds. The faith and credit of the Issuer, the State or any political subdivision of the State are not pledged to the payment of the principal of or interest on the Bonds. Neither the members of the Board of Supervisors of the Issuer, nor any person executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason thereof.

Section 2.05. Weekly Variable Rate Mode and Daily Variable Rate Mode.

(a) *Weekly Variable Rate Mode.*

(i) *Weekly Variable Rate.* Except while a Series of Bonds bears interest during a Bank Rate Period, a Daily Variable Rate Period, Reset Period or a Fixed Rate Period, the Bonds shall bear interest at the Weekly Variable Rate, determined from time to time pursuant to Section 2.05(a)(ii). During the Weekly Variable Rate Period, interest shall accrue on the basis of a 365- or 366-day year, as applicable, for the actual number of days elapsed.

(ii) *Determination of Weekly Variable Rate.* During each Weekly Variable Rate Period, the Remarketing Agent shall determine the Weekly Variable Rate for each Series for each Week not later than 4:00 p.m. Eastern Time on each Rate Determination Date. The Weekly Variable Rate shall be the minimum rate of interest necessary, in the professional judgment of the Remarketing Agent, taking into consideration prevailing market conditions, to enable the Remarketing Agent to remarket all of the Bonds of a Series on the applicable Rate Determination Date at par plus accrued interest on such Bonds for that Week. Each Weekly Variable Rate so determined shall be effective for the Week for which such rate was determined. The Remarketing Agent shall provide notice of the Weekly Variable Rate for each Series before 5:00 p.m. Eastern Time on the Rate Determination Date by telephone to any Beneficial Owner upon request and to the Credit Provider (so long as the Letter of Credit is in effect) or any Alternate Credit Provider (at such time as an Alternate Credit Facility is in effect), and the Trustee, and not later than the next Business Day to the other Remarketing Notice Parties by Electronic Means. Each Weekly Variable Rate for each Series so determined by the Remarketing Agent will be conclusive and binding upon the Remarketing Notice Parties and the Registered Owners.

(b) *Daily Variable Rate Mode.*

(i) *Daily Variable Rate.* Except while a Series of Bonds bears interest during a Bank Rate Period, a Weekly Rate Period, a Reset Period or a Fixed Rate Period, the Bonds shall bear interest at the applicable Daily Variable Rate for each Series, determined from time to time pursuant to Section 2.05(b)(ii). During the Daily Variable Rate Period, interest shall accrue on the basis of a 365-or 366-day year, as applicable, for the actual number of days elapsed.

(ii) *Determination of Daily Variable Rate.* During each Daily Variable Rate Period, the Remarketing Agent shall determine the Daily Variable Rate for each Series not later than 9:45 a.m. Eastern Time on each Rate Determination Date. The Daily Variable Rate shall be the minimum rate of interest necessary, in the professional judgment of the Remarketing Agent, taking into consideration prevailing market conditions, to enable the Remarketing Agent to remarket all of the Bonds of a Series on the applicable Rate Determination Date at par plus accrued interest on the Bonds for that date. Each Daily Variable Rate for each

Series so determined shall be effective for the day for which such rate was determined. The Daily Variable Rate for each Series for any date which is not a Business Day shall be the latest Daily Variable Rate for such Series determined by the Remarketing Agent.

The Remarketing Agent shall provide notice of the Daily Variable Rate determined on each Rate Determination Date before 10:00 a.m. Eastern Time by telephone to any Beneficial Owner upon request and to the Credit Provider (so long as the Letter of Credit is in effect) or any Alternate Credit Provider (at such time as an Alternate Credit Facility is in effect), and the Trustee by fax or electronic transmission. Each Daily Variable Rate so determined by the Remarketing Agent will be conclusive and binding upon the Remarketing Notice Parties and the Registered Owners.

Section 2.06. Reset Rate Mode.

(a) ***Reset Rate.*** During any Reset Period, a Series of Bonds shall bear interest at the Reset Rate determined pursuant to Section 2.06(b) for such Reset Period. During each Reset Period, interest shall accrue on the basis of a year of 360 days of twelve 30-day months.

(b) ***Determination of Reset Rate.*** The Remarketing Agent shall determine the Reset Rate for each Series not later than 4:00 p.m. Eastern Time on the applicable Rate Determination Date. Each Reset Rate shall be the minimum rate of interest necessary, in the professional judgment of the Remarketing Agent, taking into consideration prevailing market conditions, to enable the Remarketing Agent to remarket all of the Bonds on the applicable Rate Determination Date at par for the applicable Reset Period. The Remarketing Agent will provide notice of each Reset Rate before 5:00 p.m. Eastern Time on the Rate Determination Date by telephone to any Beneficial Owner upon request and to the Trustee and the Credit Provider (so long as the Letter of Credit is in effect) or any Alternate Credit Provider (at such time as an Alternate Credit Facility is in effect), and not later than the next Business Day to the other Remarketing Notice Parties by Electronic Means. Each Reset Rate so determined by the Remarketing Agent will be conclusive and binding upon the Remarketing Notice Parties and the Registered Owners.

Section 2.07. Fixed Rate Mode.

(a) ***Fixed Rate.*** During the Fixed Rate Period, a Series of Bonds shall bear interest at the Fixed Rate determined pursuant to Section 2.07(b). During the Fixed Rate Period, interest shall accrue on the basis of a year of 360 days of twelve 30-day months.

(b) ***Determination of Fixed Rate.*** The Remarketing Agent shall determine the Fixed Rate for each Series not later than 4:00 p.m. Eastern Time on the applicable Rate Determination Date. The Fixed Rate shall be the minimum rate of interest necessary, in the professional judgment of the Remarketing Agent, taking into consideration prevailing market conditions, to enable the Remarketing Agent to remarket all of the Bonds on the Rate Determination Date at par for the Fixed Rate Period. The

Remarketing Agent shall provide notice of each Fixed Rate before 5:00 p.m. Eastern Time on the Rate Determination Date by telephone to the Trustee and the Credit Provider (so long as the Letter of Credit is in effect) or any Alternate Credit Provider (at such time as an Alternate Credit Facility is in effect), and not later than the next Business Day to the other Remarketing Notice Parties by Electronic Means. Each Fixed Rate so determined by the Remarketing Agent will be conclusive and binding upon the Remarketing Notice Parties and the Registered Owners.

Section 2.08. Bank Rate Mode.

(a) From the Closing Date until any Adjustment Date and following any Adjustment Date on which the interest rate on Bonds of a Series is adjusted to a Bank Rate, the Bonds of each Series shall bear interest at a Bank Rate, as hereinafter described.

(b) The Bank Rate will be determined by the Administrative Agent on (i) the Closing Date for the period beginning on the Closing Date and ending on the last day of the month in which the Closing Date occurs, and (ii) on the first Business Day of each calendar month thereafter for the period beginning on such first day and ending on the last day of such calendar month, in each case, as follows:

During the Initial Bank Rate Period,

(i) the interest rate on the 2006A Bonds and the 2008A Bonds shall be established at a rate equal to (x) 75% of the sum of LIBOR plus the Applicable Margin, multiplied by (y) the Margin Rate Factor; and

(ii) the interest rate on the 2006A-T Bonds shall be established at a rate equal to LIBOR plus the Applicable Margin.

During any Bank Rate Period other than the Initial Bank Rate Period, the interest rate on the Bonds of the applicable Series shall be established in the manner established as provided in Section 2.09(g).

The Bank Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days.

(c) If for any reason the Administrative Agent is not able to determine LIBOR, or LIBOR does not accurately reflect the Administrative Agent's or any Purchaser's cost of funds, or it becomes illegal for the Administrative Agent or an Purchaser to maintain the Bonds based on LIBOR, then upon written notice from the Administrative Agent to the Borrower and the Trustee, and until such time as the Administrative Agent gives written notice to the Borrower and the Trustee that such condition or conditions no longer exist, the Bank Rate for the 2006A Bonds and the 2008A Bonds shall be established at a rate equal to (x) 75% of the sum of the Base Rate plus the Applicable Margin, multiplied by (y) the Margin Rate Factor and the Bank Rate for the 2006A-T Bonds shall be established are a rate equal to the Base Rate plus the Applicable Margin. For as long as the Administrative Agent or any Purchaser is a party to the AvalonBay Credit Agreement, the Administrative Agent or such Purchaser shall

not exercise its right under this Section 2.08(c) on the basis of LIBOR not accurately reflecting cost of funds of the Administrative Agent or such Purchaser unless such right is also exercised by the Administrative Agent or such Purchaser under the AvalonBay Credit Agreement.

(d) The determination of the Administrative Agent of the Bank Rate (absent manifest error) shall be conclusive and binding upon the Issuer, the Borrower, the Trustee and the Owner of the Bonds. If for any reason the Administrative Agent shall fail to establish the Bank Rate, the Bonds with applicable Series shall bear interest at the Bank Rate last in effect.

Section 2.09. Mode Adjustments.

(a) ***Adjustment to Reset Rate From Daily Variable Rate, Weekly Variable Rate or From Prior Reset Rate.*** At the option of the Borrower, the interest rate on all Outstanding Bonds of a Series may be adjusted on any Interest Payment Date from the Weekly Variable Rate or Daily Variable Rate to a Reset Rate for a Reset Period of 10 years or more selected by the Borrower, or such shorter period as may be selected by the Borrower, with the prior written consent of the Credit Provider. Any Reset Period must end immediately before an Interest Payment Date. In addition, the interest rate on all Outstanding Bonds of a Series may be adjusted from a prior Reset Rate to a new Reset Rate on the Adjustment Date immediately following the Reset Period then in effect. Each such adjustment is subject to satisfaction of the following conditions precedent:

(i) not less than 45 days before the proposed Reset Date, the Borrower delivers to the Trustee (A) written notice to the other Remarketing Notice Parties of the proposed adjustment and designating the proposed Reset Date and the duration of the Reset Period to commence on such Reset Date and (B) the written preliminary consent of the Credit Provider to such adjustment which consent may be subject to the satisfaction of conditions specified by the Credit Provider prior to such adjustment;

(ii) not less than 30 days before the proposed Reset Date, the Trustee gives written notice to the Bondholders by first class mail, postage prepaid, stating: (A) the proposed Reset Date; (B) that from and after the proposed Reset Date, if the conditions specified in this Indenture to such adjustment are satisfied, the Bonds will bear interest at a Reset Rate (which rate need not be stated); and (C) that all Bonds of such Series are subject to mandatory tender and purchase on the proposed Reset Date, whether or not such conditions are satisfied, and no holder of any Bond shall have the right to elect to retain such Bond;

(iii) on or prior to the proposed Reset Date, the Borrower delivers (A) to the Trustee, written notice from the Credit Provider consenting to the adjustment to the Reset Rate, together with confirmation that the Credit Facility will be sufficient in amount and term to satisfy the requirements of Section 2.10 and (B) to the other Remarketing Notice Parties, an opinion of Bond Counsel to the effect that the adjustment of the interest rate on the Bonds to the Reset Rate is

authorized and permitted by this Indenture and the laws of the State (including the Act), and will not adversely affect the exclusion from gross income for federal income tax purposes of the interest payable on the Tax-Exempt Bonds; and

(iv) on or prior to the proposed Reset Date, the Remarketing Agent has given notice pursuant to Section 4.03(d) to the effect that all Outstanding Bonds of such Series have been remarketed for the Reset Period at the Reset Rate determined pursuant to Section 2.06(b).

(b) ***Adjustment to Weekly Variable Rate From Daily Variable Rate, and to Daily Variable Rate From Weekly Variable Rate.*** At the option of the Borrower, the interest rate on all Outstanding Bonds of a Series may be adjusted on any Interest Payment Date from the Weekly Variable Rate to the Daily Variable Rate or from the Daily Variable Rate to the Weekly Variable Rate with the prior written consent of the Credit Provider. Each such adjustment is subject to satisfaction of the following conditions precedent:

(i) not less than 45 days before the proposed Adjustment Date, the Borrower delivers to the Trustee (A) written notice to the other Remarketing Notice Parties electing the proposed adjustment and (B) the written preliminary consent of the Credit Provider to such adjustment which consent may be subject to the satisfaction of conditions specified by the Credit Provider, prior to such adjustment;

(ii) not less than 30 days before the proposed Adjustment Date, the Trustee gives written notice to the Bondholders by first class mail, postage prepaid, stating: (A) the proposed Adjustment Date; (B) that from and after the proposed Adjustment Date, if the conditions specified in this Indenture to such adjustment are satisfied, the Bonds will bear interest at the Daily Variable Rate or the Weekly Variable Rate as the case may be (which rate need not be stated); and (C) that all Bonds of such Series are subject to mandatory tender and purchase on the proposed Adjustment Date, and that no holder of any Bond will have the right to elect to retain such Bond;

(iii) on or prior to the proposed Adjustment Date, the Borrower delivers (A) to the Trustee, written notice from the Credit Provider consenting to the adjustment to the Daily Variable Rate or the Weekly Variable Rate, together with confirmation that the Credit Facility will be sufficient in amount and term to satisfy the requirements of Section 2.10 and (B) to the other Remarketing Notice Parties, an opinion of Bond Counsel to the effect that the adjustment of the interest rate on the Bonds to the Daily Variable Rate or the Weekly Variable Rate is authorized and permitted by this Indenture and the laws of the State, and will not adversely affect the exclusion from gross income for federal income tax purposes of the interest payable on the Tax-Exempt Bonds; and

(iv) on or prior to the proposed Adjustment Date, the Remarketing Agent has given notice pursuant to Section 4.03(d) to the effect that all

Outstanding Bonds of such Series have been remarketed for the first Week of the Weekly Variable Rate Period at the applicable Weekly Variable Rate determined pursuant to Section 2.05(a)(ii), or for the first Daily Variable Rate Period at the applicable Daily Variable Rate determined pursuant to Section 2.05(b)(ii).

(c) ***Adjustment From Reset Rate to Weekly Variable Rate or Daily Variable Rate.*** At the option of the Borrower, the interest rate on all Outstanding Bonds of a Series may be adjusted from a Reset Rate to the Daily Variable Rate or the Weekly Variable Rate on the day following the last day of a Reset Period with the prior written consent of the Credit Provider. Each such adjustment is subject to the satisfaction of the following conditions precedent:

(i) not less than 45 days before the proposed Adjustment Date, the Borrower delivers to the Trustee (A) written notice to the other Remarketing Notice Parties electing the proposed adjustment and (B) the written preliminary consent of the Credit Provider to such adjustment which consent may be subject to the satisfaction of conditions specified by the Credit Provider, prior to such adjustment;

(ii) not less than 30 days before the proposed Adjustment Date, the Trustee gives written notice to the Bondholders by first class mail, postage prepaid, stating: (A) the proposed Adjustment Date; (B) that from and after the proposed Adjustment Date, if the conditions specified in this Indenture to such adjustment are satisfied, the Bonds of such Series will bear interest at the Daily Variable Rate or the Weekly Variable Rate as the case may be (which rate need not be stated); and (C) that all Bonds of such Series are subject to mandatory tender and purchase on the proposed Adjustment Date, and that no holder of any Bond will have the right to elect to retain such Bond;

(iii) on or prior to the proposed Adjustment Date, the Borrower delivers (A) to the Trustee, written notice from the Credit Provider consenting to the adjustment to the Daily Variable Rate or the Weekly Variable Rate, together with confirmation that the Credit Facility will be sufficient in amount and term to satisfy the requirements of Section 2.10 and (B) to the other Remarketing Notice Parties, an opinion of Bond Counsel to the effect that the adjustment of the interest rate on the Bonds to the Daily Variable Rate or the Weekly Variable Rate is authorized and permitted by this Indenture and the laws of the State, and will not adversely affect the exclusion from gross income for federal income tax purposes of the interest payable on the Tax-Exempt Bonds; and

(iv) on or prior to the proposed Adjustment Date, the Remarketing Agent has given notice pursuant to Section 4.03(d) to the effect that all Outstanding Bonds have been remarketed for the first Week of the Weekly Variable Rate Period at the applicable Weekly Variable Rate determined pursuant to Section 2.05(a)(ii) or for the first Daily Variable Rate Period at the applicable Daily Variable Rate determined pursuant to Section 2.05(b)(ii).

(d) ***Adjustment to Reset Rate From Bank Rate.*** At the option of the Borrower, the interest rate on all Outstanding Bonds of a Series may be adjusted on any Business Day from the Bank Rate to a Reset Rate for a Reset Period selected by the Borrower. Any Reset Period must end immediately before an Interest Payment Date. Each such adjustment is subject to satisfaction of the following conditions precedent:

(i) not less than 45 days before the proposed Reset Date, the Borrower delivers to the Trustee and the Issuer written notice of the proposed adjustment and designating the proposed Reset Date and the duration of the Reset Period to commence on such Reset Date.

(ii) not less than 30 days before the proposed Reset Date, the Trustee gives written notice to the Bondholders by first class mail, postage prepaid, stating: (A) the proposed Reset Date; (B) that from and after the proposed Reset Date, if the conditions specified in this Indenture to such adjustment are satisfied, the Bonds will bear interest at a Reset Rate (which rate need not be stated); and (C) that all Bonds of such Series are subject to mandatory tender and purchase on the proposed Reset Date, whether or not such conditions are satisfied, and no holder of any Bond shall have the right to elect to retain such Bond;

(iii) on or prior to the proposed Reset Date, the Borrower delivers (A) to the Trustee, a Credit Facility sufficient in amount and term to satisfy the requirements of Section 2.10 and (B) to the Issuer and the Trustee, an opinion of Bond Counsel to the effect that the adjustment of the interest rate on the Bonds to the Reset Rate is authorized and permitted by this Indenture and the laws of the State (including the Act), and will not adversely affect the exclusion from gross income for federal income tax purposes of the interest payable on the Tax-Exempt Bonds; and

(iv) on or prior to the proposed Reset Date, the Remarketing Agent has given notice pursuant to Section 4.03(d) to the effect that all Outstanding Bonds of such Series have been remarketed for the Reset Period at the Reset Rate determined pursuant to Section 2.06(b).

(e) ***Adjustment From Bank Rate to Weekly Variable Rate or Daily Variable Rate.*** At the option of the Borrower, the interest rate on all Outstanding Bonds of a Series may be adjusted from a Bank Rate to the Daily Variable Rate or the Weekly Variable Rate on any Business Day. Each such adjustment is subject to the satisfaction of the following conditions precedent:

(i) not less than 45 days before the proposed Adjustment Date, the Borrower delivers to the Trustee and the Issuer written notice electing the proposed adjustment;

(ii) not less than 30 days before the proposed Adjustment Date, the Trustee gives written notice to the Bondholders by first class mail, postage prepaid, stating: (A) the proposed Adjustment Date; (B) that from and after the

proposed Adjustment Date, if the conditions specified in this Indenture to such adjustment are satisfied, the Bonds of such Series will bear interest at the Daily Variable Rate or the Weekly Variable Rate as the case may be (which rate need not be stated); and (C) that all Bonds of such Series are subject to mandatory tender and purchase on the proposed Adjustment Date, and that no holder of any Bond will have the right to elect to retain such Bond;

(iii) on or prior to the proposed Adjustment Date, the Borrower delivers (A) to the Trustee and the Issuer a Credit Facility sufficient in amount and term to satisfy the requirements of Section 2.10 and (B) to the Issuer and the Trustee, an opinion of Bond Counsel to the effect that the adjustment of the interest rate on the Bonds to the Daily Variable Rate or the Weekly Variable Rate is authorized and permitted by this Indenture and the laws of the State, and will not adversely affect the exclusion from gross income for federal income tax purposes of the interest payable on the Tax-Exempt Bonds; and

(iv) on or prior to the proposed Adjustment Date, the Remarketing Agent has given notice pursuant to Section 4.03(d) to the effect that all Outstanding Bonds have been remarketed for the first Week of the Weekly Variable Rate Period at the applicable Weekly Variable Rate determined pursuant to Section 2.05(a)(ii) or for the first Daily Variable Rate Period at the applicable Daily Variable Rate determined pursuant to Section 2.05(b)(ii).

(f) ***Adjustment to Bank Rate From Daily Variable Rate, Weekly Variable Rate or Reset Rate.*** At the option of the Borrower, and with the prior written consent of the Credit Provider and, unless the Bonds of such Series may be transferred only to qualified institutional buyers (as defined in Rule 144A promulgated under the Securities Act of 1933) in denominations of not less than \$500,000 with an investor letter in form and substance reasonably satisfactory to the Issuer, with the prior written consent of the Issuer, the interest rate on all Outstanding Bonds of a Series may be adjusted to the Bank Rate (i) from the Weekly Variable Rate or Daily Variable Rate on any Interest Payment Date designated by the Borrower or (ii) from a Reset Rate (A) on the day following the last day of any Reset Period or (B) on any Interest Payment Date during a Reset Period on which the Bonds are subject to redemption pursuant to Section 3.02(a) at par without any premium. Such adjustment is subject to the satisfaction of the following conditions precedent:

(i) not less than 45 days before the proposed Bank Rate Adjustment Date, the Borrower delivers to the Trustee written notice to the other Remarketing Notice Parties designating the proposed Bank Rate Adjustment Date;

(ii) not less than 30 days before the proposed Bank Rate Adjustment Date, the Trustee gives written notice to the Bondholders by first class mail, postage prepaid, stating the following: (A) the proposed Bank Rate Adjustment Date; (B) that from and after the proposed Bank Rate Adjustment Date, if the conditions specified in this Indenture to such adjustment are satisfied, the Bonds will bear interest at the Bank Rate; and (C) that all Bonds of such Series are

subject to mandatory tender and purchase on the proposed Bank Rate Adjustment Date, whether or not such conditions are satisfied and no holder of any Bond(s) will have the right to elect to retain its Bonds; and

(iii) on or prior to the proposed Bank Rate Adjustment Date, the Borrower delivers to the Trustee and the Issuer an opinion of Bond Counsel to the effect that the adjustment of the interest rate on the Bonds to the Bank Rate is authorized and permitted by this Indenture and the laws of the State (including the Act), and will not adversely affect the exclusion from gross income for federal income tax purposes of the interest payable on the Tax-Exempt Bonds;

(g) ***Establishment of a New Bank Rate.*** On the day following the last day of any Bank Rate Period, at the option of the Borrower, and with the prior written consent of the Administrative Agent, the interest rate on all outstanding Bonds of the applicable Series may bear interest at a new Bank Rate for a new Bank Rate Period, upon delivery by the Borrower to the Trustee and the Issuer on or prior to the commencement of the Bank Rate Period of the following:

(i) a written agreement executed by the Borrower and the Administrative Agency specifying (A) the manner in which the Bank Rate will be determined and (B) the last day of the Bank Rate Period; and

(ii) an opinion of Bond Counsel to the effect that the adjustment of the interest rate on the Bonds to the new Bank Rate for the new Bank Rate Period is authorized and permitted by this Indenture and the laws of the State (including the Act), and will not adversely affect the exclusion from gross income for federal income tax purposes of the interest payable on the Tax-Exempt Bonds.

(h) ***Adjustment to Fixed Rate.*** At the option of the Borrower, and with the prior written consent of the Credit Provider, if any, and, unless (i) a Credit Facility providing for credit support for the Bonds of such Series will be in effect, (ii) the Bonds of such Series are rated at least “A” by Moody’s or S&P, (iii) the Bonds of such Series may be transferred only to Qualified Institutional Buyers in denominations of not less than \$500,000 with an investor letter in form and substance reasonably satisfactory to the Issuer or (iv) with the prior written consent of the Issuer, the interest rate on all Outstanding Bonds of a Series may be adjusted to the Fixed Rate (i) from the Weekly Variable Rate or Daily Variable Rate on any Interest Payment Date designated by the Borrower, (ii) from a Reset Rate (A) on the day following the last day of any Reset Period or (B) on any Interest Payment Date during a Reset Period on which the Bonds are subject to redemption pursuant to Section 3.02(a) at par without any premium or (iii) from a Bank Rate, on any Business Day designated by the Borrower. Such adjustment is subject to the satisfaction of the following conditions precedent:

(i) not less than 45 days before the proposed Fixed Rate Adjustment Date, the Borrower delivers to the Trustee (A) written notice to the other Remarketing Notice Parties designating the proposed Fixed Rate Adjustment Date and (B) the written preliminary consent of the Credit Provider to such adjustment

which consent may be subject to the satisfaction of conditions prior to such adjustment;

(ii) not less than 30 days before the proposed Fixed Rate Adjustment Date, the Trustee gives written notice to the Bondholders by first class mail, postage prepaid, stating the following: (A) the proposed Fixed Rate Adjustment Date; (B) that from and after the proposed Fixed Rate Adjustment Date, if the conditions specified in this Indenture to such adjustment are satisfied, the Bonds will bear interest at the Fixed Rate (which rate need not be stated); and (C) that all Bonds of such Series are subject to mandatory tender and purchase on the proposed Fixed Rate Adjustment Date, whether or not such conditions are satisfied and no holder of any Bond(s) will have the right to elect to retain its Bonds;

(iii) on or prior to the proposed Fixed Rate Adjustment Date, the Borrower delivers (A) to the Trustee, either (1) written notice from the Credit Provider consenting to the adjustment to the Fixed Rate, together with confirmation that the Credit Facility will be sufficient in amount and term to satisfy the requirements of Section 2.10 or (2) a written waiver from the Issuer of the requirement for a Credit Facility during the Fixed Rate Period so long as the Credit Facility then in effect remains in effect for the mandatory tender of the Bonds on the proposed Fixed Rate Adjustment Date (which waiver will acknowledge that the Rating Agency has been notified not less than 10 days prior to the Fixed Rate Adjustment Date that the Credit Facility will be terminated on the Fixed Rate Adjustment Date); and (B) to the other Remarketing Notice Parties, an opinion of Bond Counsel to the effect that the adjustment of the interest rate on the Bonds to the Fixed Rate is authorized and permitted by this Indenture and the laws of the State (including the Act), and will not adversely affect the exclusion from gross income for federal income tax purposes of the interest payable on the Tax-Exempt Bonds;

(iv) on or prior to the proposed Fixed Rate Adjustment Date, the Remarketing Agent has given notice pursuant to Section 4.03(d) to the effect that all Outstanding Bonds have been remarketed for the Fixed Rate Period at the Fixed Rate determined pursuant to Section 2.07(b); and

(v) on or prior to the proposed Fixed Rate Adjustment Date (A) the Issuer, at the written direction of the Borrower and with the prior written consent of the Credit Provider, establishes a Sinking Fund Schedule, and provide the Trustee a copy of such schedule (B) the Issuer, the Trustee and the Credit Provider receive an opinion of Bond Counsel to the effect that establishing a Sinking Fund Schedule will not adversely affect the exclusion from gross income for federal income tax purposes of the interest payable on the Tax-Exempt Bonds and (C) the Note is amended, with the prior written consent of the Credit Provider, to provide for principal amortization of the Loan consistent with the Sinking Fund Schedule.

The Trustee shall provide a copy of the Sinking Fund Schedule, Opinion of Bond Counsel and Note amendment to the Credit Provider on or before the proposed Adjustment Date.

Section 2.10. Credit Facility Requirement. So long as a Series of Bonds bears interest at the Weekly Variable Rate, Daily Variable Rate or at a Reset Rate, one or more Credit Facilities providing credit support for the Bonds of such Series and liquidity support for the Bonds of such Series must be in effect. If the Bonds of a Series bear interest at the Fixed Rate, one or more Credit Facilities providing credit support for the Bonds must be in effect unless the Issuer has expressly waived such requirement in writing. When delivered, each Credit Facility shall satisfy the following requirements:

(a) the Credit Facility shall be in an amount equal to the aggregate principal amount of the Bonds of such Series Outstanding from time to time plus the Interest Requirement;

(b) the Credit Facility shall provide for payment in immediately available funds to the Trustee, upon receipt of the Trustee's request for such payment with respect to any Interest Payment Date, purchase date (if applicable) or mandatory redemption date pursuant to the Indenture;

(c) if the Credit Facility is provided to secure a Series of Bonds during a Reset Period, the Credit Facility shall provide an expiration date no earlier than the earliest of (i) the day following the Adjustment Date immediately succeeding the Reset Period; (ii) 10 days after the Trustee receives notice from the Credit Provider of an Event of Default under the Reimbursement Agreement and a direction to redeem all Outstanding Bonds of such Series; (iii) the date on which all Bonds of such Series are paid in full and this Indenture is discharged in accordance with its terms; and (iv) the date on which the Bonds of such Series become secured by an Alternate Credit Facility in accordance with the terms of the Indenture and the Credit Facility;

(d) unless waived by the Issuer in its sole discretion, the Credit Facility shall result in such Series of Bonds receiving a short-term rating in the highest rating category of each Rating Agency or a long-term rating in one of the three highest rating categories of each Rating Agency, or both, as applicable for the Mode then in effect;

(e) if the Credit Facility is an Alternate Credit Facility, the Alternate Credit Facility satisfies the requirements of Section 8.04; and

(f) the Trustee has received on or prior to the effective date of the Credit Facility (i) an Opinion of Counsel to the Credit Provider issuing the Credit Facility, in form and substance satisfactory to the Issuer and the Trustee, relating to the due authorization and issuance of the Credit Facility and its enforceability and (ii) with respect to an Alternate Credit Facility, an opinion of Bond Counsel to the effect that the Alternate Credit Facility will not adversely affect the exclusion from gross income, for federal income tax purposes, of the interest payable on the Tax-Exempt Bonds.

Section 2.11. Certain General Provisions Concerning Modes and Interest Rates.

(a) *Failure To Satisfy Conditions Precedent to Mode Change.* If the conditions precedent to a change in Mode set forth in Sections 2.09 and 2.10 have not been satisfied, then the following will apply:

(i) The new Mode shall not take effect;

(ii) The applicable Bonds shall be subject to mandatory tender on the proposed Adjustment Date and the holders of the Bonds will not have the right to elect to retain their Bonds;

(iii) If the Mode in effect immediately prior to the proposed Adjustment Date is the Bank Rate, the Weekly Variable Rate or the Daily Variable Rate, the interest rate on the applicable Bonds shall continue at the Bank Rate, the Weekly Variable Rate or the Daily Variable Rate, as the case may be, from and after the proposed Adjustment Date, without any further action by any party;

(iv) If the Mode in effect immediately prior to the proposed Adjustment Date is a Reset Rate, the interest rate on the applicable Bonds shall be adjusted on the proposed Adjustment Date to the Weekly Variable Rate or Daily Variable Rate if, with respect to a change in Mode of a Series of Tax-Exempt Bonds, the Trustee and the Credit Provider receive an opinion of Bond Counsel to the effect that the change to a Weekly Variable Rate or Daily Variable Rate will not adversely affect the exclusion from gross income for federal income tax purposes of the interest payable on such Tax-Exempt Bonds. If such an opinion is not delivered, the interest rate on such Tax-Exempt Bonds shall be adjusted on the proposed Adjustment Date to a new Reset Rate for the shortest Reset Period ending on an Interest Payment Date which would enable the Remarketing Agent to remarket such Tax-Exempt Bonds on the proposed Adjustment Date at par with such Tax-Exempt Bonds bearing interest (on a weighted average basis) at the lowest possible rate, but in no event greater than the Reset Rate in effect for the Reset Period immediately prior to the proposed Adjustment Date or such higher rate to which the Credit Provider may consent from time to time without any further action by any party other than the selection of the Reset Period and the remarketing of such Tax-Exempt Bonds so long as the Trustee and the Credit Provider receive an opinion of Bond Counsel to the effect that the change to such Reset Period will not adversely affect the exclusion of the interest on such Tax-Exempt Bonds from gross income for federal income tax purposes. If such opinion is not delivered, such Tax-Exempt Bonds shall remain at the Reset Rate in effect for the immediately prior Reset Period, with a Reset Period equal to the Reset Period previously in effect without any further action by any party other than the remarketing of such Tax-Exempt Bonds; and

(v) The Remarketing Agent will remarket the applicable Bonds on the Adjustment Date at the applicable interest rate.

(b) ***Failure by Remarketing Agent To Determine Weekly Variable Rate or Daily Variable Rate.*** If the Remarketing Agent fails or refuses to determine the Weekly Variable Rate or Daily Variable Rate applicable to a Series of Bonds for any Week, the interest rate to be borne by a Series of Bonds during such Week shall be (i) with respect to the 2006A Bonds and the 2008A Bonds, the latest SIFMA Index Rate published on or before the Rate Determination Date or (ii) with respect the 2006A-T Bonds, the current LIBOR, or, in the event the SIFMA Index Rate or LIBOR is no longer published, the last Weekly Variable Rate or Daily Variable Rate for such Series of Bonds determined by the Remarketing Agent.

(c) ***Maximum Interest Rate.*** Notwithstanding any other provision of this Indenture, the interest rate on the Bonds (other than Bonds bearing interest at a Bank Rate) may not exceed the Maximum Rate.

(d) ***Alternate Credit Facility.*** Notwithstanding anything to the contrary in this Indenture, the consent of the Credit Provider to a change in Mode shall not be required if (i) an Alternate Credit Facility satisfying the requirements of Section 2.10 will be in effect on the Adjustment Date and (ii) the Credit Facility then in effect will remain available for mandatory tenders of Bonds on the Adjustment Date. Each opinion of Bond Counsel relating to a change in Mode required to be delivered to the Credit Provider must also be delivered to the Alternate Credit Provider.

Section 2.12. Temporary Bonds. If definitive Bonds are not ready for delivery on the Escrow Break Date, the Issuer shall execute, and at the request of the Issuer, the Trustee shall authenticate and deliver, one or more temporary typewritten, printed or lithographed Bonds, in any Authorized Denomination, in fully registered form, and in substantially the form provided for definitive Bonds with appropriate omissions, insertions and variations. The Issuer shall cause definitive Bonds to be prepared and to be executed and delivered to the Trustee. Upon presentation to it of any temporary Bond, the Trustee shall cancel the same and authenticate and deliver in exchange therefor, without charge to the owner of such Bond, a definitive Bond or Bonds of an equal aggregate principal amount of Authorized Denominations, of the same maturity and series, and bearing interest at the same rate as the temporary Bond surrendered. Until so exchanged, the temporary Bonds will in all respects be entitled to the same benefit and security of this Indenture as the definitive Bonds.

Section 2.13. Execution. The Bonds shall be signed by the manual or facsimile signature of an Authorized Representative and attested by the manual or facsimile signature of an Authorized Attesting Officer. The foregoing officers are hereby authorized and directed to sign the Bonds in accordance with this section. Any facsimile signatures shall have the same force and effect as if the person had manually signed and attested the Bonds. In case any officer whose signature or a facsimile of whose signature appears on any Bonds ceases to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes as if such officer had remained in office until delivery.

Section 2.14. Authentication. Only such Bonds as have endorsed on them a certificate of authentication substantially in the form set forth in Exhibit A (Exhibit B if the Bonds of a Series, bear interest at a Bank Rate) to this Indenture duly executed by the Trustee shall be

entitled to any right or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication has been manually executed by the Trustee. Such executed certificate upon any Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized representative of the Trustee, but it shall not be necessary that the same person sign the certificates of authentication on all of the Bonds.

Upon conversion to or from the Bank Rate Period, the Issuer shall execute at the written request and sole expense of the Borrower and the Trustee shall authenticate and deliver new Bonds of like dates and denominations and in the form attached hereto as "Exhibit A" when converting from the Bank Rate Period, and "Exhibit B" when converting to the Bank Rate Period.

Section 2.15. Mutilated, Lost, Stolen or Destroyed Bonds. If any Bond is mutilated, lost, stolen or destroyed, the Issuer shall execute and the Trustee shall authenticate and deliver a new Bond of the same maturity, interest rate, principal amount, Series and tenor in lieu of and in substitution for the mutilated, lost, stolen or destroyed Bond, provided, however, that in the case of any mutilated Bond, the mutilated Bond must first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there must be first furnished to the Trustee evidence satisfactory to it of the ownership of the Bond, and of the loss, theft or destruction, together with indemnity satisfactory to the Trustee and the Issuer and compliance with such other reasonable requirements as the Trustee and the Issuer may prescribe. If any such Bond will mature within the ensuing 60 days, or if such Bond has been called for redemption or a redemption date pertaining to such Bond has passed, instead of replacing the Bond, the Trustee may, upon receipt of such indemnity, pay the Bond on such maturity date or redemption date. The Trustee shall cancel any mutilated Bond surrendered to it. In connection with any such substitution or payment, the Issuer and the Trustee may charge the holder of such Bond their reasonable fees and expenses, including attorneys' fees and expenses.

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

Section 2.16. Securities Depository Provisions.

(a) **Registration in the Book-Entry System.** All Bonds, other than Bonds bearing interest at a Bank Rate, shall be Book-Entry Bonds. All Book-Entry Bonds shall be initially in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"). The Issuer and the Trustee acknowledge that they have executed and delivered a Letter of Representations with DTC. All payments of principal of, redemption premium, if any, and interest on the Book-Entry Bonds and all notices with respect thereto, including notices of full or partial redemption, shall be made and given at the times and in the manner set out in the Letter of Representations. This Indenture shall

govern in the event of any inconsistency between this Indenture and the Letter of Representations. The Letter of Representations may be amended without Bondholder consent.

(b) ***Exculpation.*** With respect to Book-Entry Bonds, neither the Issuer, the Trustee, the Credit Provider, any Alternate Credit Provider nor the Borrower will have any responsibility or obligation to any broker-dealer, bank or other financial institution for which DTC holds Bonds from time to time as securities depository (“DTC Participant”) or to any person on behalf of whom such a DTC Participant directly or indirectly holds an interest in the Bonds (“Indirect Participant”). Without limiting the immediately preceding sentence, the Issuer, the Trustee, the Credit Provider, any Alternate Credit Provider and the Borrower will have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any Indirect Participant or any other person, other than DTC, as Bondholder, of any notice with respect to the Bonds, including any notice of redemption, (iii) the payment to any DTC Participant or Indirect Participant or any other Person, other than DTC, as Bondholder, of any amount with respect to principal of, premium, if any, or interest on, the Bonds, (iv) any consent given by DTC or (v) selection of Bonds for redemption. The Issuer, the Borrower, the Credit Provider, any Alternate Credit Provider and the Trustee shall treat DTC or any successor securities depository as, and deem DTC or any successor securities depository to be, the absolute owner of the Bonds for all purposes whatsoever and neither the Issuer, the Borrower nor the Trustee shall have any responsibility or obligation to any Beneficial Owner of any Book-Entry Bond. While in the DTC system, no person other than DTC will receive a Bond certificate with respect to any Bond.

(c) ***Successor Securities Depository; Transfers Outside Book-Entry System.*** DTC may discontinue providing its services with respect to the Bonds at any time by giving written notice to the Issuer, the Trustee, the Remarketing Agent, the Tender Agent, the Credit Provider, any Alternate Credit Provider and the Borrower and by discharging its responsibilities with respect to the Bonds under applicable law. The Issuer or the Borrower, with the consent of the other, may terminate the services of DTC. If the Borrower is in default under any Bond Document or any Loan Document, the Issuer will not be required to obtain the consent of the Borrower to terminate the services of DTC. Without the consent of the Issuer, the Borrower may terminate the services of DTC if the Tender Agent is not a DTC Participant. Upon the discontinuance or termination of the services of DTC, unless a substitute securities depository is appointed to undertake the functions of DTC under this Indenture, the Issuer, at the expense of the Borrower, shall provide Bond certificates to the Trustee for delivery to the Beneficial Owners of the Bonds, and the Bonds may be registered in whatever name or names the Registered Owners transferring or exchanging Bonds designate to the Trustee in writing. The Trustee may appoint a successor depository operating a securities depository system, qualified to act as such under Section 17A of the Securities Exchange Act of 1934, as amended, as may be acceptable to the Issuer.

(d) ***No Book-Entry System During Bank Rate Period.*** The Bank shall not be Book-Entry Bonds so long as the Bonds bear interest at the Bank Rate.

Section 2.17. Bond Registrar; Exchange and Transfer of Bonds; Persons Treated as the Bondholders.

(a) ***Bond Registrar; Bond Register.*** The Trustee shall act as the initial Bond Registrar and in such capacity shall keep the Bond Register for the registration of the Bonds and for the registration of transfer of the Bonds.

(b) ***Transfers and Exchanges.*** Any Bondholder or its attorney duly authorized in writing may transfer title to or exchange a Bond upon surrender of the Bond at the Designated Office of the Trustee together with a written instrument of transfer (in substantially the form of assignment, including signature guarantee, attached to the Bond) satisfactory to the Trustee executed by the Bondholder or its attorney duly authorized in writing. Upon surrender for registration of transfer of any Bond, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the Bondholder or its transferee or transferees a new Bond or Bonds of the same aggregate principal amount, rate of interest, maturity, series and tenor as the Bond surrendered and of any Authorized Denomination.

(c) ***Exceptions to Transfers and Exchanges.*** Except as provided in Section 4.01, the Trustee will not be required to register any transfer or exchange of any Bond (or portion of any Bond) during the 15-day period immediately before the selection of Bonds for redemption, and from and after notice calling such Bonds (or portion of such Bonds) for redemption or partial redemption has been given and prior to such redemption.

(d) ***Charges.*** Registrations of transfers or exchanges of Bonds shall be without charge to the Bondholders, but any taxes or other governmental charges required to be paid with respect to a transfer or exchange shall be paid by the Bondholder requesting the registration of transfer or exchange as a condition precedent to the exercise of such privilege. Any service charge made by the Trustee for any such registration, transfer or exchange shall be paid by the Borrower.

(e) ***Recognized Owners.*** The person in whose name any Bond is registered on the Bond Register will be deemed the absolute owner of such Bond for all purposes, and payment of any principal, interest and premium will be made only to or upon the order of such person or its attorney duly authorized in writing, but such registration may be changed as provided above. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

(f) ***Bonds Protected.*** All Bonds issued upon any registration of transfer or exchange of Bonds will be legal, valid and binding limited obligations of the Issuer, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Bonds surrendered upon such transfer or exchange.

(g) **Issuer's Reliance.** In executing any Bond upon any exchange or registration of transfer provided for in this Section, the Issuer may rely conclusively on a representation of the Trustee that such execution is required.

(h) **Transfer Restrictions during Bank Rate Period.** Bonds bearing interest at a Bank Rate may be transferred only to Qualified Institutional Buyers in denominations of not less than \$500,000 with an investor letter in form and substance reasonably satisfactory to the Issuer.

Section 2.18. Cancellation. All Bonds which have been surrendered pursuant to Section 2.03 or Article III for payment upon maturity or redemption prior to maturity or Bonds which are deemed canceled or are canceled pursuant to Section 4.04(b) will be canceled by the Trustee and will not be reissued. Unless otherwise directed by the Issuer, the Trustee shall treat such Bonds in accordance with its document retention policies or as may be directed by the law of the State.

Section 2.19. No Additional Bonds. No bonds other than the Bonds may be issued hereunder.

ARTICLE III

REDEMPTION OF BONDS

Section 3.01. Redemption. The Bonds are subject to redemption prior to maturity only as set forth in this Article III. All redemptions must be in Authorized Denominations.

Section 3.02. Optional Redemption.

(a) **General Provisions.** The Bonds are subject to optional redemption in whole or in part upon optional prepayment of the Loan by the Borrower. Redemptions pursuant to this Section 3.02 will be made at the following times and at the following prices:

(i) On any Interest Payment Date within a Bank Rate Period, Weekly Variable Rate Period or Daily Variable Rate Period and on any Adjustment Date at a redemption price equal to 100% of the principal amount redeemed, without premium, plus accrued interest to the Redemption Date.

(ii) On any date within a Reset Period at the respective redemption prices set forth in the table below expressed as percentages of the principal amounts of the Bonds called for redemption, such redemption prices declining 0.5% each year until such redemption price equals 100% of the principal amount of the Bonds, plus accrued interest, if any, to the Redemption Date:

Term of Reset Period	No-Call Period	Redemption Price
Greater than or equal to 16 years	8 years	101%, declining 0.5% per year to 100%
Less than 16 years and greater than or equal to 8 years	4 years	101%, declining 0.5% per year to 100%
Less than 8 years and greater than or equal to 4 years	2 years	101%, declining 0.5% per year to 100%

The Borrower and the Remarketing Agent, not less than 15 days before any Reset Date, may give notice to the Issuer, the Credit Provider and the Trustee setting forth a redemption schedule different from that set forth above, accompanied by (A) the written consent of the Credit Provider of the Credit Facility to be in effect for the ensuing Reset Period and (B) an opinion of Bond Counsel to the effect that such change will not adversely affect the exclusion from gross income for federal income tax purposes of the interest payable on the Tax-Exempt Bonds. Such different redemption schedule will apply to any redemption pursuant to this Section 3.02(a)(ii) for the new Reset Period, without further action by any party.

(iii) On any date within the Fixed Rate Period, at the respective redemption prices set forth below expressed as percentages of the principal amounts of the Bonds called for redemption, such redemption prices declining each year as provided below until such redemption price equals 100% of the principal amount of the Bonds, plus accrued interest, if any, to the Redemption Date:

Term of Fixed Period	No-Call Period	Redemption Price
Greater than or equal to 16 years	8 years	102%, declining 1.0% per year to 100%
Less than 16 years and greater than or equal to 8 years	4 years	101%, declining 0.5% per year to 100%
Less than 8 years and greater than or equal to 4 years	2 years	101%, declining 0.5% per year to 100%

The Borrower and the Remarketing Agent may, not less than 15 days before the Fixed Rate Adjustment Date, give notice to the Issuer, the Credit Provider and the Trustee setting forth a redemption schedule different from that set forth in this paragraph, accompanied by (A) the written consent of the Credit Provider of the Credit Facility, if any, to be in effect for the ensuing Fixed Rate Period and (B) an opinion of Bond Counsel to the effect that such change will not adversely affect

the exclusion from gross income for federal income tax purposes of interest payable on the Tax-Exempt Bonds. Such different redemption schedule shall apply to any redemption pursuant to this Section 3.02(a)(iii) for the Fixed Rate Period, without further action by any party.

(iv) On any Mandatory Tender Date, as designated by the Borrower in writing on or before such Mandatory Tender Date, at a price equal to the principal amount of Bonds redeemed, plus interest accrued thereon to the date fixed for redemption.

(b) ***Premium From Available Moneys Other Than the Credit Facility.*** If a Letter of Credit or an Alternate Facility is in effect, the principal of and accrued interest on any Bond being redeemed under Section 3.02(a) shall be paid from a Draw on the Letter of Credit or Alternate Credit Facility. Notwithstanding any other provision of this Indenture, optional redemption of the Bonds shall not be permitted unless, on or before the Redemption Date, the Trustee has on deposit Available Moneys (which shall be from a source other than the Credit Facility and from a party other than the Credit Provider) in an amount sufficient to pay the premium, if any, on the Redemption Date.

Section 3.03. Mandatory Redemption. The Bonds are subject to mandatory redemption as provided in this Section 3.03 on the earliest practicable Redemption Date for which timely notice of redemption can be given pursuant to Section 3.04 following the occurrence of the event requiring such redemption. The principal of and accrued interest on any Bond being redeemed under this Section 3.03 other than a Bond bearing interest at a Bank Rate, shall be paid from a Draw on the Letter of Credit, if a Letter of Credit is in effect, or if an Alternate Credit Facility is in effect, be paid from a Draw under the Alternate Credit Facility. Bonds will be redeemed at a redemption price equal to 100% of the principal amount of such Bonds, without premium, plus accrued interest to the Redemption Date. Bonds subject to mandatory redemption in part shall be redeemed in Authorized Denominations or shall be redeemed in such amounts so that the Bonds Outstanding following the redemption are in Authorized Denominations. If the Trustee receives an amount for the mandatory redemption of Bonds which is not equal to a whole integral multiple of the Authorized Denomination, the Trustee shall redeem Bonds in an amount equal to the next lowest whole integral multiple of the Authorized Denomination to the amount received by the Trustee and hold any excess amount in the Redemption Account.

(a) ***Casualty or Condemnation.*** The Bonds shall be redeemed in whole or in part in the event and to the extent that proceeds of insurance from any casualty to, or proceeds of any award from any condemnation of, or any award as part of a settlement in lieu of condemnation of, the Mortgaged Property (“Proceeds”) are applied in accordance with the Security Instrument to the prepayment of the Loan.

(b) ***After an Event of Default Under a Reimbursement Agreement.*** The Bonds shall be redeemed in whole or in part in an amount specified by and at the direction of the Credit Provider requiring that the Bonds be redeemed pursuant to this subsection following any Event of Default under a Reimbursement Agreement. The Redemption Date shall be the earliest practicable date, but in no event shall such

redemption occur later than two Business Days prior to the date, if any, that the Credit Facility terminates on account of the Credit Provider's giving of direction to the Trustee pursuant to this subsection to redeem all of the Bonds.

(c) ***Principal Reserve Fund.*** The Bonds shall be redeemed in whole or in part as follows:

(i) on each Adjustment Date in an amount equal to the amount which has been transferred from the Principal Reserve Fund on such Adjustment Date to the Redemption Account pursuant to Section 5.11(b)(v); and

(ii) on any Interest Payment Date in an amount equal to the amount which has been transferred from the Principal Reserve Fund on such Interest Payment Date to the Redemption Account pursuant to Section 5.11(b)(vi).

Bonds shall be redeemed in the following order of priority: first, 2006A-T Bonds, second, Tax-Exempt Bonds in a Daily Mode or a Weekly Mode, third, all other Tax-Exempt Bonds.

(d) ***Sinking Fund Redemption.*** The Bonds shall be redeemed during the Fixed Rate Period if the Issuer has established a Sinking Fund Schedule, at the times and in the amounts set forth in the Sinking Fund Schedule (subject to the provisions of Section 5.05(c) permitting amounts to be credited toward part or all of any one or more Sinking Fund Payments).

Section 3.04. Notice of Redemption to Registered Owners.

(a) ***Notice Requirement.*** For any redemption of Bonds pursuant to Section 3.02 or 3.03 (a), (c) or (e), the Trustee shall give notice of redemption by first class mail, postage prepaid, not less than 10 days prior to the specified Redemption Date, to the Registered Owner of each Bond to be redeemed at the address of such Registered Owner as shown on the Bond Register; provided, that no notice of redemption shall be required for redemption of Bonds pursuant to Section 3.02(a)(iv). With respect to Book-Entry Bonds, if the Trustee sends notice of redemption to the Securities Depository pursuant to the Letter of Representations, the Trustee shall not be required to give the notice set forth in the immediately preceding sentence. In the case of any redemption of Bonds pursuant Section 3.03(b), no notice of redemption will be given.

In the case of an optional redemption under Section 3.02, the notice of redemption shall state that it is conditioned upon receipt by the Trustee of sufficient moneys to redeem the Bonds including Available Moneys to pay any redemption premium in full ("Conditional Redemption"), and such notice and optional redemption shall be of no effect if either (A) by no later than the scheduled redemption date, sufficient moneys to redeem the Bonds and sufficient Available Moneys to pay any redemption premium have not been deposited with the Trustee, or if such moneys are deposited, are not available or (B) the Credit Provider, if any, instructs the Trustee to rescind such notice on or prior to the scheduled redemption date. The Trustee shall provide copies of all notices given under this Section and of all revocations of notices to the Credit Provider (so long as the

Letter of Credit is in effect) or any Alternate Credit Provider (at such time as an Alternate Credit Facility is in effect), at the same time it gives notices to Bondholders.

(b) **Content of Notice.** Each notice of redemption must state: (i) the date of the redemption notice; (ii) the complete official name of the Bonds, including the Series designation; (iii) for each Bond to be redeemed, the interest rate or that the interest rate is variable, maturity date and in the case of a partial redemption of Bonds, the principal amount of each Bond to be redeemed; (iv) for Bonds other than Bonds bearing interest at a Bank Rate, the CUSIP numbers of all Bonds being redeemed; (v) the place or places where the Bonds to be redeemed must be surrendered for payment and where amounts due upon such redemption will be payable upon surrender of the Bonds to be redeemed; (vi) the Redemption Date and redemption price of each Bond to be redeemed; (vii) the name, address, telephone number and contact person at the office of the Trustee with respect to such redemption; (viii) that interest on all Bonds to be redeemed will not accrue from and after the Redemption Date; (ix) if a redemption is a Conditional Redemption, that redemption is conditional upon receipt by the Trustee of sufficient moneys to redeem the Bonds including Available Moneys to pay any redemption premium and (x) that the Credit Provider may direct the Trustee to cancel such redemption upon the occurrence of any Event of Default under any Credit Facility Document.

(c) **Additional Notice.** Other than for Bonds bearing interest at a Bank Rate, the same time notice of redemption is sent to the Registered Owners the Trustee shall send notice of redemption by first class mail, overnight delivery service or such other means as is acceptable to the recipient, postage or service prepaid (or as specified below) (i) to the Rating Agency, (ii) if the Bonds are not subject to the Book-Entry System, to certain municipal registered Securities Depositories (described below) which are known to the Trustee, on the second Business Day prior to the date the notice of redemption is mailed to the Bondholders, to be holding Bonds, and (iii) at least two of the national Information Services (described below) that disseminate securities redemption notices. For this purpose:

(i) Securities Depositories include: The Depository Trust Company, 55 Water Street, 50th Floor, New York, NY 10041-0099 Attn. Call Notification Department, Fax (212) 855-7232; or, in accordance with the then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories or any such other depositories as the Issuer may designate in writing to the Trustee; and

(ii) Information Services include: Financial Information, Inc. "Daily Called Bond Service," 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; Kenny Information Services, "Called Bond Service," 65 Broadway, 16th Floor, New York, New York 10004; Moody's Investors Service "Municipal and Government," 99 Church Street, 8th Floor, New York, New York 10007, Attention: Municipal News Reports; and Standard & Poor's Ratings Group "Called Bond Record," 55 Water Street, New York, New York 10041; or, in accordance with then current guidelines of the Securities and

Exchange Commission, such other addresses and/or such other services providing information with respect to called bonds, or any other such services as the Issuer may designate in writing to the Trustee.

(d) ***Validity of Proceedings for the Redemption of Bonds.*** If notice is given as stated in subsection (a), failure of any Bondholder to receive such notice, or any defect in the notice, shall not affect the redemption or the validity of the proceedings for the redemption of the Bonds.

(e) ***Rescission of Conditional Redemption; Cancellation of Optional Redemption.*** The Trustee shall rescind any Conditional Redemption if the requirements of Section 3.02(b) have not been met on or before the Redemption Date or the Trustee has received a direction to cancel the Conditional Redemption from the Credit Provider. The Trustee shall give notice of rescission by the same means as is provided in this Section for the giving of notice of redemption or by Electronic Means confirmed in writing. The optional redemption shall be canceled once the Trustee has given notice of rescission. Any Bonds subject to Conditional Redemption where redemption has been rescinded shall remain Outstanding, and neither the rescission nor the failure of funds being made available in part or in whole on or before the Redemption Date shall constitute an Event of Default. Notwithstanding notice having been given in the manner provided above, any optional redemption of Bonds shall be canceled with the consent of or at the direction of the Credit Provider if the Credit Provider has notified the Trustee in writing that an Event of Default under any Credit Facility Document has occurred.

Section 3.05. Redemption Payments. If notice of redemption has been given and the conditions for such redemption, if applicable, have been met, the Bonds called for redemption shall become due and payable on the Redemption Date, interest on those Bonds will cease to accrue from and after the Redemption Date and the called Bonds will no longer be Outstanding. The holders of the Bonds so called for redemption shall thereafter no longer have any security or benefit under this Indenture except to receive payment of the redemption price for such Bonds upon surrender of such Bonds to the Trustee. All moneys held by or on behalf of the Trustee for the redemption of particular Bonds will be held in trust for the account of the holders of the Bonds to be redeemed. If less than the entire principal amount of a Bond is called for redemption, the Issuer shall execute, and the Trustee shall authenticate and deliver, upon the surrender of such Bond to the Trustee, without charge by the Issuer or the Trustee to the Bondholder, in exchange for the unredeemed principal amount of such Bond, a new Bond or Bonds of the same interest rate, maturity and term, in any Authorized Denomination, in aggregate principal amount equal to the unredeemed balance of the principal amount of the Bond so surrendered.

Section 3.06. Selection of Bonds To Be Redeemed Upon Partial Redemption. If less than all the Outstanding Bonds of a Series are called for redemption, the Trustee shall select by lot, in such manner as it determines in its discretion, the Bonds, or portions of the Bonds in Authorized Denominations, to be redeemed. In the selection process (i) any Pledged Bonds Outstanding will be called for redemption before any other Bonds are selected for redemption, and (ii) if applicable, the Bonds with the highest interest rate will be called for redemption before any other Bonds are selected for redemption. For the purposes of this Section, Bonds which

have previously been selected for redemption will not be deemed Outstanding. Notwithstanding the foregoing, the Securities Depository for Book-Entry Bonds shall select the Bonds for redemption within particular maturities according to its stated procedures.

Section 3.07. Purchase of Bonds in Whole in Lieu of Redemption. If the Bonds are called for redemption in whole, the Bonds called for redemption may be purchased in lieu of redemption in accordance with this Section.

(a) ***Purchase in Lieu of Redemption.*** Purchase in lieu of redemption shall be available for all of the Bonds called for redemption. The Credit Provider, or the Borrower with the written consent of the Credit Provider, may direct the Trustee to purchase all of the Bonds. Any such direction to the Trustee must:

(i) be in writing;

(ii) state either that all of the Bonds called for redemption are to be purchased or, if less than all of the Bonds called for redemption are to be purchased, identify those Bonds to be purchased by maturity date and outstanding principal amount in Authorized Denominations; and

(iii) be received by the Trustee no later than noon one Business Day prior to the Redemption Date.

If so directed, the Trustee shall purchase such Bonds on the date which otherwise would be the Redemption Date. Any of the Bonds called for redemption that are not purchased in lieu of redemption shall be redeemed as otherwise required by this Indenture on the Redemption Date.

(b) ***Withdrawal of Direction To Purchase.*** On or prior to the scheduled redemption date, any direction given to the Trustee pursuant to this Section or any consent given by the Credit Provider to such a direction may be withdrawn by written notice to the Trustee. Subject generally to this Indenture, should a direction to purchase or the consent of the Credit Provider be withdrawn, the scheduled redemption of such Bonds shall not occur.

(c) ***Purchaser.*** If the purchase is directed by the Credit Provider, the purchase shall be made for the account of the Credit Provider or its designee. If the purchase is directed by the Borrower with the consent of the Credit Provider, the purchase shall be made for the account of the Borrower or its designee.

(d) ***Purchase Price.*** The purchase price of the Bonds shall be equal to the outstanding principal of, accrued and unpaid interest on and the redemption premium, if any, which would have been payable on such Bonds on the Redemption Date for such redemption. To pay the purchase price of such Bonds, the Trustee shall use such funds, if any, in:

(i) the Credit Facility Account to pay the principal and interest components of the purchase price; and

(ii) the Redemption Account to pay the redemption premium component of the purchase price;

that the Trustee would have used to pay the outstanding principal of, accrued and unpaid interest on and the redemption premium, if any, that would have been payable on the redemption of such Bonds on the Redemption Date. Otherwise, the Trustee shall pay the purchase price only from Available Moneys. The Trustee shall not purchase the Bonds pursuant to this Section if by no later than the Redemption Date, sufficient moneys have not been deposited with the Trustee, or such moneys are deposited, but are not available.

(e) **No Notice to Bondholders.** No notice of the purchase in lieu of redemption shall be required to be given to the Bondholders (other than the notice of redemption otherwise required under this Indenture).

(f) **Limitations on Transfer of Bonds.** Notwithstanding Section 2.17, Bonds purchased pursuant to this Section 3.07 may not be transferred to another registered owner without the written approval of the Issuer and only in compliance with all applicable securities laws; provided, however, that such approval shall not be required if, at the time of such transfer, such Bonds have a current investment grade rating from the Rating Agency. Any such approved transfer must be of all of the Bonds purchased to a single registered owner.

ARTICLE IV

PURCHASE AND REMARKETING OF BONDS

Section 4.01. Purchase of Bonds on Any Business Day.

(a) **Optional Tender.** During any Weekly Variable Rate Period or Daily Variable Rate Period, the Trustee shall purchase any Bond on behalf of and as agent for the Borrower, but solely from the sources provided in Section 4.01(g), on the demand of the Beneficial Owner of such Bond. The purchase price of any Bond tendered for purchase shall be 100% of the principal amount of such Bond plus accrued interest, if any, to the date of purchase. The Beneficial Owner may demand purchase of its Bond by delivery of a Bondholder Tender Notice complying with the requirements of this subsection to the Tender Agent at its Designated Office on any Business Day. Any Bondholder Tender Notice received by the Tender Agent after 3:30 p.m. Eastern Time on a Business Day will be treated as received at 9:00 a.m. Eastern Time on the following Business Day. The date of purchase shall be the date selected by the Beneficial Owner in the Bondholder Tender Notice; provided, however, that such date is (i) a Business Day which is at least seven days after the date of the delivery of the Bondholder Tender Notice to the Tender Agent with respect to a Bond at a Weekly Variable Rate or (ii) is a Business Day with respect to a Bond at a Daily Variable Rate. During a Daily Variable Rate Period, a Bondholder Tender Notice must be received by the Tender Agent no later than 9:00 a.m. Eastern time if the date of purchase is the day the Bondholder Tender Notice is received. A Bondholder Tender Notice complies with the requirements of this subsection if it:

(i) is accompanied by a guaranty of signature acceptable to the Tender Agent; and

(ii) contains the CUSIP number of the Bond, the principal amount to be purchased (or portion of a Bond, provided that the retained portion is an Authorized Denomination), the name, address and tax identification number or social security number of the Beneficial Owner of the Bond demanding such payment and the purchase date.

(b) ***Irrevocability of Tender.*** Subject to Section 4.01(h), by delivering a Bondholder Tender Notice the Beneficial Owner irrevocably agrees to deliver the Tendered Bond (with an appropriate transfer of registration form executed in blank and accompanied by a guaranty of signature satisfactory to the Tender Agent) to the Designated Office of the Tender Agent or any other address designated by the Tender Agent at or prior to 10:00 a.m. Eastern Time on the date of purchase specified in the Bondholder Tender Notice. Any election by a Beneficial Owner to tender a Bond or Bonds (or portion of a Bond or Bonds) for purchase on a Business Day in accordance with Section 4.01(a) shall also be binding on any transferee of the Beneficial Owner making such election.

(c) ***Compliance With Tender Requirements.*** Bonds shall be required to be purchased pursuant to Section 4.01(a) only if the Bonds so delivered to the Tender Agent conform in all respects to the description of such Bonds in the Bondholder Tender Notice. The Tender Agent shall determine in its sole discretion whether a Bondholder Tender Notice complies with the requirements of Section 4.01(a) and whether Bonds delivered conform in all respects to the description of the Bonds in the Bondholder Tender Notice. Such determination shall be binding on the other Remarketing Notice Parties and the Beneficial Owner of the Bonds.

(d) ***Notice of Bondholder Tender Notice.*** Immediately upon receipt of a copy of a Bondholder Tender Notice, the Tender Agent shall notify the other Remarketing Notice Parties by telephone, promptly confirmed in writing, of such receipt, specifying the contents of such Bondholder Tender Notice.

(e) ***Untendered Bonds.*** If after delivery of a Bondholder Tender Notice to the Tender Agent the holder making such election fails to deliver any of the Bonds described in the Bondholder Tender Notice as required by Section 4.01(b), each untendered Bond or portion of such untendered Bond (“Untendered Bond”) described in such Bondholder Tender Notice shall be deemed to have been tendered to the Tender Agent for purchase, to the extent that there is on deposit in the Bond Purchase Fund on the applicable purchase date an amount sufficient to pay the purchase price of such Untendered Bond, and such Untendered Bond from and after such purchase date will cease to bear interest and no longer be considered to be Outstanding. The Trustee shall promptly give notice by registered or certified first-class mail, postage prepaid, to each Beneficial Owner of any Bond which has been deemed to have been purchased pursuant to this Section, stating that interest on such Untendered Bond ceased to accrue from and after the date of purchase and that moneys representing the purchase price of such Untendered Bond are

available against delivery of such Untendered Bond at the Designated Office of the Tender Agent. The Issuer shall sign and the Tender Agent shall authenticate and deliver for redelivery a new Bond or Bonds in replacement of the Untendered Bond not so delivered. The replacement of any Bond will not be deemed to create new indebtedness, but will be deemed to evidence the indebtedness previously evidenced by the Untendered Bond.

(f) **Purchase of Bond in Part.** Upon surrender of any Bond for purchase in part only, the Issuer shall execute and the Tender Agent shall authenticate and deliver to the holder of such Bond a new Bond or Bonds of the same maturity and interest rate, of Authorized Denominations, in an aggregate principal amount equal to the unpurchased portion of the Bond surrendered.

(g) **Payment and Sources of Purchase Price.** The Tender Agent shall make payment for any Tendered Bond to the Registered Owner at or before 4:00 p.m. Eastern Time on the date for purchase specified in the Bondholder Tender Notice, first from remarketing proceeds on deposit in the Bond Purchase Fund, second, from proceeds of a payment under the Credit Facility, and third, from the Borrower.

(h) **Book-Entry-Only.** Notwithstanding the above, during any period that the Bonds are Book-Entry Bonds, (i) any Bondholder Tender Notice also must (A) provide evidence satisfactory to the Tender Agent that the party delivering the notice is the Beneficial Owner of the Bond(s) or a custodian for the Beneficial Owner referred to in the notice, and (B) if the Beneficial Owner is other than a DTC Participant, identify the DTC Participant through whom the Beneficial Owner will direct transfer; (ii) on or before the purchase date, the Beneficial Owner must direct (or if the Beneficial Owner is not a DTC Participant, cause its DTC Participant to direct) the transfer of said Bond(s) on the records of DTC to the account of, or as directed by, the Trustee; (iii) Tendered Bond(s) will be purchased without physical delivery as if such Bond(s) had been so delivered and (iv) the purchase price of such Bond(s) will be paid to DTC.

Section 4.02. Mandatory Tender and Purchase.

(a) ***Mandatory Tender Dates (Other Than Upon Default); Notice.*** The holders of the Bonds shall be required to tender their Bonds to the Tender Agent for purchase on each Mandatory Tender Date by the Trustee acting on behalf of and as agent for the Borrower, but solely from the sources provided in Section 4.02(d), at a purchase price equal to 100% of the principal amount of the Bonds plus accrued interest to the applicable Mandatory Tender Date. The Owner of any Bond may not elect to retain its Bond. Mandatory Tender Dates include the Adjustment Date following the last day of any Bank Rate Period, each proposed Adjustment Date (even if a proposed change in Mode fails to occur), each Substitution Date and each Extension Date (unless an extension of the Letter of Credit or the Alternate Credit Facility then in effect has been received by the Trustee on or before such date). The Trustee shall give notice of Mandatory Tender Dates as follows:

(i) Not less than 30 days before any proposed Adjustment Date, the Trustee shall give notice by first class mail, postage prepaid, to the Bondholders stating the information required to be set forth in notices pursuant to the applicable provisions of Sections 2.09(a)(ii), 2.09(b)(ii) or 2.09(c)(ii); provided, no notice need be required with respect to the mandatory tender of Bonds on the Adjustment Date following the last day of a Bank Rate Period.

(ii) Not less than 9 days before any Substitution Date, the Trustee shall give notice by first class mail, postage prepaid, to the Bondholders stating (A) an Alternate Credit Facility will be substituted for the Credit Facility then in effect, (B) the Substitution Date, (C) that the Bonds are required to be tendered on the Substitution Date and (D) that Bondholders will not have the right to elect to retain their Bonds.

(iii) Not less than 10 days before any Extension Date, if the Trustee has not received a binding commitment to extend the Letter of Credit or applicable Alternate Credit Facility then in effect, the Trustee shall give notice by first class mail, postage prepaid, to the Bondholders stating (A) the Extension Date and that no commitment to extend the Letter of Credit or Alternate Credit Facility then in effect has been received by the Trustee, (B) that such Bonds are required to be tendered on the Extension Date (unless an extension of the Letter of Credit or Alternate Credit Facility then in effect is received prior to the Extension Date, notice of which shall be given promptly to Bondholders), and (C) that the Bondholders will not have the right to elect to retain such Bonds if an extension of the Letter of Credit or Alternate Credit Facility then in effect is not received.

(b) ***Mandatory Tender Upon Default; Notice.*** The Bonds shall be subject to mandatory tender upon receipt by the Trustee of written notice from the Credit Provider stating that an Event of Default under this Indenture, the Financing Agreement or any Credit Facility Document has occurred and directing that the Bonds be subject to mandatory tender. Such mandatory tender shall be made on the earliest practicable date but no later than 10 days, after notice of tender has been given to Bondholders and shall

be payable solely from the sources provided in Section 4.02(d)(ii) at a purchase price equal to 100% of the principal amount of the Bonds plus accrued interest to the Mandatory Tender Date. The Owner of any Bond may not elect to retain its Bond. Immediately upon receipt by the Trustee of such written notice from the Credit Provider, the Trustee shall give notice by first class mail, postage prepaid, to the owners of the Bonds stating that (i) such event has occurred, (ii) the Bonds are required to be tendered on the Mandatory Tender Date specified in such notice and (iii) the Bondholders will not have the right to elect to retain their Bonds.

(c) ***Untendered Bond.*** Any Bond which is not tendered on a Mandatory Tender Date (“Untendered Bond”) will be deemed to have been tendered to the Tender Agent as of such Mandatory Tender Date, and, from and after such Mandatory Tender Date, shall cease to bear interest and no longer will be considered to be Outstanding. In the event of a failure by owners to deliver Bonds on the Mandatory Tender Date, such Owners will not be entitled to any payment (including any interest to accrue from and after the Mandatory Tender Date) other than the purchase price for such Untendered Bond, and any Untendered Bond will no longer be entitled to the benefits of this Indenture, except for the purpose of payment of the purchase price for such Untendered Bond. The Issuer shall sign, and the Tender Agent shall authenticate and deliver to the Remarketing Agent for redelivery to the purchaser, a new Bond in replacement of the Untendered Bond. The replacement of any such Untendered Bond shall not be deemed to create new indebtedness, but shall be deemed to evidence the indebtedness previously evidenced by the Untendered Bond.

(d) ***Payment and Sources of Purchase Price.*** The Tender Agent shall make payment for Bonds purchased pursuant to this Section at or before 4:00 p.m. Eastern Time on the Mandatory Tender Date. The Tender Agent shall pay the purchase price:

(i) for Bonds purchased pursuant to 4.02(a), first, from remarketing proceeds on deposit in the Bond Purchase Fund, second, from proceeds of a payment under a Credit Facility, and third, from the Borrower; and

(ii) for Bonds purchased pursuant to Section 4.02(b), first from proceeds of a payment under the Credit Facility, and second, from the Borrower.

(e) ***Purchase Price Moneys Held in Trust.*** Following any Mandatory Tender Date, moneys deposited with the Tender Agent for the purchase of Bonds shall be held in trust in the Bond Purchase Fund and shall be paid to the former owners of such Bonds upon presentation of such Bonds at the Designated Office of the Tender Agent. The Tender Agent shall promptly give notice by registered or “certified first class” mail, postage prepaid, to each Registered Owner of Bonds whose Bonds are deemed to have been purchased stating that interest on such Bonds ceased to accrue on the date of purchase and that moneys representing the purchase price of such Bonds are available against delivery of such Bonds at the Designated Office of the Tender Agent. During any period that the Bonds are Book-Entry Bonds, (i) any notice delivered pursuant to this Section 4.02(e) shall be given only to the entity designated in the Letter of Representations, as required by Section 3.04(a) and (ii) it shall not be necessary for

Bond(s) to be physically delivered on the date specified for purchase of such Bond(s), but such purchase shall be made as if such Bond(s) had been so delivered, and the purchase price of such Bond(s) shall be paid to DTC.

Section 4.03. Remarketing of Bonds.

(a) ***Appointment, Resignation and Removal of Remarketing Agent.***

(i) The Borrower shall appoint and maintain a Remarketing Agent for the Bonds at all times except with respect to Bonds of a Series in a Bank Rate Mode or Fixed Rate Mode.

(ii) *Resignation of Remarketing Agent; Termination of Existence.* The Remarketing Agent may resign by giving no less than 30 days' prior written notice to the other Remarketing Notice Parties, but in no event shall such resignation take effect prior to the date a successor Remarketing Agent is appointed and is serving under this Indenture and the Remarketing Agreement. Upon receipt of such notice or upon termination of the Remarketing Agent's corporate existence, or removal of the Remarketing Agent pursuant to Section 4.03(a)(iii), the Borrower, with the prior written consent of the Credit Provider and the Issuer, shall appoint a successor Remarketing Agent, which must be a trust company or bank or investment bank in good standing, within or without the State. If the Borrower fails or refuses to make such appointment prior to the effective date of the resignation set forth in such notice, or upon such termination of existence, the Credit Provider may, with the prior written consent of the Issuer, appoint a successor Remarketing Agent by written notice to the other Remarketing Notice Parties.

(iii) *Removal of Remarketing Agent.* The Borrower may remove the Remarketing Agent, with the prior written consent of the Credit Provider, at any time by a written notice to the other Remarketing Notice Parties, but unless specifically approved by the Credit Provider, such removal will not become effective until a successor Remarketing Agent satisfactory to the Credit Provider and the Issuer is appointed. If (A) an Event of Default has occurred and is continuing under the Reimbursement Agreement or (B) the Remarketing Agent has failed to fulfill any of its duties and obligations under this Indenture or the Remarketing Agreement, the Credit Provider may remove the Remarketing Agent by written notice to the other Remarketing Notice Parties and appoint a successor Remarketing Agent.

(b) ***Best Efforts To Remarket Tendered Bonds.*** In accordance with Sections 2.05, 2.06 and 2.07, the Remarketing Agent shall offer for sale and use its best efforts to remarket, on or prior to each applicable Tender Date:

(i) all Bonds identified in a Bondholder Tender Notice delivered to the Tender Agent;

(ii) all Bonds required to be tendered upon delivery of notice under Sections 4.02(a)(i), 4.02(a)(ii) and 4.02(a)(iii);

(iii) all Bonds required to be tendered pursuant to Section 4.02(a)(iii) but only if the Letter of Credit has been extended or an Alternate Credit Facility has been delivered to the Trustee; and

(iv) all Bonds required to be tendered upon delivery of notice pursuant to Section 4.02(b) but only if the Credit Provider directs that such Bonds be remarketed.

The Remarketing Agent shall offer such Bonds for sale at par plus accrued interest, if any.

(c) ***Preliminary Notice of Remarketing.*** During any Weekly Variable Rate, the Remarketing Agent will give notice by telephone (immediately confirmed by Electronic Means) not later than 4:00 p.m. Eastern Time (unless a mandatory tender pursuant to Section 4.02(b) is scheduled, in which case the Remarketing Agent will give such notice not later than 11:00 a.m. Eastern Time) on the Business Day preceding each Tender Date, as follows:

(i) to the other Remarketing Notice Parties specifying the total principal amount of Tendered Bonds, if any, (A) that have been remarketed for settlement on such Tender Date, (B) that remain unremarketed at such time and (C) that in its best good faith estimate will remain unremarketed as of 10:00 a.m. Eastern Time on the Tender Date; and

(ii) to the Trustee, specifying the name, address and taxpayer identification number or social security number of each purchaser as well as the denominations of the Bonds to be issued to such purchaser.

(d) ***Final Notice of Remarketing.*** Not later than 10:00 a.m. Eastern Time on the Tender Date, the Remarketing Agent shall give notice by Electronic Means to the other Remarketing Notice Parties (immediately confirmed in writing, together with instructions to the Tender Agent as to the manner in which any Bonds that have been remarketed are to be registered) specifying as follows:

(i) the principal amount of Bonds remarketed (together with the information required to be specified in Section 4.03(c) if not already provided);

(ii) the amount of remarketing proceeds on deposit with the Tender Agent;

(iii) the amount of Bonds to be purchased that have not been remarketed at the time of such notice; and

(iv) the amount required to be paid under the Credit Facility;

except that the information specified in paragraphs (iii) and (iv) is not relevant to a remarketing described in Section 4.03(b)(iv) and the Remarketing Agent need not give such information in that circumstance. Upon receipt of such notice, the Trustee shall draw on the Credit Facility pursuant to Section 8.02 in the amount necessary to pay the purchase price of the Bonds for which remarketing proceeds are not available.

(e) **Payment of Purchase Price.** Upon delivery (except as otherwise provided in, but subject to the tendering Beneficial Owners' compliance with, Section 4.01(h)) of Tendered Bonds to or upon the order of the Remarketing Agent, the Remarketing Agent shall deliver to the Tender Agent at its Designated Office no later than 3:00 p.m., Eastern time, in immediately available funds, an amount equal to the purchase price of the total principal amount of Bonds specified in the notice given by the Remarketing Agent pursuant to Section 4.03(d), plus accrued interest, if any, on such Bonds.

(f) **Prohibited Remarketing.** Except as otherwise provided in this Indenture, the Remarketing Agent shall not remarket any Bonds directly to the Issuer, the Borrower, any Affiliate of the Borrower, any Affiliate of the Issuer or any guarantor of the Loan.

(g) **Remarketing Agent's Own Account.** The Remarketing Agent may, but is not obligated to, acquire for its own account any Bonds delivered to it, but not otherwise remarketed. The Remarketing Agent may purchase and sell Bonds for its own account at any time.

(h) **Periodic Notice to Credit Provider.** The Remarketing Agent shall provide the Credit Provider with a notice, in form satisfactory to the Credit Provider, by the next Business Day after the first Rate Determination Date in each calendar month, setting forth the name and telephone number of the person providing the notice, the name of the Remarketing Agent and the principal amount of Bonds tendered for remarketing that remain unremarketed as of the close of business on such Rate Determination Date, or, if no Bonds were so tendered, indicating that no Bonds were tendered. The Credit Provider may waive its right to receive such notice(s) from time to time in writing.

(i) **Notices of Rate Determination Date and Nonpayment of Fees.** On or before a Rate Determination Date other than during a Daily Variable Rate Period or Weekly Variable Rate Period, the Remarketing Agent shall notify the other Remarketing Notice Parties of the date selected as the Rate Determination Date.

(j) **Duties of Trustee Concerning Remarketed Bonds.** Unless the Bonds are then Book-Entry Bonds, the Trustee shall deliver, or cause to be delivered, at the Designated Office of the Tender Agent, Bonds remarketed by the Remarketing Agent, before 1:00 p.m. Eastern Time on the applicable purchase date or Mandatory Tender Date; provided, however, that prior to delivery of the Bonds (including Bonds previously purchased pursuant to Section 4.04 and then being remarketed) to such purchasers the amount available under the Credit Facility to secure the Bonds must equal the principal amount of the Bonds Outstanding (other than Pledged Bonds not then being remarketed) plus the Interest Requirement.

(k) **Remarketing of Bonds Bearing Interest at a Bank Rate.** Bonds bearing interest at a Bank Rate (other than the delivery of the Bonds on the Closing Date) shall be delivered to the Purchasers thereof on the first day of the applicable Bank Rate Period in exchange for the purchase price thereof, such purchase price being an amount equal to 100% of the Principal Amount of the applicable Bonds, on such terms as the Borrower and the Administrative Agent shall agree. The proceeds of such remarketing shall be deposited in the Bond Purchase Fund and applied to pay the purchase price of the Bonds subject to mandatory tender for purchase on such date.

Section 4.04. Pledged Bonds.

(a) **No Credit Facility Support.** The Credit Facility shall not constitute security or provide liquidity for Pledged Bonds.

(b) **Ownership and Pledge of Pledged Bonds.** Pledged Bonds shall be owned by the Borrower and pledged to the Credit Provider under the Pledge Agreement. As set forth in the Pledge Agreement, the Tender Agent shall either (i) ensure that Pledged Bonds are delivered to the Credit Provider, or (ii) if, and only if, delivery of the Bonds is not possible, deliver a written entitlement order to the applicable financial intermediaries on whose records ownership of the Pledged Bonds is reflected directing the intermediaries to credit the security entitlement to the Pledged Bonds to the appropriate account for the benefit of the Credit Provider and deliver to the Credit Provider a written confirmation of such credit, whether or not the Borrower notifies the Remarketing Agent to do so. The Trustee shall cancel Pledged Bonds upon the written direction of the Credit Provider.

(c) **Remarketing of Pledged Bonds.** At such time as a Pledged Bond is remarketed by the Remarketing Agent, the Trustee or the Tender Agent, as appropriate, shall (i) remit the proceeds from the remarketing to the Credit Provider, (ii) confirm with the Credit Provider or the Alternate Credit Provider, as applicable, that the Letter of Credit has been reinstated by the amount drawn to purchase the Pledged Bonds and (iii) give written notice to the Remarketing Agent, the Borrower and the Credit Provider that such Bond is no longer a Pledged Bond. No Pledged Bond which has been remarketed shall be delivered by the Trustee to the purchaser of such Bond until the Trustee has received written confirmation from the Credit Provider that the Credit Facility has been reinstated in the principal amount of such remarketed Pledged Bond. During the occurrence and continuation of an Event of Default under this Indenture or any Credit Facility Document, no Pledged Bond shall be remarketed without the prior written consent of the Credit Provider. No Pledged Bond shall be remarketed unless the Trustee takes such action, if any, required by the Credit Facility to reinstate the Credit Facility for a like amount.

Section 4.05. No Sales After Wrongful Dishonor; No Purchase After Acceleration. Notwithstanding anything in this Indenture to the contrary, no Bonds shall be remarketed if the Trustee has given notice to the Remarketing Agent that a Wrongful Dishonor has occurred and is continuing. No Bonds, other than Pledged Bonds, shall be purchased if the Trustee has given

notice to the Remarketing Agent that there has occurred and is continuing an acceleration of the Bonds pursuant to Section 10.02.

ARTICLE V

FUNDS AND ACCOUNTS

Section 5.01. Creation of Funds and Accounts. The following Funds and Accounts are created with the Trustee:

- (a) the Loan Fund and within the Loan Fund, a Tax-Exempt Bonds subaccount and a 2006A-T Bonds subaccount;
- (b) the Revenue Fund and within the Revenue Fund, the Interest Account, the Credit Facility Account, the Redemption Account, and the Fees Account;
- (c) the Costs of Conversion Fund;
- (d) the Rebate Fund;
- (e) so long as any Bonds are Outstanding and have not been adjusted to the Fixed Rate, the Bond Purchase Fund; and
- (f) the Principal Reserve Fund.

The Trustee shall hold and administer the Funds and Accounts in accordance with this Indenture.

Section 5.02. Initial Transfers and Deposits. On the Closing Date, the Trustee shall make the following transfers and deposits in the following order:

- (a) deposit \$116,000,000, representing Net Bond Proceeds of the 2006A Bonds and \$10,000,000 representing Net Bond Proceeds of the 2008A Bonds received from the Purchasers on the Closing Date, in the Tax-Exempt Bonds subaccount of the Loan Fund.
- (b) deposit \$8,500,000, representing Net Bond Proceeds of the 2006A-T Bonds received from the Purchaser on the Closing Date, in the 2006A-T Bonds subaccount of the Loan Fund; and
- (c) deposit \$_____, received from the Borrower, representing the Costs of Conversion Deposit, into the Costs of Conversion Fund;

Section 5.03. Loan Fund.

- (a) ***Disbursement from the Tax-Exempt Bonds subaccount of the Loan Fund.*** The Trustee shall transfer, on the Closing Date, all amounts on deposit in the Tax-Exempt Bonds subaccount of the Loan Fund to Bank of America, N.A., the provider of

the letter of credit under the Original Indenture, as payment of the purchase price of the Tax-Exempt Bonds.

(b) ***Disbursement from the 2006A-T Bonds subaccount of the Loan Fund.*** The Trustee shall transfer, on the Closing Date, all amounts on deposit in the 2006A-T Bonds subaccount of the Loan Fund to Bank of America, N.A., the provider of the letter of credit under the Original Indenture, as payment of the purchase price of the 2006A-T Bonds.

Section 5.04. Revenue Fund—Interest Account.

(a) ***Deposits Into the Interest Account.*** The Trustee shall deposit each of the following amounts into the Interest Account:

(i) moneys provided by or on behalf of the Borrower relating to an interest payment under the Note or an interest reimbursement under a Reimbursement Agreement;

(ii) moneys provided by or on behalf of the Borrower for the payment of the Facility Fee to the Credit Provider;

(iii) all Investment Income on the Funds and Accounts (except that Investment Income earned on amounts on deposit in the Loan Fund, Rebate Fund, Costs of Conversion Fund, and the Principal Reserve Fund shall be credited to and retained in those respective Funds or Accounts); and

(iv) any other moneys made available for deposit into the Interest Account from any other source, including, but not limited to, any excess amounts in the Bond Purchase Fund pursuant to Section 5.10.

(b) ***Disbursements From the Interest Account.*** The Trustee shall disburse or transfer, as applicable, moneys on deposit in the Interest Account at the following times and apply such moneys in the following manner and in the following order of priority:

(i) On each (A) Interest Payment Date, (B) Redemption Date and (C) date of acceleration of the Bonds, the Trustee shall disburse to the Credit Provider the amount of any Draw, as applicable, under the Credit Facility relating to the payment of interest on the Bonds;

(ii) In the event of a Wrongful Dishonor until such Wrongful Dishonor is cured or if no Credit Facility is in effect with respect to the Bonds, the Trustee shall disburse to the Bondholders on each Interest Payment Date, an amount equal to the interest due on the Bonds on such date;

(iii) On each Interest Payment Date, to the Credit Provider the amount of its Facility Fee;

(iv) If the Credit Provider gives written notice to the Trustee at any time to the effect that there is any unreimbursed draw under the Credit Facility or any other amount required to be paid by the Borrower to the Credit Provider under the Loan Documents, the Bond Documents or the Credit Facility Documents remains unpaid, then the Trustee shall transfer any Investment Income earned on the Interest Account from and after the preceding Interest Payment Date to the Credit Provider but not in an amount which exceeds the amount stated as unpaid by the Credit Provider in its notice to the Trustee; and

(v) Unless there is (A) a deficiency in the Principal Reserve Fund, the Fees Account or the Rebate Fund or (B) other than as described in paragraph (iii) above, an Event of Default under any Credit Facility Document or any Bond Document or a default under any Loan Document has occurred and is continuing, on each Interest Payment Date the Trustee shall disburse the Investment Income earned on or transferred to the Interest Account from and after the preceding Interest Payment Date to the Borrower. If a deficiency exists in the Principal Reserve Fund, the Fees Account or the Rebate Fund, such Investment Income shall be transferred to the Principal Reserve Fund, the Fees Account and/or the Rebate Fund, in that order of priority, prior to any payment to the Borrower.

Section 5.05. Revenue Fund—Redemption Account.

(a) ***Deposits Into the Redemption Account.*** The Trustee shall deposit each of the following amounts into the Redemption Account:

(i) Available Moneys provided by or on behalf of the Borrower to fund the premium payable on Bonds in connection with a redemption of such Bonds, which amounts shall be held in a segregated subaccount in the Redemption Account;

(ii) moneys provided by or on behalf of the Borrower relating to a principal payment, including any prepayment under the Note;

(iii) moneys transferred from the Principal Reserve Fund pursuant to Section 5.11; and

(iv) any other amount received by the Trustee and required by the terms of this Indenture or the Financing Agreement to be deposited into the Redemption Account.

(b) ***Disbursements From the Redemption Account.*** On each Redemption Date, date of acceleration of the Bonds, the Maturity Date and/or the date on which the Bonds are purchased in lieu of redemption in accordance with Section 3.07 hereof, the Trustee shall disburse from the Redemption Account (x) to the Credit Provider, the amount of any Draw under the Credit Facility relating to the payment of principal on the Bonds or (y) in the event of a Wrongful Dishonor or if no Credit Facility is in effect with respect to the Bonds, to the Bondholders, an amount equal to the principal due on the Bonds on such date. In addition, on any date on which premium payable on Bonds in

connection with a redemption of such Bonds is due, the Trustee shall disburse to the Bondholders, from the segregated subaccount in the Redemption Account, Available Moneys in an amount sufficient to pay such premium.

(c) ***Disbursements From the Redemption Account for Sinking Fund Payments.***

(i) *Application of Moneys.* Provided that no notice of optional redemption has been sent to Bondholders on or prior to the thirtieth day preceding a Sinking Fund Payment Date, at the written instruction of the Issuer (acting through an Authorized Representative), at the direction of the Borrower and with the prior written consent of the Credit Provider, if any, the Trustee shall apply any moneys accumulated in the Redemption Account on or prior to the thirtieth day preceding such Sinking Fund Payment Date to the purchase of Bonds of the maturity for which such Sinking Fund Payment was established at prices (including any brokerage and other charges) not exceeding the redemption price for such Bonds plus accrued and unpaid interest to the date of purchase, such purchase to be made in such manner as the Trustee (after consultation with the Issuer, the Borrower and the Credit Provider) determines.

(ii) *Credit Toward Sinking Fund Payment.* Upon the purchase of any Bond pursuant to Section 5.05(c)(i), all such Bonds will be cancelled by the Trustee and an amount equal to the principal amount of the Bonds so purchased will be credited toward the Sinking Fund Payment next due with respect to the Bonds of such maturity. In the event the Trustee is able to purchase Bonds at a price less than the redemption price at which such Bonds were to be redeemed, then, presuming no notice of redemption has been sent to Bondholders, after payment by the Trustee of the purchase price of such Bonds and after payment of any other amounts due on the due date of such Sinking Fund Payment, the Trustee shall pay an amount not greater than the difference between the amount of such purchase price and the amount of such redemption price to, or at the direction of, the Borrower.

(iii) *Redemption.* As soon as practicable after the thirtieth day preceding the due date of any such Sinking Fund Payment, and otherwise as provided in Section 3.04, the Trustee shall give notice of redemption of Bonds in such amount as is necessary to complete the retirement of a principal amount of Bonds equal to the unsatisfied balance of such Sinking Fund Payment. The Trustee shall call such Bonds for redemption whether or not it then has moneys in the Redemption Account sufficient to pay the applicable redemption price of the Bonds to be redeemed on the Redemption Date. The Trustee shall pay the amount required for the redemption of the Bonds called for redemption from the Funds specified in Article V of this Indenture, in the order of priority indicated, and such amount will be applied by the Trustee to such redemption.

Section 5.06. Revenue Fund—Credit Facility Account.

(a) ***Deposits Into the Credit Facility Account.*** The Trustee shall deposit into the Credit Facility Account all Draws under the Credit Facility, except that amounts drawn to purchase Pledged Bonds shall be deposited into the Bond Purchase Fund pursuant to Section 5.10(a)(ii). No other moneys shall be deposited into the Credit Facility Account and the Credit Facility Account shall be maintained as a segregated account and moneys in it shall not be commingled with any other moneys held under the Indenture. The Credit Facility Account shall be closed at such time as the Credit Provider has no continuing liability under the Credit Facility.

(b) ***Transfers From the Credit Facility Account.*** The Trustee shall cause amounts deposited into the Credit Facility Account to be applied on the date payment is due to the payments for which the Draw was made pursuant to the Credit Facility. In no event shall amounts in the Credit Facility Account be applied to any premium that may be payable upon the redemption of any Bonds, the payment of principal of and interest, the purchase price and any premium on any Pledged Bonds or on any Bonds known by the Trustee to be held by the Borrower or any Affiliate of the Borrower. Any amounts remaining in the Credit Facility Account after making the payment for which the Draw was made pursuant to the Credit Facility shall be immediately refunded to the Credit Provider.

Section 5.07. Revenue Fund—Fees Account.

(a) ***Deposits Into the Fees Account.*** The Trustee shall deposit into the Fees Account all:

(i) ***Third Party Fees.*** Payments made by or on behalf of the Borrower under the Financing Agreement attributable to the Third Party Fees; and

(ii) ***Fees and Expenses.*** Payments made by or on behalf of the Borrower under the Financing Agreement attributable to the Fees and Expenses.

(b) ***Disbursements From the Fees Account.*** On any date on which any amounts are required to pay any Third Party Fees or any Fees and Expenses, such amounts shall be withdrawn by the Trustee from the Fees Account for payment to the appropriate party. In the event the amount in the Fees Account is insufficient to pay such Third Party Fees or any Fees and Expenses, the Trustee shall make written demand on the Borrower for the amount of such insufficiency and, pursuant to the terms of the Financing Agreement, the Borrower shall be liable to promptly pay the amount of such insufficiency to the Trustee after the date of the Trustee's written demand. The Trustee will provide notice of the insufficiency to the Credit Provider.

(c) ***No Other Claims to Trust Estate.*** Neither the Tender Agent, the Remarketing Agent nor the Rebate Analyst shall have any right to any moneys in any Fund or Account or otherwise in the Trust Estate other than those moneys deposited pursuant to subsection (a) into the Fees Account specifically for such Person. Except as otherwise stated in Sections 5.17 and 9.02, the Issuer shall not have any right to any

moneys in any Fund or Account or otherwise in the Trust Estate other than those moneys deposited pursuant to subsection (a) into the Fees Account specifically for the Issuer. Except as otherwise stated in Sections 5.17, 9.02 and 10.10, the Trustee shall not have any right to any moneys in any Fund or Account or otherwise in the Trust Estate other than those moneys deposited pursuant to subsection (a) into the Fees Account specifically for the Trustee.

Section 5.08. Costs of Conversion Fund.

(a) *Deposits Into the Costs of Conversion Fund.* On or before the Closing Date the Borrower shall deliver the Costs of Conversion Deposit to the Trustee. On the Closing Date the Trustee shall deposit the portion of the Costs of Conversion Deposit then remitted to the Trustee into the Costs of Conversion Fund to pay the costs incurred in connection with the conversion of the Bonds on the Closing Date.

(b) *Disbursements From the Costs of Conversion Fund.* The Trustee shall disburse moneys on deposit in the Costs of Conversion Fund, pursuant to requisitions in the form of Exhibit C attached to this Indenture, signed by an Authorized Borrower Representative, to pay Costs of Conversion. The Trustee may conclusively rely on such requisitions for purposes of making such disbursements. Moneys on deposit in the Costs of Conversion Fund shall not be part of the Trust Estate and will be used solely to pay Costs of Conversion.

(c) *Disposition of Remaining Amounts.* Any moneys remaining in the Costs of Conversion Fund 30 days after the Closing Date and not needed to pay still unpaid Costs of Conversion will be returned to the Borrower. Upon final disbursement, the Trustee shall close the Costs of Conversion Fund.

Section 5.09. Rebate Fund. The Trustee shall hold and apply the Rebate Fund as provided in this Indenture. Within 30 days after the end of every fifth Bond Year (as defined in the Tax Certificate) for the Tax-Exempt Bonds, and within 55 days after the date on which no Tax-Exempt Bonds are Outstanding, the Borrower or the Trustee shall cause the Rebate Analyst to deliver to the Trustee and the Issuer a certificate stating whether any rebate payment is required to be made, as set forth in the Tax Certificate, and the Borrower shall deliver to the Trustee any amount so required to be paid. Notwithstanding any provision of this Indenture to the contrary, if at any time within one year after the Closing Date the Borrower causes a Rebate Analyst to deliver such a certificate and following payment by the Borrower of the amount required to be paid pursuant to such report of the Rebate Analyst, the Borrower may direct the Trustee in writing to transfer any amounts held in the Rebate Fund following such payment to any fund or account under this Indenture or to the Borrower by wire transfer.

The Trustee agrees to comply with all instructions given to it by the Borrower in accordance with this covenant. The Trustee shall conclusively be deemed to have complied with the provisions of this Section 5.09 and the related provisions in the Tax Certificate if it follows the instructions of the Borrower and shall not be required to take any actions hereunder in the absence of instructions from the Borrower.

Section 5.10. Bond Purchase Fund.

(a) *Deposits Into Bond Purchase Fund.* The Trustee shall deposit each of the following into the Bond Purchase Fund:

(i) remarketing proceeds received upon the remarketing of Tendered Bonds to any person; and

(ii) Draws under the Credit Facility to enable the Trustee to pay the purchase price of Tendered Bonds to the extent that moneys obtained pursuant to paragraph (i) are insufficient on any date to pay the purchase price of Tendered Bonds, which amounts the Trustee shall transfer to the Tender Agent on or before 3:00 p.m. Eastern Time on each Tender Date.

Subject to Section 8.03 permitting reimbursement of amounts owed to the Credit Provider, moneys in the Bond Purchase Fund shall be held uninvested and exclusively for the payment of the purchase price of Tendered Bonds. Amounts held to pay the purchase price for more than two years will be applied in the same manner as provided under Section 5.16 with respect to unclaimed payments of principal and interest.

(b) *Disbursements From the Bond Purchase Fund.* The Trustee shall transfer to the Tender Agent on or before 3:00 p.m. Eastern Time on each Tender Date amounts on deposit in the Bond Purchase Fund to pay the purchase price of Tendered Bonds. The Tender Agent shall apply such amounts to pay the purchase price of Bonds purchased under this Indenture to the former owners of such Bonds upon presentation of the Bonds to the Tender Agent pursuant to Section 4.01 or 4.02.

Section 5.11. Principal Reserve Fund.

(a) *Deposits Into the Principal Reserve Fund.* The Trustee shall deposit each of the following amounts into the Principal Reserve Fund:

(i) All of the monthly payments of principal made by the Borrower in accordance with the Reimbursement Agreement, as such schedule of principal payments may be amended in accordance with the Reimbursement Agreement, upon delivery to the Issuer, the Trustee and the Credit Provider of an Opinion of Bond Counsel to the effect that such amendment will not, in and of itself, adversely affect the exclusion of the interest payable on the Tax-Exempt Bonds from gross income for federal income tax purposes; and

(ii) Investment Income earned on amounts on deposit in the Principal Reserve Fund.

(b) *Disbursements From the Principal Reserve Fund.* The Trustee shall pay or transfer amounts on deposit in the Principal Reserve Fund as follows:

(i) at the written direction of the Credit Provider, to the Credit Provider to reimburse the Credit Provider for any unreimbursed Draw under the

Credit Facility and to pay any other amounts required to be paid by the Borrower under the Loan Documents, the Bond Documents or the Credit Facility Documents (including any amounts required to be paid to the Credit Provider);

(ii) at the written direction of the Credit Provider, with the written consent of the Borrower (so long as an Event of Default has not occurred and is not continuing under any of the Credit Facility Documents), to the Credit Provider or the Borrower, as the Credit Provider elects, to make improvements or repairs to the Mortgaged Property;

(iii) at the written direction of the Credit Provider, if a default has occurred under the Credit Facility Documents, any Loan Document or any Bond Document, to the Credit Provider for any use approved in writing by the Credit Provider;

(iv) at the written direction of the Credit Provider, if a new mortgage and mortgage note have been substituted for the Security Instrument and the Note in accordance with the Loan Documents, or if the Borrower otherwise consents, for any purpose approved in writing by the Credit Provider;

(v) on each Adjustment Date, to the Redemption Account;

(vi) during a Weekly Variable Rate Period or Daily Variable Rate Period, so long as any 2006A-T Bonds remain Outstanding, on the tenth Business Day prior to each Interest Payment Date, all or any part of the amounts on deposit in the Principal Reserve Fund in Authorized Denominations (rounded down to the nearest integral multiple of \$100,000) shall be transferred to the Redemption Account for the redemption of 2006A-T Bonds; and thereafter, on the tenth Business Day prior to each Interest Payment Date, all amounts on deposit in the Principal Reserve Fund (rounded downward to the nearest multiple of \$100,000) in excess of the Principal Reserve Amount, to the Redemption Account for the redemption of Tax-Exempt Bonds; and

(vii) pay to the Borrower, Investment Income on moneys in the Principal Reserve Fund on the Interest Payment Date following receipt by the Trustee of such interest or profits; provided that there is no deficiency in the Interest Account, the Redemption Account, the Principal Reserve Fund, the Fees Account or the Rebate Fund, and that no default exists under the Credit Facility Documents, any Loan Document or any Bond Document. If a deficiency exists in the Interest Account, the Redemption Account, the Principal Reserve Fund, the Fees Account or the Rebate Fund, the Trustee shall transfer such Investment Income to the Interest Account, the Redemption Account, the Principal Reserve Fund, the Fees Account and/or the Rebate Fund, in that order of priority, prior to any payment to the Borrower.

(c) ***No Principal Reserve Fund During Bank Rate Period.*** While the Bonds bear interest at a Bank Rate, no amounts shall be required to be deposited into or held in

the Principal Reserve Account. All amounts held in the Principal Reserve Fund on the Closing Date and not used to redeem Bonds on such date shall be released to the Borrower.

Section 5.12. Moneys To Be Held in Trust. Except for (i) moneys deposited with or paid to the Trustee for the redemption of Bonds notice of the redemption of which has been duly given and (ii) moneys on deposit in the Costs of Issuance Fund, the Rebate Fund and the Fees Account, all moneys required to be deposited with or paid to the Trustee for the account of any Fund or Account will be held by the Trustee in trust and, while held by the Trustee, shall constitute part of the Trust Estate and be subject to the security interest created by this Indenture.

Section 5.13. Records. The Trustee shall keep and maintain accurate records with respect to the Funds and Accounts. The Trustee shall file at least an annual accounting of the Funds and Accounts and the payment history on the Bonds and the Loan with the Issuer and the Borrower and, upon request, with the Credit Provider.

Section 5.14. Reports by the Trustee. The Trustee shall, on or before the twentieth day of each month, file with the Borrower and, upon request, the Credit Provider a statement setting forth in respect of the preceding calendar month:

- (a) the amount withdrawn or transferred and the amount deposited within or on account of each Fund and Account under this Indenture, including the amount of Investment Income on each Fund and Account transferred to the Interest Account;
- (b) the amount on deposit at the end of such month to the credit of each Fund and Account;
- (c) a brief description of all obligations held as an investment of moneys in each Fund and Account;
- (d) the amount applied to the purchase or redemption of Bonds and a description of the Bonds or portions of Bonds so purchased or redeemed; and
- (e) any other information which the Borrower, the Credit Provider or the Issuer may reasonably request.

No monthly statement for a Fund or Account need be rendered if no activity occurred in that Fund or Account during such month. Upon the written request of any Bondholder owning 25% or more in aggregate principal amount of Bonds then Outstanding, the Trustee, at the Borrower's expense, shall provide a copy of such statement to the Bondholder. All records and files pertaining to the Trust Estate will be open at all reasonable times during regular business hours of the Trustee to the inspection and audit of the Issuer, the Borrower and the Credit Provider and their agents and representatives upon reasonable prior notice.

Section 5.15. Moneys Held for Particular Bonds. The amounts held by the Trustee for payment of the interest, premium, if any, principal or redemption price due on any date with respect to particular Bonds, pending such payment, will be set aside and held in trust by the Trustee for the Bondholders entitled to such payment. For the purposes of this Indenture such

interest, premium, principal or redemption price, after the due date of payment, will no longer be considered to be unpaid.

Section 5.16. Nonpresentment of Bonds. In the event any Bond is not presented for payment when the principal of such Bond becomes due, either at maturity or at the date fixed for redemption of such Bond or otherwise, if amounts sufficient to pay such Bond have been deposited with the Trustee for the benefit of the owner of the Bond and have remained unclaimed for two years after such principal has become due and payable, such amounts, to the extent amounts are owed to the Credit Provider as set forth in a written statement of the Credit Provider addressed to the Trustee, will be paid to the Credit Provider, with any excess to be paid to the Borrower. Upon such payment, all liability of the Issuer and the Trustee to the holder of any Bond for the payment of such Bond will cease and be completely discharged. The obligation of the Trustee under this Section 5.16 to pay any such amounts to the Credit Provider or the Borrower will be subject to any provisions of law applicable to the Trustee or to such amounts providing other requirements for disposition of unclaimed property.

Section 5.17. Disposition of Remaining Moneys. Provided that the rebate requirements referenced in the Tax Certificate are first satisfied, any amounts remaining in the Revenue Fund or the Principal Reserve Fund after payment in full of the principal of and interest and any premium on the Bonds will be applied to pay (i) first, to the Credit Provider any unpaid amounts certified by the Credit Provider to be due and owing to the Credit Provider, (ii) second, to the person or persons entitled to be paid, all other unpaid amounts required to be paid under this Indenture or the Financing Agreement, and (iii) third, to the Borrower the balance upon the expiration or sooner cancellation or termination of the term of the Financing Agreement as provided in the Financing Agreement.

ARTICLE VI

INVESTMENTS

Section 6.01. Investment Limitations. Moneys held as part of any Fund or Account shall be invested and reinvested in Permitted Investments. Permitted Investments shall have maturities corresponding to, or shall be available for withdrawal without penalty no later than, the dates upon which such moneys shall be needed for the purpose for which such moneys are held. Moneys on deposit in the (i) Interest Account shall be invested only in investments described in paragraphs (a), (b) and (c) of the definition of Permitted Investments, (ii) Redemption Account shall be invested only in investments described in paragraph (a) of the definition of Permitted Investments, with a term not exceeding the earlier of 30 days from the date of investment of such moneys or the date or dates that such moneys are anticipated to be required for redemption, (iii) Credit Facility Account and Bond Purchase Fund shall be held uninvested and (iv) Costs of Issuance Fund, until disbursed or returned to the Borrower pursuant to Section 5.08, shall be invested only in investments described in paragraph (h) of the definition of Permitted Investments. Permitted Investments shall be held by or under the control of the Trustee. All Investment Income from moneys held in all Funds and Accounts other than the Loan Fund, the Rebate Fund, the Costs of Issuance Fund (other than as provided below) and the Principal Reserve Fund, upon receipt, shall be deposited into the Interest Account. Investment

Income from moneys held in the Loan Fund, the Rebate Fund, the Costs of Issuance Fund and the Principal Reserve Fund shall remain in the respective Fund where earned.

Section 6.02. Trustee's Authority and Responsibilities. The Trustee is authorized to sell and reduce to cash a sufficient amount of Permitted Investments whenever the cash balance is or will be insufficient to make a requested or required disbursement. The Trustee shall not be accountable for any depreciation in the value of any Permitted Investment or for any loss resulting from such sale. The Trustee may trade with itself and its Affiliates in the purchase and sale of securities for investments, and may transact purchases and sales through its investment department or through its Affiliates. The Trustee and its Affiliates may act as principal, agent, sponsor, advisor or depository with respect to any investments. All Permitted Investments shall be made by the Trustee in its name, as Trustee, at the written direction of the Borrower, subject to the limitations contained in this Indenture. If no direction is provided to the Trustee, the Trustee shall invest such moneys in investments described in paragraph (h) of the definition of Permitted Investments. In computing the amount in any Fund or Account, Permitted Investments if purchased at par shall be valued at principal cost plus accrued interest, or, if purchased at other than par, at principal cost plus amortized discount or less amortized premium (amortization to be on a straight-line basis to the date of stated maturity without regard to redemptions or repayments of principal which may occur prior to maturity) plus accrued interest. The Trustee shall take such actions as shall be necessary to assure that Permitted Investments purchased by it under this Indenture are held pursuant to the terms of this Indenture and are subject to the trusts and security interests created in this Indenture. The Issuer (and the Borrower by its execution of the Financing Agreement) acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Issuer or the Borrower the right to receive brokerage confirmations of security transactions as they occur, the Issuer and the Borrower specifically waive receipt of such confirmations to the extent permitted by law.

ARTICLE VII

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE ISSUER

Section 7.01. Issuer's Representations and Warranties. The Issuer represents and warrants that:

(a) The Issuer is duly authorized under the Constitution and laws of the State, including the Act, to (i) issue the Bonds, (ii) execute and deliver this Indenture, the Financing Agreement, the Assignment and the Regulatory Agreement and to endorse the Note, (iii) assign its interest in the Financing Agreement (except the Reserved Rights) and (iv) pledge and assign the Trust Estate as set forth in this Indenture for the benefit of (A) the Bondholders, to secure the payment of the principal of and interest and any premium on the Bonds in accordance with the terms and provisions of this Indenture and the Bonds and (B) the Credit Provider, if any, to secure the payment of all amounts owing to the Credit Provider under the Credit Facility Documents.

(b) All actions on the part of the Issuer for the issuance, sale and delivery of the Bonds and for the execution and delivery of this Indenture, the Financing Agreement,

the Assignment and the Regulatory Agreement and the endorsement of the Note have been or will be taken duly and effectively.

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

Section 7.02. Issuer's Covenants. In addition to all other covenants and agreements of the Issuer contained in this Indenture or the Financing Agreement, the Issuer further covenants and agrees with the Bondholders and the Trustee as follows:

(a) Except as provided in Article XII, the Issuer shall not alter, modify or cancel, or agree to alter, modify or cancel, any agreement which relates to or affects the Security.

(b) Except as otherwise provided in this Indenture, the Financing Agreement, the Assignment or the Credit Facility Documents, the Issuer shall not sell, convey, mortgage, encumber or otherwise dispose of any portion of the Security or create or authorize to be created any debt, lien or charge thereon.

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

Section 7.03. Limitations on Liability. Notwithstanding any other provision of this Indenture to the contrary:

(a) The obligations of the Issuer with respect to the Bonds are not general obligations of the Issuer but are special, limited obligations of the Issuer payable by the Issuer solely from the Security;

(b) Nothing contained in the Bonds or in this Indenture shall be considered as assigning or pledging any funds or assets of the Issuer other than the Trust Estate;

(c) The Bonds are not and will not be a debt of the State, the Issuer or of any other political subdivision of the State, and none of the State, the Issuer or any other political subdivision of the State is or will be liable for the payment of the Bonds;

(d) Neither the faith and credit of the Issuer, the State nor of any other political subdivision of the State are pledged to the payment of the principal of and interest and any premium on the Bonds;

(e) No failure of the Issuer to comply with any term, condition, covenant or agreement in this Indenture or in any document executed by the Issuer in connection with the Mortgaged Property, or the issuance, sale and delivery of the Bonds shall subject the

Issuer to liability for any claim for damages, costs or other charges except to the extent that the same can be paid or recovered from the Trust Estate;

(f) The Issuer shall not be required to advance any moneys derived from any source other than the Trust Estate for any of the purposes of this Indenture, any of the other Bond Documents or any of the Loan Documents, whether for the payment of the principal or redemption price of, or interest on, the Bonds, the payment of Third Party Fees, Fees and Expenses or administrative expenses or otherwise; and

(g) Neither the members of the Board of Supervisors of the Issuer nor any person executing the Bonds will be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 7.04. Further Assurances; Security Agreement. The Issuer, to the extent permitted by law, shall execute, acknowledge and deliver such supplemental indentures and other instruments and documents, and perform such further acts, as the Trustee or the Credit Provider may reasonably require to perfect, and maintain perfected, the security interest in the Trust Estate or to better assure, transfer, convey, pledge, assign and confirm to the Trustee or the Credit Provider all of its respective interest in the property described in this Indenture and the revenues, receipts and other amounts pledged by the Indenture. The Issuer shall cooperate to the extent necessary with the Borrower, the Trustee and the Credit Provider in their defenses of the Trust Estate and the Security against the claims and demands of all Persons. In addition to the assignment by the Issuer of its rights in the Trust Estate to the Trustee, the Issuer hereby acknowledges that in order to more fully protect, perfect and preserve the rights of the Trustee and the Credit Provider in the Trust Estate, the Issuer grants to the Trustee and the Credit Provider, a security interest in the Trust Estate and the proceeds thereof.

Section 7.05. Enforcement. The Issuer agrees that the Trustee and, so long as a Credit Facility provided by the Credit Provider continues in effect, the Credit Provider, in its name or in the name of the Issuer, may enforce against the Borrower or any other Person any rights of the Issuer under the Bond Documents (other than the Reserved Rights) whether or not the Issuer is in default under this Indenture or under the Financing Agreement, but neither the Trustee nor the Credit Provider will be deemed to have assumed any of the obligations of the Issuer under the Bond Documents. The Issuer shall fully cooperate with the Trustee or the Credit Provider in the enforcement by the Trustee or the Credit Provider of any such rights. At the request of the Trustee or the Credit Provider, the Issuer, upon being indemnified to its reasonable satisfaction against all liability, costs and expenses which may be incurred in connection with such enforcement, shall in its name commence legal action or take such other actions as the Trustee or the Credit Provider reasonably requests to enforce the rights of the Issuer, the Trustee or the Credit Provider under or arising from the Bonds or the Bond Documents.

Section 7.06. Tax Covenants. The Issuer agrees:

(a) it shall neither make nor direct the Trustee to make any investment or other use of the proceeds of the Bonds that would cause the Tax-Exempt Bonds to be “arbitrage bonds” as that term is defined in Section 148(a) of the Code and that it shall comply with the requirements of the Code throughout the term of the Tax-Exempt Bonds;

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

(c) it shall enforce or cause to be enforced all obligations of the Borrower under the Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Regulatory Agreement within a reasonable period after any such violation is first discovered.

In furtherance of the covenants in this Section, the Issuer and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which is by this reference incorporated into this Indenture and made a part of this Indenture, and by its acceptance of this Indenture the Trustee acknowledges receipt of the Tax Certificate, acknowledges its incorporation into this Indenture by this reference and agrees to follow any investment instructions given by the Borrower or the Issuer pursuant thereto.

ARTICLE VIII

CREDIT FACILITY; ALTERNATE CREDIT FACILITY; LETTER OF CREDIT

Section 8.01. Acceptance of the Credit Facility. The Trustee shall hold any Credit Facility and shall enforce in its name all rights of the Trustee and all obligations of the Credit Provider under the Credit Facility for the benefit of the Bondholders. The Trustee shall not assign or transfer the Credit Facility except (i) to a successor Trustee under this Indenture, (ii) to the Credit Provider upon expiration or other termination of the Credit Facility in accordance with its terms, including expiration on its stated expiration date or (iii) upon payment under the Credit Facility of the full amount payable under the Credit Facility.

Section 8.02. Draws Under Credit Facility. Unless the Bonds bear interest at a Bank Rate or at a Fixed Rate without a Credit Facility, Trustee shall draw on the Letter of Credit, or, if an Alternate Credit Facility is in effect, draw on the Alternate Credit Facility, in each case for the payment of principal of and interest due on any Bond and the purchase price of any Bond to the extent required by Section 4.01(g) and 4.02(d) (deducting from the amount drawn only for amounts on deposit in the Bond Purchase Fund at the time the Trustee submits the draw request) and in accordance with the terms of the Credit Facility then in effect, and cause the proceeds of each Draw to be applied so that full and timely payments are made on each date on which payment of principal, interest or purchase price is due on any Bond. The Trustee shall not request, and shall not apply the proceeds of, any Draw to pay (i) principal of, interest on, or the purchase price of, any Pledged Bond or any Bond known by the Trustee to be held by the Borrower or any Affiliate of the Borrower, (ii) premium that may be payable upon the redemption of any of the Bonds or (iii) interest that may accrue on any of the Bonds on or after the maturity of such Bonds. Prior to making a Draw to pay principal of or interest on the Bonds on an Interest Payment Date, the Trustee shall determine the amount necessary to make such payment of principal or interest. Notwithstanding any other provision of this Indenture to the contrary, so long as a Credit Facility is in effect (i) interest payable to the Bondholders on each

Interest Payment Date, and principal payable to the Bondholders on any date on which principal is payable to the Bondholders, whether by reason of redemption, upon maturity, acceleration, or otherwise, shall be paid from the proceeds of the Credit Facility deposited into the Credit Facility Account, prior to the use of any other moneys, and all amounts held by the Trustee under this Indenture derived from payments made by the Borrower under the Note shall, on the date on which the Trustee receives payment under the Credit Facility, as the case may be, be paid to the Credit Provider on such date in reimbursement of the amounts so paid and (ii) premium payable upon any optional redemption of Bonds shall be paid with Available Moneys, provided that in no event shall amounts be paid under the Credit Facility to pay the premium on any Bond or principal, interest, premium or any other amount in respect of any Pledged Bond or any Bond known by the Trustee to be held by the Borrower or any Affiliate of the Borrower.

Section 8.03. Return of Payments Under the Credit Facility. In the event the Trustee receives a Draw from the Credit Provider on account of any Tendered Bond and thereafter the Trustee receives remarketing proceeds upon the remarketing of such Tendered Bond, then the Trustee shall promptly reimburse the Credit Provider with such funds to the extent of the amount so paid by the Credit Provider as a reimbursement on behalf of the Borrower.

Section 8.04. Alternate Credit Facility. Subject to the terms of the Credit Facility Documents, the Trustee shall accept any Alternate Credit Facility delivered to the Trustee in substitution for the Credit Facility then in effect if:

- (a) the Alternate Credit Facility meets the requirements of Section 2.09;
- (b) the Substitution Date for the Alternate Credit Facility is an Interest Payment Date during a Weekly Variable Rate Period, or a Daily Variable Rate Period, or an Adjustment Date which immediately follows a Reset Period;
- (c) the Alternate Credit Facility is effective on and from the Substitution Date for such Alternate Credit Facility; and
- (d) the Trustee receives on or prior to the effective date of the Alternate Credit Facility (i) an Opinion of Counsel to the Credit Provider issuing the Alternate Credit Facility, in form and substance satisfactory to the Issuer and the Trustee, relating to the due authorization and issuance of the Alternate Credit Facility and its enforceability and (ii) an opinion of Bond Counsel to the effect that the substitution of such Alternate Credit Facility will not adversely affect the exclusion from gross income, for federal income tax purposes, of the interest payable on the Tax-Exempt Bonds.

The Trustee shall give notice to the Bondholders by first class mail, postage prepaid, of the substitution by such Alternate Credit Facility for the Credit Facility then in effect as provided in Section 4.02. On the Substitution Date, the Trustee shall, if necessary, draw on or request an Advance on the Credit Facility being replaced and shall not surrender such Credit Facility until all requests thereon have been honored.

Any provider of an Alternate Credit Facility shall have the rights and obligations of the Credit Provider in the event an Alternate Credit Facility is delivered to the Trustee that meets the requirements of Sections 2.09 and 8.04.

Section 8.05. Extension of Credit Facility. In the event the term of the Letter of Credit or the term of any Alternate Credit Facility is extended, the Trustee must receive, not later than the Extension Date, (i) either a commitment to extend the Letter of Credit or Alternate Credit Facility or other written evidence of the extension of the Letter of Credit or Alternate Credit Facility and (ii) an Opinion of Counsel for the Credit Provider (of the Letter of Credit or Alternate Credit Facility), in substantially the form of the Opinion of Counsel delivered to the Trustee upon the issuance of the Letter of Credit or Alternate Credit Facility. The Trustee shall provide a copy of any commitment to extend and the actual extension of the Letter of Credit or Alternate Credit Facility upon receipt thereof to the Rating Agency and Remarketing Agent and, upon request, to any Bondholder. Upon the failure of the Borrower to furnish the Trustee with the actual extension of the Letter of Credit or Alternate Credit Facility or a binding commitment to extend the Letter of Credit or Alternate Credit Facility or an Alternate Credit Facility pursuant to Section 8.04 and the accompanying Opinion of Counsel on or prior to each Extension Date, the Bonds shall be subject to mandatory tender pursuant to Section 4.02.

Section 8.06. Limitations on Rights of Credit Provider. Notwithstanding anything contained in this Indenture to the contrary, all provisions in this Indenture regarding consents, approvals, directions, waivers, appointments, requests or other actions by the Credit Provider shall be deemed not to require or permit such consents, approvals, directions, waivers, appointments, requests or other actions and shall be read as if the Credit Provider were not mentioned in such provisions (i) if a Wrongful Dishonor has occurred and is continuing or (ii) after the Credit Facility ceases to be valid and binding on the Credit Provider for any reason excluding those circumstances where all drawings have been made under the Credit Facility and unreimbursed obligations with respect to such drawings are owed by the Borrower under the Reimbursement Agreement; provided, however, that the Credit Provider's right to notices and (subject to the limitations below) the payment of amounts due to the Credit Provider shall continue in full force and effect. In addition, if a Wrongful Dishonor has occurred and is continuing or after the Credit Facility ceases to be valid and binding on the Credit Provider for any reason excluding those circumstances where all drawings have been made under the Credit Facility and unreimbursed obligations with respect to such drawings are owed by the Borrower under the Reimbursement Agreement, the security interest and related rights of the Credit Provider in the Trust Estate shall be junior and subordinate to the rights of the Bondholders. The foregoing shall not affect any other rights of the Credit Provider.

Section 8.07. References to Credit Provider When No Credit Facility Is In Effect; Approval and Consent Rights of the Administrative Agent. All provisions of this Indenture relating to the rights of the Credit Provider shall be of no force and effect if there is no Credit Facility in effect and there are no Pledged Bonds and all amounts owing to the Credit Provider under the Credit Facility Documents have been paid and all references to the Credit Provider shall have no force or effect; provided, during any Bank Rate Period, for purposes of the approval and consent rights of the Credit Provider, the Administrative Agent shall be considered to be the Credit Provider.

Section 8.08. Certain Notices to the Credit Provider. The Trustee and Issuer shall promptly notify the Credit Provider of any of the following as to which it has actual knowledge: (i) the occurrence of any Event of Default under this Indenture or under any of the other Transaction Documents, or any event which, with the passage of time or service of notice, or

both, would constitute such an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect to such event, (ii) an Act of Bankruptcy or a bankruptcy filing by or against the Borrower and (iii) the making of any claim in connection with seeking the avoidance as a preferential transfer (“Preference Claim”) of any payment of principal of, or interest on, the Loan.

Section 8.09. Credit Provider To Control Insolvency Proceedings. Each Bondholder, by its purchase of Bonds, the Trustee and the Issuer agree that the Credit Provider may at any time during the continuation of an insolvency proceeding of the Issuer or the Borrower (“Insolvency Proceeding”) direct all matters relating to the Bonds in any such Insolvency Proceeding, including, without limitation, (i) all matters relating to any Preference Claim, (ii) the direction of any appeal of any order relating to any Preference Claim and (iii) the posting of any surety, supersedes or performance bond pending any such appeal. In addition, and without limitation of the foregoing, the Credit Provider shall be subrogated to the rights of the Issuer, the Trustee and the Bondholders in any Insolvency Proceeding to the extent it has performed its payment obligations under the Credit Facility, including any rights of any party to an adversary proceeding action with respect to any court order issued in connection with any such Insolvency Proceeding and rights pertaining to the filing of a proof of claim, voting on a reorganization plan and rights to payment thereunder.

Section 8.10. Terms and Conditions of the Letter of Credit.

(a) **Delivery.** In connection with the adjustment of the interest rate on Bonds of a Series to a Daily Variable Rate, Weekly Variable Rate or a Reset Rate as provided in Section 2.09, the Borrower shall cause to be delivered to the Trustee a Letter of Credit or an Alternate Credit Facility. Following the delivery of a Letter of Credit by a Credit Provider to, and in favor of, the Trustee, for the benefit of the Bondholders, the Letter of Credit shall secure the Bonds in accordance with its terms so long as the Mode in effect for the Bonds is the Weekly Variable Rate or Daily Variable Rate.

(b) **Draws.** So long as the Letter of Credit is in effect the Trustee shall make timely Draws in accordance with the Letter of Credit such that (i) timely payment of principal and interest is made on the Bonds (other than Excluded Bonds) as required by this Indenture and (ii) timely payment of the purchase price of Tendered Bonds (other than Excluded Bonds) that have not been remarketed is made under Article IV. The Trustee shall make such Draws in such fashion as to be able to obtain on the applicable payment date, such funds to the extent necessary to permit the Trustee or the Tender Agent, as the case may be, to make such payment when due in accordance with this Indenture. If any such Draws are made on a Mandatory Tender Date in connection with the delivery of an Alternate Credit Facility, such Draws shall be made upon the Letter of Credit and not on the Alternate Credit Facility.

(c) **Notice.** The Trustee shall advise the Borrower by telecopy or telex on the date of each Draw on the Letter of Credit of the amount and date of such Draw and of the reason for such Draw.

(d) **Extension.** For any extension of the term of the Letter of Credit, the Trustee shall, at the direction of an Authorized Credit Provider Representative, but only if required to evidence an extension of the term of the Letter of Credit, surrender the Letter of Credit to the Credit Provider in exchange for a new letter of credit or the Letter of Credit with notations on it, as the Credit Provider may so elect, conforming in all material respects to the Letter of Credit, but with the extended expiration date. Any such extension shall be for a period of at least three months or, if less, until the fifteenth day following the maturity date of the Bonds.

(e) **Pledged Bonds and Bonds Held by Borrower.** No draws shall be made by the Trustee under the Letter of Credit for payment of any Pledged Bond or Bond known by the Trustee to be held by the Borrower or any Affiliate of the Borrower.

(f) **Draw Requirement.** The Trustee shall not terminate or surrender the Letter of Credit until the Trustee shall have made such Draw(s), if any, as shall be required under this Indenture to provide for payment in full of the principal of and interest on the Bonds, and shall have received the proceeds of such Draw(s) from the Credit Provider.

(g) **Beneficiary of Letter of Credit.** The Trustee shall have the obligation to hold and maintain the Letter of Credit for the benefit of the Owners of the Bonds until the Letter of Credit terminates or expires in accordance with its terms.

(h) **Surrender of Letter of Credit.** When the Letter of Credit terminates or expires in accordance with its terms, the Trustee shall immediately surrender it to the Credit Provider. The Trustee agrees that, except in the case of a redemption of Bonds in part or any other reduction in the principal amount of Bonds Outstanding, it will not under any circumstances request that the Credit Provider reduce the amount of the Letter of Credit. If at any time all Bonds shall cease to be Outstanding, the Trustee shall surrender the Letter of Credit to the Credit Provider in accordance with its terms.

Section 8.11. Wrongful Dishonor. Upon a Wrongful Dishonor, the Trustee shall give immediate telephonic notice of such dishonor to the Remarketing Agent, the Issuer, the Borrower, and the Credit Provider.

ARTICLE IX

DISCHARGE OF LIEN

Section 9.01. Discharge of Lien and Security Interest.

(a) **Discharge.** Upon satisfaction of the conditions set out in subsection (b), the Trustee shall (i) cancel and discharge this Indenture and the pledge and assignment of the Security, (ii) execute and deliver to the Issuer such instruments in writing prepared by the Issuer or its counsel and provided to the Trustee and the Credit Provider as may be required to cancel and discharge this Indenture and the pledge and assignment of the Trust Estate, (iii) reconvey, assign and deliver to the Issuer so much of the Trust Estate as may be in its possession or subject to its control (except for (A) moneys and Government

Obligations held for the purpose of paying Bonds and (B) moneys and Investments held in the Rebate Fund for payment to the United States Government) who shall, in turn, convey, assign and deliver the remaining Trust Estate to the Borrower and (iv) return the Credit Facility to the Credit Provider.

(b) **Conditions To Discharge.** The conditions precedent to the cancellation and discharge of this Indenture and the other acts described in subsection (a) are (i) payment in full of the Bonds, (ii) payment of the Trustee's Annual Fee and the Trustee's ordinary costs and expenses under this Indenture, (iii) receipt by the Trustee of a written statement from the Credit Provider stating that all obligations owed to the Credit Provider under the Credit Facility Documents have been fully paid, (iv) payment of all Extraordinary Items, (v) receipt by the Trustee of a written statement from the Issuer stating that all amounts owed to the Issuer in respect of Reserved Rights have been fully paid and (vi) receipt by the Trustee of an Opinion of Counsel, at the expense of the Borrower, stating that all conditions precedent to the satisfaction and discharge of this Indenture have been satisfied.

(c) **Survival of Rights and Powers.** The Reserved Rights of the Issuer and the rights and powers granted to the Trustee with respect to the payment, transfer and exchange of Bonds shall survive the cancellation and discharge of this Indenture.

Section 9.02. Payment of Outstanding Amounts. If the Bonds are paid in full, but any one or more of the other conditions precedent set out in Section 9.01(b) are not satisfied because an amount has not been paid, the Trustee, prior to cancellation and discharge of this Indenture, shall pay to the persons listed below, in the strict order set out below, the amounts required to satisfy those conditions precedent:

(a) **Trustee's Annual Fee and Ordinary Costs and Expenses.** If any portion of the Trustee's Annual Fee or ordinary costs and expenses of the Trustee remain unpaid, the Trustee shall pay to itself so much of the Trust Estate as will fully pay such unpaid amounts. No Extraordinary Items may be included under this subsection (a).

(b) **Credit Provider.** If the Trustee receives a written statement from the Credit Provider, if any, stating that moneys are owed to the Credit Provider under the Credit Facility Documents or the Loan Documents, the Trustee shall pay to the Credit Provider so much of the remaining Trust Estate as will fully pay all amounts due and owing to the Credit Provider, as determined by the Credit Provider. The reimbursement from the Trust Estate of amounts provided by the Credit Provider for application to the payment of remarketing expenses will be made with interest at a rate equal to the 30-day LIBOR rate plus two (2) percentage points or from the date or dates of such advances through the date of such reimbursement. The Trustee is authorized to rely on the written statement of the Credit Provider as to the amount of such advances and interest accrued on such advances.

(c) **Trustee.** If any Extraordinary Items have not been paid to the Trustee, the Trustee shall pay to itself so much of the remaining Trust Estate as will fully pay all amounts owing to the Trustee for Extraordinary Items.

(d) **Issuer.** If the Trustee receives a written statement from the Issuer stating that moneys are owed to the Issuer in respect of the Reserved Rights, the Trustee shall pay to the Issuer so much of the remaining Trust Estate as will fully pay all amounts owing to the Issuer in respect of the Reserved Rights.

Section 9.03. Defeasance.

(a) **Provision for Payment of Bonds.** Any Bond will be deemed paid within the meaning of Section 9.01 if each of the conditions set out in this Section is satisfied. The conditions are:

(i) The Issuer or the Borrower deposits with the Trustee (A) Available Moneys or (B) Government Obligations which are not subject to early redemption and which are purchased with Available Moneys, of such maturities and interest payment dates and bearing such interest as will be sufficient, without further investment or reinvestment of either the principal amount of such Government Obligations or the interest earnings on Government Obligations (the earnings to be held in trust also), together with any Available Moneys, for the payment on their respective maturity dates, or redemption dates prior to maturity, of the principal of such Bonds (calculated at the Maximum Rate in the case of Bonds in the Daily Variable Rate Mode or the Weekly Variable Rate Mode) and redemption premium, if any, and interest to accrue on such Bonds to such maturity or redemption dates;

(ii) The Trustee receives, at the expense of the Borrower, and may rely upon: (A) a verification report of an independent certified public accountant or other firm nationally recognized in the certification of cash flow analyses; and (B) an Opinion of Bond Counsel to the effect that such deposit with the Trustee and consequent defeasance of the Bonds does not adversely affect the excludability from gross income for federal income tax purposes of the interest payable on the Tax-Exempt Bonds;

(iii) All Third Party Fees and Fees and Expenses due or to become due have been paid or sufficient additional moneys to make the required payments have been irrevocably deposited with the Trustee;

(iv) For any such Bonds to be redeemed on any date prior to their maturity, the Trustee has received in form satisfactory to it irrevocable instructions to redeem such Bonds on a date on which the Bonds are subject to redemption, and either evidence satisfactory to the Trustee that all redemption notices required by this Indenture have been given or irrevocable power authorizing the Trustee to give such redemption notices; and

(v) If the Bonds bear interest at a Reset Rate, the Bonds will be redeemed on or before the last day of the current Reset Period, and if the Bonds bear interest at a Daily Variable Rate, a Weekly Variable Rate or a Bank Rate, the Bonds will be redeemed on the earliest possible redemption or tender date.

The Trustee shall redeem the Bonds specified by such irrevocable instructions on the date specified by such irrevocable instructions.

(b) ***Defeased Bonds No Longer Outstanding.*** At such times as a Bond is deemed to be paid under this Indenture, it will no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of payment in accordance with this Indenture.

(c) ***Release of Certain Income.*** All income from all Government Obligations in the hands of the Trustee pursuant to this Section which is identified by an independent certified public accountant or other firm nationally recognized in the certification of cash flow analyses as not required for the payment of the Bonds and interest on such income with respect to which such moneys have been so deposited will be deposited with the Trustee as and when realized and collected for use and application as are other moneys deposited with the Trustee.

(d) ***Particular Bonds.*** Notwithstanding any other provision of this Indenture to the contrary, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Article IX for the payment of Bonds (including accrued interest on such Bonds) shall be applied to and used solely for the payment of the particular Bonds (including interest on such Bonds) with respect to which such moneys or Government Obligations have been so set aside in trust.

ARTICLE X

DEFAULT PROVISIONS AND REMEDIES

Section 10.01. Events of Default; Preliminary Notice.

(a) ***Events of Default.*** Each of the following constitutes an Event of Default under this Indenture:

(i) default in the payment when due and payable of any interest due on any Bond (other than a Pledged Bond) or, unless the Credit Provider specifies otherwise by written notice to the Trustee, on any Bond purchased in lieu of redemption by the Credit Provider pursuant to Section 3.07;

(ii) default in the payment when due and payable of (A) the principal of or any redemption premium on any Bond (other than a Pledged Bond) or, unless the Credit Provider specifies otherwise by written notice to the Trustee, Bond purchased in lieu of redemption by the Credit Provider pursuant to Section 3.07 at maturity or upon any redemption or (B) the purchase price of any Tendered Bond (other than a Pledged Bond);

(iii) written notice to the Trustee from the Credit Provider of a default by the Issuer in the observance or performance of any covenant, agreement, warranty or representation on the part of the Issuer included in this Indenture or in the Bonds (other than an Event of Default set forth in subsection (i) or (ii) above)

and the continuance of such default for a period of 30 days (or such longer period as is consented to in writing by the Credit Provider) after the Trustee receives such notice;

(iv) written notice to the Trustee from the Credit Provider of an Event of Default under the Reimbursement Agreement;

(v) so long as the Bonds bear interest at a Bank Rate, written notice to the Trustee from the Administrative Agent of the occurrence of any Event of Default under the Guaranty Agreement;

(vi) written notice to the Trustee from the Credit Provider of an Act of Bankruptcy; or

(vii) a Wrongful Dishonor.

(b) **Preliminary Notice.** The Trustee shall immediately notify the Issuer, the Borrower and the Credit Provider after the Trustee obtains knowledge or receives notice of the occurrence of an Event of Default under this Indenture or an event which would become such an Event of Default with the passage of time, the giving of notice or both, identifying the paragraph in Section 10.01(a) under which the Event of Default has occurred or may occur.

(c) **Non-Default and Prohibition of Mandatory Redemption Upon Tax Event.** The occurrence of any event (“Tax Event”) which results in the interest payable on the Tax-Exempt Bonds being includable, for federal income tax purposes, in the gross income of the Bondholders, including any violation of any provision of the Regulatory Agreement or any of the other Bond Documents, shall not (i) directly or indirectly constitute an Event of Default under this Indenture or permit any party (other than the Credit Provider) to accelerate, or require acceleration of, the Loan or the Bonds, unless the Credit Provider provides written notice to the Trustee that such Tax Event constitutes a default under the Reimbursement Agreement, (ii) give rise to a mandatory redemption of the Bonds, or (iii) give rise to the payment to the Bondholders of any amount, denoted as “supplemental interest,” “additional interest,” “penalty interest,” “liquidated damages,” “damages” or otherwise, in addition to the amounts payable to the owners of the Bonds prior to the occurrence of the Tax Event. Nothing contained in this subsection will be deemed to amend or supplement the terms of the Loan Documents. Promptly upon determining that a Tax Event has occurred, the Issuer or the Trustee, by notice in writing to the Credit Provider, all Registered Owners of the Bonds and the Remarketing Agent, shall state that a Tax Event has occurred and whether the Tax Event is cured, curable within a reasonable period or incurable. Notwithstanding the availability of the remedy of specific performance to cure a Tax Event that is curable within a reasonable period, neither the Issuer nor the Trustee shall have, upon the occurrence of a Tax Event, any right or obligation to cause or direct acceleration of the Bonds or the Loan, to enforce the Note or to foreclose the Security Instrument, to accept a deed to the Mortgaged Property in lieu of foreclosure, or to effect any other comparable conversion of the Mortgaged Property.

Section 10.02. Acceleration, Redemption and Mandatory Tender. The Bonds shall be subject to acceleration, redemption and mandatory tender as set out in this Section.

(a) ***Acceleration.*** Upon:

(i) the occurrence and during the continuance of a Wrongful Dishonor, the Trustee may, and, upon the written request of Bondholders owning not less than 51% in aggregate principal amount of Bonds then Outstanding, must, by written notice to the Issuer, the Borrower and the Credit Provider, declare the principal of all Bonds and the interest accrued, and to accrue, on the Bonds to the date of payment immediately due and payable; or

(ii) the occurrence of any other Event of Default under this Indenture, the Trustee may, upon receiving the prior written consent of the Credit Provider, and must, upon the written direction of the Credit Provider requiring that the Bonds be accelerated pursuant to this subsection, by written notice to the Issuer, the Borrower and the Credit Provider, declare the principal of all Bonds and the interest accrued, and to accrue, on the Bonds to the date of declaration immediately due and payable.

(b) ***Redemption and Mandatory Tender.*** Upon the occurrence of an Event of Default under Section 10.01(a)(iv) of this Indenture:

(i) if the Credit Provider so directs pursuant to Section 3.03(b), the Bonds shall be redeemed in whole or in part in the amount specified by and at the direction of the Credit Provider.

(ii) if the Credit Provider so directs pursuant to Section 4.02(b), the Bonds shall be subject to mandatory tender.

Notwithstanding anything to the contrary in this Indenture, if the Credit Provider directs that the Bonds be redeemed in part pursuant to Section 3.03(b), the Credit Provider may further direct on one or more other occasions under this subsection that the Bonds be redeemed in whole or in part or that the Bonds be subject to mandatory tender.

(c) ***Notice.***

(i) ***Acceleration.*** Upon any decision to accelerate payment of the Bonds, the Trustee shall notify the Bondholders of the declaration of acceleration, that, in the event of acceleration pursuant to Section 10.02(a)(ii), interest on the Bonds will cease to accrue upon such declaration, and payment of the Bonds will be made upon presentment of the Bonds at the Designated Office of the Trustee. Such notice shall be sent by registered mail or overnight delivery service, postage prepaid, or, at the Trustee's option, may be given by Electronic Means to each Registered Owner of Bonds at such Registered Owner's last address appearing in the Bond Register. Any defect in or failure to give notice of such declaration will not affect the validity of such declaration.

(ii) *Redemption.* Upon the direction of the Credit Provider to redeem the Bonds in whole or in part pursuant Section 3.03(b) and as provided in Section 3.04(a), immediate notice of redemption will be given.

(iii) *Mandatory Tender.* Upon any direction of the Credit Provider that the Bonds be subject to mandatory tender, the Trustee shall give notice to the Bondholders as provided in Section 4.02(b).

(d) *Payment Under Credit Facility.* Immediately upon acceleration of the Bonds, the Trustee shall draw on the Letter of Credit, or Draw on the Alternate Credit Facility then in effect, as applicable, in accordance with its terms.

Section 10.03. Other Remedies. Upon the occurrence and continuance of an Event of Default under this Indenture, the Trustee may, with or without taking action under Section 10.02, but only with the prior written consent of the Credit Provider, and must at the direction of the Credit Provider if the Event of Default occurs under Section 10.01(a)(iii), (iv) or (v), pursue any of the following remedies:

(a) an action in mandamus or other suit, action or proceeding at law or in equity (i) to enforce the payment of the principal of and interest and any premium on the Bonds, (ii) for the specific performance of any covenant or agreement contained in this Indenture, the Financing Agreement or the Regulatory Agreement or (iii) to require the Issuer to carry out any other covenant or agreement with Bondholders and to perform its duties under the Act;

(b) the liquidation of the Trust Estate; or

(c) an action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders and to execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Trustee in order to have the respective claims of the Bondholders against the Issuer allowed in any bankruptcy or other proceeding.

Subject to the provisions of Section 10.07 and the requirement, if any, that the Credit Provider consent in writing to the exercise by the Trustee of any remedy, upon the occurrence and continuance of an Event of Default under this Indenture, the Trustee shall exercise such of the rights and powers conferred by this Section as the Trustee, being advised by counsel, deems most effective to enforce and protect the interests of the Bondholders and, unless a Wrongful Dishonor has occurred and is continuing, the Credit Provider.

Section 10.04. Preservation of Security and Remedies if Payment Under Credit Facility Is Not Made or Is Insufficient; Rights of Bondholders. Upon the occurrence and during the continuance of a Wrongful Dishonor, the Trustee may proceed, and upon the written request of the holders of not less than 25% of the aggregate principal amount of the Bonds Outstanding and the receipt of indemnity reasonably satisfactory to the Trustee shall proceed, to protect and enforce its rights and the rights of the Bondholders under this Indenture by such suits, actions or special proceedings in equity or at law, whether for the specific performance of any covenant or agreement, or in aid of the execution of any power granted in this Indenture or

by the Act, or for the enforcement of any legal or equitable right or remedy, as the Trustee, being advised by counsel, deems most effective to protect and enforce such rights or to perform any of its duties under this Indenture.

Section 10.05. Remedies Not Exclusive; Delay or Omission. No right or remedy conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other right or remedy, but each and every such right and remedy will be cumulative and in addition to any other right or remedy given to the Trustee or to the Bondholders under this Indenture or under the Financing Agreement, the Regulatory Agreement or the Credit Facility or now or later existing at law or in equity. No delay or omission to exercise any right or remedy provided in this Indenture will impair any such right or remedy or be construed to be a waiver of any Event of Default or acquiescence in it. Every such right and remedy may be exercised from time to time as often as may be deemed expedient.

Section 10.06. Waiver. Subject to the conditions precedent set out below, (i) the Trustee may waive, (ii) the Trustee shall waive if directed to do so by the Credit Provider in writing, and (iii) Bondholders owning not less than 51% in aggregate principal amount of Bonds then Outstanding may waive, by written notice to the Trustee, any Event of Default under this Indenture and its consequences and rescind any declaration of acceleration of maturity of principal. The conditions precedent to any waiver are:

(a) unless waiver is directed by the Credit Provider, the Credit Provider must consent to such waiver in writing;

(b) the principal and interest on the Bonds in arrears, together with interest thereon (to the extent permitted by law) at the applicable rate or rates of interest borne by the Bonds has been paid or provided for by the Borrower in Available Moneys or by the Credit Provider and all fees and expenses of the Trustee have been paid or provided for by the Borrower or the Credit Provider; and

(c) after the waiver, the Credit Facility remains in effect in an amount equal to the aggregate principal amount of the Bonds Outstanding (other than Pledged Bonds) plus the Interest Requirement; provided, however, that such waiver will be permitted without the Credit Facility remaining in effect if (i) the Issuer consents to the waiver, (ii) the Rating Agency then rating the Bonds is notified and the Trustee gives written notice to the Bondholders that the ratings on the Bonds may be reduced or withdrawn upon the occurrence of such waiver, and (iii) 100% of the Bondholders consent to the waiver.

Upon any such waiver, the default or Event of Default shall be deemed cured and shall cease to exist for all purposes and the Issuer, the Borrower, the Trustee and the Bondholders will be restored to their former positions and rights under this Indenture. No waiver of any default or Event of Default shall extend to or affect any subsequent default or Event of Default or shall impair any right or remedy consequent thereto.

Section 10.07. Rights of the Credit Provider and the Bondholders To Direct Proceedings; Rights and Limitations Applicable to Bondholders, Issuer and Trustee.

(a) ***Rights To Direct Proceedings.*** Notwithstanding anything contained in this Indenture to the contrary, the Credit Provider itself or Bondholders owning not less than 51% in aggregate principal amount of Bonds then Outstanding, but only with the prior written consent of the Credit Provider, shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture or any other proceedings under this Indenture, provided, however, that such direction will not be otherwise than in accordance with the provisions of law and of this Indenture, and provided that the Trustee will be indemnified to its reasonable satisfaction (except for actions required under Section 10.02(c) and (d)).

(b) ***Limitations on Bondholders' Rights.*** No Bondholder has or shall have the right to enforce the provisions of this Indenture or the Financing Agreement, or to institute any proceeding in equity or at law for the enforcement of this Indenture or the Financing Agreement, or to take any action with respect to an Event of Default under this Indenture or an Event of Default under the Financing Agreement, or to institute, appear in or defend any suit or other proceeding with respect to this Indenture or the Financing Agreement upon an Event of Default unless (i) such Event of Default is a Wrongful Dishonor, (ii) such Bondholder has given the Trustee, the Issuer, the Credit Provider and the Borrower written notice of the Event of Default, (iii) the holders of not less than 51% in aggregate principal amount of Bonds then Outstanding have requested the Trustee in writing to institute such proceeding, (iv) the Trustee has been afforded a reasonable opportunity to exercise its powers or to institute such proceeding, (v) the Trustee has been offered reasonable indemnity, where required, and (vi) the Trustee has thereafter failed or refused to exercise such powers or to institute such proceeding within a reasonable period of time. No Bondholder has or shall have any right in any manner whatever to affect, disturb or prejudice the pledge of revenues or of any other moneys, Funds, Accounts or securities under this Indenture. Except as provided in this subsection, no Bondholder has or shall have the right, directly or indirectly, individually or as a group, to seek to enforce, collect amounts available under, or otherwise realize on, the Credit Facility.

Section 10.08. Discontinuance of Proceedings. If the Trustee or any Bondholder has instituted any proceeding or remedy under this Indenture, and such proceedings have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case the Issuer, the Credit Provider and the Trustee will be restored to their former positions and rights under this Indenture, and all rights, remedies, powers, duties and obligations of the Issuer, the Trustee and the Credit Provider shall continue as if no such proceedings had been taken, subject to the limits of any adverse determination.

Section 10.09. Possession of Bonds. All rights under this Indenture or upon any of the Bonds enforceable by the Trustee may be enforced by the Trustee without the possession of any of the Bonds, or the production of the Bonds at trial or other proceedings. Any suit, action or

proceeding instituted by the Trustee may be brought in its name for itself or as representative of the Bondholders without the necessity of joining Bondholders as parties, and any recovery resulting from such proceedings shall, subject to Section 10.10, be for the ratable benefit of the Bondholders.

Section 10.10. Application of Moneys. Amounts derived from payments under the Credit Facility shall be deposited into the Credit Facility Account and applied solely to pay the principal of and interest on the Bonds. Amounts on deposit in the Bond Purchase Fund shall be applied solely to pay the purchase price of the Bonds. All other moneys received by the Trustee pursuant to any action taken under this Article X shall be deposited into the Interest Account and the Redemption Account, as applicable, after payment of reasonable fees and expenses of the Trustee (including reasonable fees and disbursements of its counsel) incurred in and about the performance of its powers and duties under this Indenture. The balance of such moneys, less such amounts as the Trustee determines may be needed for possible use in paying future fees and expenses and for the preservation and management of the Mortgaged Property (as identified by the Credit Provider), shall be applied as set out in the following subsections.

(a) ***Principal on Bonds Not Declared Due and Payable.*** Unless the principal on all Bonds has become or been declared due and payable, all such moneys will be applied:

FIRST, to the payment of all interest then due on the Bonds (including for this purpose, the interest component in respect of the Credit Facility), in the order of the maturity of such interest and, if the amount available shall not be sufficient to pay in full said amount, then to the payment ratably, of the amounts due, without any discrimination or privilege;

SECOND, to the payment of the unpaid principal (including for this purpose, the principal component in respect of the Credit Facility) of any of the Bonds which have become due (other than Bonds matured or called for redemption for the payment of which moneys are held pursuant to this Indenture), in the order of due dates, with interest upon the principal amount of the Bonds from the respective dates upon which they become due at the rate or rates borne by the Bonds, to the extent permitted by law, and, if the amount available shall not be sufficient to pay in full the principal of such Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled to such payment without any discrimination or privilege;

THIRD, to the payment of any other amounts owed to the Credit Provider under the Credit Facility Documents and the Loan Documents.

(b) ***Principal of Bonds Declared Due and Payable.*** If the principal of all the Bonds has become or been declared due and payable, all such moneys shall be applied first, to the payment of the principal and interest then due and unpaid upon the Bonds (including for this purpose, the principal and interest component in respect of the Credit Facility), without preference or priority of principal over interest or of interest over

principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably according to the amounts due respectively for principal and interest to the persons entitled to payment, until all such principal and interest has been paid; second, to pay the Credit Provider any other amounts owed to it under the Credit Facility Documents and the Loan Documents; and third, to any other amounts due and payable under this Indenture.

(c) **General.** Whenever moneys are to be applied pursuant to this Section, such moneys shall be applied at such times, and from time to time, as the Trustee determines, having due regard for the amount of such moneys available for application, the likelihood of additional moneys becoming available for such application in the future, and potential expenses relating to the exercise of any remedy or right conferred on the Trustee by this Indenture. Whenever the Trustee applies such moneys, it shall fix the date (which will be an Interest Payment Date unless it deems an earlier 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 date shall cease to accrue, unless interest has already ceased to accrue in accordance with Section 10.02(b). The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the owner of any Bond until such Bond is presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

ARTICLE XI

THE TRUSTEE AND TENDER AGENT

Section 11.01. Appointment of Trustee; Duties. The Trustee is appointed and agrees to act in such capacity and to perform the duties of the Trustee under this Indenture, the Financing Agreement, the Assignment and the Regulatory Agreement upon the express terms and conditions of this Indenture.

(a) **Attorneys, Agents or Receivers.** The Trustee may execute any of its trusts or powers under this Indenture and perform any of its duties by or through attorneys, agents or receivers. The Trustee shall be entitled to advice of counsel concerning all matters of trust under this Indenture and its duties under this Indenture. The Trustee may in all cases pay such reasonable compensation to such attorneys, agents and receivers and shall be entitled to reimbursement from the Borrower for all such compensation paid. The Trustee may act upon the opinion or advice of counsel, accountants, or such other professionals as the Trustee deems necessary and selected by it in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction based on its good faith reliance upon such opinion or advice which is not contrary to the express terms of this Indenture, any of the other Bond Documents or the Loan Documents.

(b) **Limitation of Responsibility.** The Trustee shall not be responsible for any recital in this Indenture (other than the final recital) or in the Bonds (other than in the certificates of authentication on the Bonds), or for insuring the Mortgaged Property, or

for the sufficiency of any insurance, or for collecting any insurance moneys, or for the validity of this Indenture or of any supplements to this Indenture or instruments of further assurance, or for the sufficiency of the security for the Bonds issued under this Indenture or intended to be secured by this Indenture, or for the value or condition of or title to the Mortgaged Property or the Security. The Trustee may require (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 aforesaid as to the condition of the Mortgaged Property. The Trustee shall not be liable for any loss suffered in connection with any investment of amounts made by it in accordance with this Indenture except for losses caused by the negligence or willful misconduct of the Trustee. The Trustee is not accountable for the use (i) of any Bonds delivered in accordance with instructions of the Issuer, (ii) by the Borrower of the proceeds of the Loan, or (iii) for the use or application of any moneys paid out by the Trustee in accordance with this Indenture.

(c) **Reliance.** The Trustee shall be protected in acting upon any Opinion of Counsel, notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons and which is not contrary to the express terms of this Indenture, the other Bond Documents or the Loan Documents. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond as shown on the Bond Register will be conclusive and binding upon all future owners or holders of the same Bonds and upon Bonds issued in exchange therefor or in place of such Bonds.

(d) **Right Not Duty Until Undertaken.** The permissive right of the Trustee to do things enumerated in this Indenture or in the other Bond Documents to which the Trustee is a party shall not be construed as duties until specifically undertaken by the Trustee. Prior to an Event of Default under this Indenture, the Trustee shall only be responsible for the performance of the duties expressly set forth in this Indenture and in the other Bond Documents to which it is a party and shall not be answerable for other than its negligence or willful misconduct in the performance of those express duties.

(e) **No Personal Liability.** 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, relating to the Mortgaged Property.

(f) **No Bond or Surety Required.** The Trustee shall not be required to give any bond or surety in respect of the execution of its trusts and powers or otherwise in respect of the premises.

(g) **Security or Indemnity Bond.** Before taking any action requested by Bondholders under Article X (except for acceleration of the Bonds or with respect to any draw on the Credit Facility), the Trustee may require reasonably satisfactory security or an indemnity bond reasonably satisfactory to it from such Bondholders for the reimbursement of all expenses to which it may be put and to protect it against all liability,

except liability which is adjudicated to have resulted from its own negligence or willful misconduct by reason of any such action so taken.

(h) ***Not Bound To Inquire.*** The Trustee is not required to take notice or deemed to have notice of any default or Event of Default under this Indenture, except Events of Default under Section 10.01(a)(i), (ii) or (vi), unless the Trustee has actual knowledge thereof or has received notice in writing of such default or Event of Default from the Issuer, the Borrower, the Credit Provider or the holders of at least 25% in aggregate principal amount of the Outstanding Bonds, and in the absence of any such notice, the Trustee may conclusively assume that no such default or Event of Default exists. The Trustee may nevertheless require the Issuer and the Borrower to furnish information regarding performance of their respective obligations under the Financing Agreement, the Regulatory Agreement and this Indenture, but is not obligated to do so.

(i) ***Standard of Care.*** The Trustee, during the existence and continuation of any Event of Default under this Indenture, shall exercise such of the rights vested in it by this Indenture, the Financing Agreement and the Regulatory Agreement, and use the same degree of care and skill in their exercise, as a reasonable person would exercise or use under the circumstances in the conduct of such person's own affairs. The foregoing will not limit the Trustee's obligations under Article VIII or Section 10.02(a).

(j) ***Notice to Rating Agency.*** At any time that the Bonds are rated by a Rating Agency, the Trustee shall give notice by mail to that Rating Agency at its address (as specified in Section 13.04) promptly upon the occurrence of any of: (i) the appointment of any successor trustee or separate trustee or co-trustee, (ii) any amendment of or supplement to this Indenture, the Financing Agreement, the Credit Facility or any Loan Document, (iii) the termination of the Credit Facility, the extension or expiration of the Credit Facility or the substitution of any Alternate Credit Facility for the Credit Facility, (iv) an Event of Default under this Indenture, (v) a redemption, acceleration or defeasance of the Bonds in whole or in part (other than any mandatory sinking fund redemption or redemption caused by the deposit and accumulation of moneys in the Principal Reserve Fund), (vi) any mandatory tender of the Bonds, (vii) execution by the Trustee of an agreement for the investment of moneys at a guaranteed rate as an Investment, (viii) any change in the provider of an agreement in the Trust Estate for the investment of moneys at a guaranteed rate; (ix) any resignation, removal or replacement of the Remarketing Agent, (x) any change in Mode, and (xi) any other event of which notice reasonably is requested by the Rating Agency. Notwithstanding the foregoing, it is expressly understood and agreed that failure to provide any such notice to any Rating Agency or any defect in any such notice will not affect the validity of any action with respect to which notice is to be given or the effectiveness of any such action.

(k) ***Notice of the Non-payment of any Third Party Fee or Fees and Expenses.*** The Trustee shall give prompt written notice to the Credit Provider of the non-payment of any Third Party Fees or Fees and Expenses.

(l) ***Authority To Execute.*** The Trustee is authorized and directed by the Issuer to execute or accept and acknowledge and to perform its obligations under, as

applicable, in its capacity as Trustee, the Financing Agreement, the Assignment, the Regulatory Agreement and any financing statements.

(m) ***No Disclosure Responsibility.*** The Trustee shall have no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds, except for any information provided by the Trustee.

(n) ***No Financial Obligation.*** No provision of this Indenture or any other Bond Document or any Loan Document shall require the Trustee to risk or advance its own funds or otherwise incur any financial liability in the performance of its duties or the exercise of its rights under this Indenture.

(o) ***No Liability for Directions.*** The Trustee will not be liable for any action taken or not taken by it in accordance with the direction of the Credit Provider or Bondholders pursuant to this Indenture except for the Trustee's own negligent action, its own negligent failure to act, or its own willful misconduct.

(p) ***Environmental Law; Hazardous Substances.*** Notwithstanding anything to the contrary contained in this Indenture, in the event the Trustee is entitled or required to foreclose, 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 Security Instrument, the Trustee shall not be required to foreclose, 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 Mortgaged Property of any Hazardous Substances (as defined below) unless the Trustee has received security or indemnity satisfactory to the Trustee in its sole discretion, protecting the Trustee from all such liability. 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. The term "Hazardous Substances" shall mean any chemical, substance or material classified or designated as hazardous, toxic or radioactive, or other similar term, and now or hereafter regulated under any Environmental Law, including without limitation, asbestos, petroleum and hydrocarbon products.

(q) ***Instructions by Electronic Methods.*** The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Borrower elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic

method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Borrower agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(r) ***Survival of Immunities and Protections; Indemnification.*** The Trustee's rights to immunities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive its resignation or removal and final payment or defeasance of the Bonds. All indemnifications and releases from liability granted herein to the Trustee shall extend to the director, officers, employees and agents of the Trustee.

(s) ***Consulting with Counsel.*** The Trustee may consult with counsel, who may be counsel to the Issuer or other counsel of or to the Issuer, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

(t) ***Books, Records and Accounts.*** The Trustee, on behalf of the Issuer, shall keep and maintain, or cause to be kept and maintained, proper books, records and accounts in which complete and accurate entries shall be made of all of its transactions relating to the Bonds, this Indenture, the Financing Agreement, the Regulatory Agreement, the Loan, the Credit Facility, the Funds and Accounts, Permitted Investments and Investment Income, all of which, at all reasonable times, and upon reasonable prior notice, will be subject to the inspection and audit by the Issuer, the Credit Provider, the Borrower and Bondholders owning not less than 25% in aggregate principal amount of Bonds then Outstanding or any of their accountants or agents duly authorized in writing, each of whom will have the right, at its expense, to make copies of any such books of record and accounts.

(u) ***List of Bondholders.*** The Trustee shall keep the Bond Register available for inspection by any Bondholder or its attorney duly authorized in writing during normal business hours upon reasonable prior notice.

Section 11.02. Qualification. The Trustee and any successor Trustee shall at all times be a bank, national banking association or trust company organized under the laws of the United States of America or any state, authorized under such laws to exercise corporate trust powers, having a combined capital stock, surplus and undivided profits of at least \$50,000,000 (or an affiliate of a corporation or banking association meeting that requirement which guarantees the obligations and liabilities of the Trustee) and subject to supervision or examination by federal or state banking authority.

Section 11.03. Fees; Expenses. Each of the Trustee and the Tender Agent is entitled to payment and reimbursement from the Borrower, or from the Trust Estate to the extent otherwise permitted in this Indenture, for reasonable fees for its ordinary services rendered under this Indenture and the other Bond Documents and its ordinary costs and expenses reasonably incurred in connection with its services under this Indenture and the other Bond Documents. In the event that it should become necessary that the Trustee perform extraordinary services, it shall be entitled to Extraordinary Items; provided however, that if such Extraordinary Items are incurred as a result of the negligence or willful misconduct of the Trustee or the Tender Agent, as applicable, it will not be entitled to compensation or reimbursement for such services or expenses. The Borrower's failure to pay amounts owed to the Trustee or the Tender Agent shall not excuse the performance of its obligations. The Trustee recognizes that all fees, charges and other compensation to which it may be entitled under this Indenture are required to be paid by the Borrower under the Financing Agreement, and, accordingly, the Trustee and the Tender Agent agree that the Issuer shall not be liable for any such fees, charges and other compensation.

Section 11.04. Merger; Consolidation. Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, merger or consolidation, provided such corporation or association otherwise qualifies under Section 11.02, shall be and become the successor Trustee under this Indenture with all the estates, properties, rights, powers and duties of the predecessor Trustee without the execution or filing of any instrument or any further act, deed or conveyance (other than the provision of notice to the Issuer and the Credit Provider).

Section 11.05. Resignation or Removal of Trustee. The Trustee may resign only upon giving 60 days' prior written notice to the Issuer, the Credit Provider, the Borrower and to each Registered Owner of Bonds then Outstanding as shown on the Bond Register. The Trustee may be removed at any time upon 30 days' prior written notice to the Trustee, (i) by the Issuer, with the prior written consent of the Credit Provider, (ii) by the owners of not less than 51% in aggregate principal amount of Bonds then Outstanding, which written instrument shall designate a successor Trustee approved by the Credit Provider, or (iii) by the Credit Provider. Such resignation or removal shall not be effective until a successor Trustee satisfying the requirements of Section 11.02 is appointed and has accepted its appointment.

Section 11.06. Appointment of Successor Trustee. Upon the resignation or removal of the Trustee, a successor Trustee, satisfying the requirements of Section 11.02, shall be appointed by the Issuer with the prior written consent of the Borrower (if the Borrower is not then in default under any Bond Document or any Loan Document and if no event which, with notice or the passage of time or both, would constitute such a default has occurred and is continuing) and with the prior written consent of the Credit Provider (unless appointed by the Bondholders as provided in Section 11.05), provided, however, that if such consent or other correspondence with respect thereto is not received by the Issuer within 15 Business Days after receipt by the Credit Provider of written notice of the proposed successor Trustee, such consent shall be deemed to have been given. If, in the case of resignation or removal of the Trustee, no successor is appointed within 30 days after the notice of resignation or within 30 days after removal, as the case may be, then, in the case of a resignation, the resigning Trustee shall appoint a successor

with the prior written consent of the Issuer and the Credit Provider or apply to a court of competent jurisdiction for the appointment of a successor Trustee and, in the case of a removal, the Credit Provider shall have the right to appoint a successor Trustee or to apply to a court of competent jurisdiction for the appointment of a successor Trustee. The successor Trustee must accept in writing its duties and responsibilities under this Indenture, the Financing Agreement, the Assignment, and the Regulatory Agreement. The successor Trustee shall give notice of such succession by first-class mail, postage prepaid, to each Bondholder, the Issuer, the Credit Provider and the Borrower.

Section 11.07. Transfer of Rights and Mortgaged Property to Successor Trustee.

The successor Trustee, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of the predecessor Trustee, but the former Trustee shall nevertheless, on the written request of the Issuer, the Credit Provider or the successor Trustee, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may be reasonably required for more fully and certainly vesting and confirming in the successor Trustee all the right, title and interest of the predecessor Trustee in and to any properties held by it under this Indenture, and shall pay over, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions set forth in this Indenture. The former Trustee shall execute and deliver a certificate of transfer or such other certificate or document as may be required by the Credit Facility for its transfer to a successor Trustee and do such other things as may be reasonably required to transfer all of its right, title and interest in and to the Credit Facility to the successor Trustee. Should any deed, conveyance or instrument in writing from the Issuer be required by the successor Trustee for more fully and certainly vesting in and confirming to the successor Trustee any such moneys, estates, properties, rights, powers and duties, any and all such deeds, conveyances and instruments in writing, shall, on request, and as may be authorized by law, be executed, acknowledged and delivered by the Issuer.

Section 11.08. Power To Appoint Co-Trustees and Separate Trustees.

(a) *Appointment of Co-Trustees.* At any time or times, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Mortgaged Property is located, the Issuer (at the request of the Borrower, unless the Borrower is then in default under any Bond Document or any Loan Document or if an event has occurred and is continuing which, with notice or the passage of time or both, would constitute such a default) shall have the power, subject to the approval of the Credit Provider, to appoint one or more persons approved by the Trustee either to act as co-trustee jointly with the Trustee or as separate trustee of all or any part of the Mortgaged Property, and to vest in such person, in such capacity, such title to the Mortgaged Property or any part of it, and/or such rights, powers, duties, trusts or obligations as the Issuer and the Trustee may consider necessary or desirable. If the Issuer is in default under this Indenture, the Trustee alone will have the power to make such appointment with the prior written consent of the Credit Provider. 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.

(b) ***Effect of Death, Incapacity, Resignation or Removal of Co-Trustee or Separate Trustee.*** In case any co-trustee or separate trustee dies, becomes incapable of acting, resigns or is removed, the pledge and assignment of the Security and all rights, powers, trusts, duties and obligations of the co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee is appointed in the same manner as provided in subsection (a).

(c) ***Approval of the Issuer.*** No co-trustee or separate trustee may assume its duties under this Indenture without the prior written approval of the Issuer, unless the Issuer is in default under this Indenture or has failed to respond timely as otherwise provided in this Article XI.

Section 11.09. Filing of Financing Statements. The Trustee shall, at the expense of the Borrower, file or record or cause to be filed or recorded all continuation statements provided by the Credit Provider for the purpose of continuing without lapse the effectiveness of (i) those financing statements which have been filed at or prior to the Closing Date in connection with the security for the Bonds pursuant to the authority of the UCC, and (ii) any previously filed continuation statements which have been filed as required by this Indenture; provided, however, that if the Credit Provider gives written notice to the Trustee that it has filed or recorded all applicable financing statements, the Trustee shall be entitled to rely on such written notice. The Issuer shall sign, and the Trustee shall obtain from the Borrower or the Credit Provider, all such financing statements as may be required for such purposes. Upon the filing of any such financing statement the Trustee shall immediately notify the Issuer, the Borrower and the Credit Provider that the same has been done. If direction is given by the Credit Provider, the Trustee shall file all financing statements in accordance with such directions.

Section 11.10. Tender Agent. The initial Tender Agent is The Bank of New York Mellon Trust Company, N.A. The Tender Agent shall at all times be the same party as the Trustee except upon receipt by the Issuer of confirmation from the Rating Agency that appointment of a separate Tender Agent will not cause the rating on the Bonds to be lowered, suspended or withdrawn. The Tender Agent shall designate to the Trustee, the Issuer, the Remarketing Agent and the Credit Provider its Designated Office and signify its acceptance of the duties and obligations imposed upon it under this Indenture by a written instrument of acceptance delivered to the Trustee under which such Tender Agent will agree particularly to:

(a) act as agent for the Trustee for the purpose of authenticating, accepting delivery of and delivering Bonds in accordance with Section 2.11, 2.12, 2.13, 2.14, 2.16, 4.01 or 4.02 or other provisions of this Indenture relating to authentication and delivery of Bonds;

(b) forward to the Trustee immediately after completion of such authentication the names, addresses, taxpayer identification numbers or social security numbers of all persons in whose names the Bonds are to be registered;

(c) deliver authenticated and registered Bonds to or to the order of the persons in whose names such Bonds are registered;

(d) as agent for the Trustee, hold all moneys delivered to it for the purchase of Bonds in trust in the Bond Purchase Fund for the account of the person who delivered such moneys until the Bonds purchased with such moneys have been registered, authenticated and delivered to or to the order of such person; and

(e) hold all Bonds delivered to it for purchase in trust for the owner of such Bonds until such owner has received the purchase price for such Bonds.

The Tender Agent shall be entitled to the same protections, immunities and limitations from liability afforded the Trustee under this Indenture. The Issuer shall cooperate with the Trustee, the Borrower and the Credit Provider to cause the necessary arrangements to be made and to be continued by which amounts from the sources specified in this Indenture and in the Financing Agreement shall be made available for the purchase of Bonds presented at the Designated Office of the Tender Agent, and by which Bonds, executed by the Issuer and to be authenticated by the Tender Agent, shall be made available to the Tender Agent to the extent necessary for delivery pursuant to Section 4.01 or 4.02.

Section 11.11. Resignation or Removal of Tender Agent. The Tender Agent may resign by giving no less than 30 days' prior written notice to the Borrower, the Trustee, the Credit Provider and the Issuer. The Tender Agent may be removed by the Issuer with the written approval of the Credit Provider, by an instrument signed by the Issuer stating the reason for such removal filed with the Tender Agent, the Trustee, the Credit Provider, and the Issuer may appoint a successor Tender Agent with the prior written consent of the Borrower (if the Borrower is not then in default under any Bond Document or any Loan Document and if no event which, with notice or the passage of time or both, would constitute such a default has occurred and is continuing) and the Credit Provider. The Trustee or the Credit Provider is authorized, with the prior written approval of the Issuer and the Credit Provider or the Trustee, as applicable, to remove the Tender Agent and appoint a successor. No removal of the Tender Agent shall be effective until a successor Tender Agent has been appointed and has accepted such appointment. Failing such appointment by the Issuer prior to the effective date of the Tender Agent's resignation, the Credit Provider shall have the right to appoint a successor Tender Agent acceptable to the Issuer. Any successor Tender Agent shall be a trust company, bank or national banking association having trust powers and in good standing, within or without the State, having trust powers. The provisions of this Section shall apply if the resignation of the Tender Agent is due to the fact that the Tender Agent no longer exists. In no event shall the resignation or removal of the Tender Agent take effect prior to the date a successor Tender Agent has been appointed and is serving under this Indenture and the Tender Agent Agreement. The Trustee, when acting as Tender Agent, may transfer the Tender Agent duties to any related affiliate without further act or approval (other than the provision of notice to the Issuer, the Credit Provider, the Borrower and the Remarketing Agent).

ARTICLE XII

SUPPLEMENTAL INDENTURES; AMENDMENTS

Section 12.01. Supplemental Indentures Not Requiring Bondholder Consent. The Issuer and the Trustee, without the consent of or notice to any Bondholder, may enter into an indenture or indentures supplemental to this Indenture for one or more of the following purposes:

(a) to cure any ambiguity or to correct or supplement any provision contained in this Indenture or in any supplemental indenture which may be defective or inconsistent with any other provision contained in this Indenture or in any supplemental indenture;

(b) to amend, modify or supplement this Indenture in any respect if such amendment, modification or supplement is not materially adverse to the interests of the Bondholders;

(c) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee, or to grant or pledge to the Trustee for the benefit of the Bondholders any additional security other than that granted or pledged under this Indenture;

(d) to modify, amend or supplement this Indenture in such manner as to permit qualification under the Trust Indenture Act of 1939, as amended, or any similar federal statute then in effect, or to permit the qualification of the Bonds for sale under the securities laws of any of the States of the United States;

(e) to appoint a successor trustee, separate trustee or co-trustee, or a separate Tender Agent or Bond Registrar;

(f) to make any change requested by the Credit Provider which is not materially adverse to the interests of the Bondholders, including, but not limited to, provision of a Credit Facility other than or in substitution for the initial Credit Facility, provided that the provision of such other Credit Facility does not adversely affect the rating then in effect for the Bonds;

(g) to make any changes in this Indenture or in the terms of the Bonds necessary or desirable in order to maintain the then existing rating awarded to the Bonds by the Rating Agency or otherwise to comply with requirements of any Rating Agency then rating the Bonds;

(h) to comply with the Code and the regulations and rulings issued with respect to the Code, to the extent determined as necessary in the Opinion of Bond Counsel;

(i) to modify, alter, amend or supplement this Indenture in any other respect, including amendments which would otherwise be described in Section 12.02, (A) if such amendments will take effect on a Mandatory Tender Date following the purchase of

Tendered Bonds or (B) if notice of the proposed supplemental indenture is given to Bondholders (in the same manner as notices of redemption are given) at least 30 days before the effective date of such amendment, modification, alteration or supplement and, on or before such effective date, the Bondholders have the right to demand purchase of their Bonds pursuant to Section 4.01; or

(j) to change any of the time periods for provision of notice relating to the remarketing of Bonds or the determination of the interest rate on the Bonds.

If the Trustee has received written confirmation from the Rating Agency to the effect that such supplemental indenture will not result in the suspension, withdrawal or reduction of the then current rating on the Bonds and all conditions precedent in this Section 12.01 and in Sections 12.05 and 12.06 have been satisfied, the Trustee shall join the Issuer in the execution of any such supplemental indenture. The Trustee promptly shall furnish a copy of any such supplemental indenture to the Credit Provider, the Remarketing Agent, the Tender Agent and the Borrower.

Section 12.02. Supplemental Indentures Requiring Bondholder Consent. The Issuer and the Trustee may, with the consent of Bondholders owning not less than 51% in aggregate principal amount of Bonds then Outstanding, from time to time, execute indentures supplemental to this Indenture for the purpose of modifying or amending any of the provisions of this Indenture provided, however, that nothing in this Section 12.02 permits, or shall be construed as permitting:

(a) an extension of the maturity of the principal of or interest on, or the mandatory redemption date of, any Bond, without the consent of the owner of such Bond;

(b) a reduction in the principal amount of, or the rate of interest on, any Bond, without the consent of the owner of such Bond;

(c) a preference or priority of any Bond or Bonds over any other Bond or Bonds, without the consent of the owners of all such Bonds;

(d) the creation of a lien prior to or on parity with the lien of this Indenture, without the consent of the owners of all of the Bonds then Outstanding;

(e) a change in the percentage of Bondholders necessary to waive an Event of Default under this Indenture or otherwise approve matters requiring Bondholder approval under this Indenture, including consent to any supplemental indenture, without the consent of the owners of all the Bonds then Outstanding;

(f) a transfer, assignment or release of the Credit Facility (or modification of the provisions of this Indenture governing such transfer, assignment or release), other than as permitted by this Indenture or the Credit Facility, without the consent of the owners of all of the Bonds then Outstanding;

(g) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indenture, without the consent of the holders of all of the Bonds then Outstanding;

(h) the creation of any lien other than a lien ratably securing all of the Bonds at any time Outstanding under this Indenture, without the consent of the holders of all of the Bonds then Outstanding; or

(i) the amendment of this Section 12.02, without the consent of the holders of all of the Bonds then Outstanding.

The Trustee shall promptly furnish a copy of any such supplemental indenture to the Credit Provider, the Remarketing Agent, the Tender Agent and the Borrower. Notice of any amendment pursuant to this Section shall be given to the Bondholders promptly following the execution thereof.

Section 12.03. No Bondholder Consent Required for Amendment to Loan Documents. Unless a Wrongful Dishonor has occurred and is continuing, the Credit Provider alone may give the consent to any amendment to the Loan Documents required to be given by Bondholders and no consent of the Bondholders is required; provided, however, that any amendment or substitution of the Note shall occur only following written confirmation of the Rating Agency that such amendment or substitution will not result in a reduction or withdrawal of the rating on the Bonds.

Section 12.04. Amendments to the Credit Facility. The Credit Facility may only be amended, supplemented or otherwise changed subject to the consent of Credit Provider and in accordance with the following:

(a) ***Replacement Credit Facility.*** At the request of the Credit Provider, the Trustee shall exchange the Credit Facility with the Credit Provider then in effect for a new Credit Facility (a “Replacement Credit Facility”) issued by the Credit Provider, provided that there is delivered to the Trustee (i) a written confirmation from the Rating Agency to the effect that such exchange shall not adversely affect the rating then in effect for the Bonds and (ii) a written opinion of Bond Counsel to the effect that such exchange will not adversely affect the excludability of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes. No such exchange shall require the approval of the Issuer, the Trustee or any of the Bondholders or constitute or require a modification or supplement to this Indenture.

(b) ***Amendment of the Credit Facility.*** The Trustee may consent, without the consent of the owners of the Bonds, to any amendment of the Credit Facility not addressed in subsection (a) which does not prejudice in any material respect the interests of the Bondholders.

(c) ***Other Amendments of the Credit Facility.*** Except as provided in subsections (a) and (b), the Credit Facility may be amended only with the consent of the Trustee and the owners of a majority of the owners of all Outstanding Bonds. No amendment may be made to the Credit Facility which would reduce the amounts required

to be paid under the Credit Facility or change the time for payment of such amounts; provided, however, that any such amounts may be reduced without such consent solely to the extent that such reduction represents a reduction in any fees payable from such amounts.

Section 12.05. Notice to and Consent of Bondholders. If consent of the Bondholders is required for any supplement, amendment or modification to this Indenture or for any other similar purpose, the Trustee shall give notice of the proposed supplement, amendment or modification by first class mail, postage prepaid, to the Bondholders. Such notice will be conclusively presumed to have been duly given and received when given in such manner, whether or not any holder actually receives the notice. Such notice shall briefly set forth the nature of the proposed supplement, amendment or modification, and shall state that copies of any such supplement, amendment or modification are on file at the Designated Office of the Trustee for inspection by the Bondholders. The consent of the holder of any Bond will be binding on any transferee and successor transferees of such Bond.

Section 12.06. Required Approvals. Subject to the provisions of Section 8.06, no amendment, supplement or modification may be made to any Transaction Document without the prior written consent of the Credit Provider (so long as the Letter of Credit is in effect) or any Alternate Credit Provider (at such time as an Alternate Credit Facility is in effect). Anything in this Indenture to the contrary notwithstanding, a supplement or amendment or other document described under this Article XII which materially and adversely affects any rights or obligations of the Borrower will not become effective unless and until the Borrower has consented in writing to the execution of such supplemental indenture, amendment or other document. The Trustee shall not be required to enter into any supplement or amendment which adversely affects the Trustee's rights and duties under this Indenture.

Section 12.07. Opinions of Counsel. The Trustee may obtain and will be fully protected in relying upon an Opinion of Counsel as conclusive evidence that any supplement or amendment to this Indenture is authorized and permitted by this Indenture and, if applicable, is not materially adverse to the interests of the Bondholders. No supplement or amendment with respect to this Indenture will be effective until the Issuer and the Trustee have received an opinion of Bond Counsel to the effect that such supplement or amendment will not adversely affect the exclusion from gross income, for federal income tax purposes, of the interest payable on the Tax-Exempt Bonds.

Section 12.08. Notation of Modification on Bonds; Preparation of New Bonds. Bonds authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article may bear a notation, in form approved by the Trustee and the Issuer as to any matter provided for in such supplemental indenture, and if such supplemental indenture so provides, new Bonds, so modified as to conform, in the opinion of the Trustee and the Issuer, to any modification of this Indenture contained in any such supplemental indenture, may be prepared by the Issuer, authenticated by the Trustee and delivered without cost to the Bondholders, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

ARTICLE XIII

MISCELLANEOUS

Section 13.01. Consents, etc., of Bondholders. Any consent, request, direction, or other instrument required to be signed by the Bondholders may be in any number of concurrent writings of similar tenor and may be signed by any Bondholder in person or by an authorized agent appointed in writing. The fact and date of the execution by any person of any such request, consent, direction, approval, objection or other instrument 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 such officer its execution, or by an affidavit of any witness to such execution. Such proof of execution or of the writing appointing any agent will be sufficient for any of the purposes of this Indenture and will be conclusive in favor of the Trustee with regard to any action taken by it under such consent, request, direction or other instrument. In the event that the Trustee receives conflicting directions from two groups of Bondholders, each with combined holdings of not less than 25% in aggregate principal amount of all Bonds then Outstanding, the directions given by the group of Bondholders which hold the largest percentage of Bonds Outstanding will be controlling and the Trustee shall follow such directions as elsewhere required in this Indenture.

Section 13.02. Limitation of Rights. With the exception of rights expressly conferred in this Indenture, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the Issuer, the Trustee, the Bondholders, the Credit Provider and the Borrower any legal or equitable right, remedy or claim under or in respect of this Indenture. This Indenture and all of the covenants, conditions and provisions in this Indenture are intended to be for the sole and exclusive benefit of the parties to this Indenture, the Bondholders, the Credit Provider and the Borrower as provided in this Indenture. The Credit Provider is a third-party beneficiary of this Indenture with the right to enforce its provisions.

Section 13.03. Severability. If any provision of this Indenture is held to be in conflict with any applicable constitution or statute or rule of law, or is otherwise held to be unenforceable for any reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other part or circumstance, or of rendering any other provision or provisions contained in this Indenture invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or Sections of this Indenture will not affect the remaining portions of this Indenture.

Section 13.04. Notices. Unless otherwise specified in this Indenture, it shall be sufficient service or giving of any notice, request, certificate, demand or other communication if the same is sent by (and all notices required to be given by mail will be given by) first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery, or sent by Electronic Means which produces evidence of transmission, confirmed by first-class mail, postage prepaid, and in each case will be deemed to have been given on the date evidenced by the postal or courier receipt or other written evidence of delivery or electronic transmission. Unless a different address is given by any party as provided in this Section, all such communications will be addressed as follows:

To the Issuer: County of Contra Costa
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Attention: Community Development Bond
Program Manager

To the Trustee: The Bank of New York Mellon Trust
Company, N.A.
700 South Flower Street, Suite 500
Los Angeles, CA 90017

To the Borrower: PHVP I, LP
400 Race Street, Suite 200
San Jose, CA 95126
Attention: Jeff White

with a copy to: Joanne Lockridge
Senior Vice President – Finance
1499 Post Road, 2nd Floor
Fairfield, CT 06824

To the Tender Agent: The Bank of New York Mellon Trust
Company, N.A.
700 South Flower St., Suite 500
Los Angeles, CA 90017

By notice given under this Indenture, any entity whose address is listed in this Section may designate any different addresses to which subsequent notices, certificates, requests, demands or other communications shall be sent, but no notice directed to any one such entity will be required to be sent to more than two addresses. All approvals required under this Indenture will be given in writing.

Section 13.05. Action Required To Be Taken on a Non-Business Day. If the date for making any payment or any date on which action is required to be taken is not a Business Day, then any action required to be taken or any payment required to be made may be taken or made on the following Business Day with the same force and effect as if made or taken on the date otherwise provided for in this Indenture and, in the case of any payment date, no interest will accrue for the period from and after such date.

Section 13.06. Binding Effect. From and after the Closing Date, this Indenture shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained in this Indenture.

Section 13.07. Governing Law. This Indenture shall be governed by and interpreted in accordance with internal laws of the State without regard to conflicts of laws principles.

Section 13.08. No Personal Liability; No Recourse. No member, officer, agent, employee or attorney of the Issuer, including any person executing this Indenture or the Bonds, will be liable personally on the Bonds or for any reason relating to the issuance of the Bonds. No recourse will be had for the payment of the principal of or the interest on the Bonds, or for any claim based on such Bonds, or otherwise in respect of such Bonds, or based on or in respect of this Indenture or any indenture supplemental to this Indenture, against any member, officer, employee or agent, as such, of the Issuer or any successor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance of this Indenture and as part of the consideration for the issue of the Bonds, expressly waived and released.

Section 13.09. Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

Section 13.10. Administrative Agent. So long as the Bonds bear interest at a Bank Rate, there shall at all times be an Administrative Agent hereunder which shall be (a) a corporation or banking association organized and doing business under the laws of the United States or of a state thereof or (b) a Qualified Institutional Buyer that owns all or a portion of the Bonds then outstanding. In the event of a transfer of the Bonds pursuant to the terms of Section 2.05 hereof to a single Bondholder and provided such Bondholder meets the requirements of the preceding sentence of this Section 13.10, then such transferee shall become the Administrative Agent effective with such transfer unless such transferee elects in writing not to become the Administrative Agent and to either retain the current Administrative Agent or to designate and appoint an alternate Administrative Agent. Otherwise, any change in the Administrative Agent shall be only at the written request of the owners of a majority in the principal amount of the Bonds outstanding and otherwise reasonably acceptable to the Issuer. Any successor Administrative Agent shall acknowledge its acceptance of its obligations under this Indenture by a written instrument delivered to the Issuer, the Borrower and, if the successor is not the sole owner of all of the Bonds then Outstanding, the owners of the Bonds. Any corporation or association into which the Administrative Agent may be merged or with which it may be consolidated, or any corporation or association resulting from any merger or consolidation to which the Administrative Agent shall be a party, shall be the successor of the Administrative Agent hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding, provided that such successor Administrative Agent shall be eligible under the provisions of the first sentence of Section 13.10.

Section 13.11. Amendment of Original Indenture. This Indenture amends the Original Indenture as of the Closing Date and shall take effect on the Closing Date. This Indenture is entered into pursuant to Section 12.01(i)(A) of the Original Indenture.

[Remainder of Page Intentionally Left Blank]

The Issuer has caused this Indenture to be executed and attested in its name and on its behalf by its duly authorized officers and the Trustee has caused this Indenture to be executed in its name by its duly authorized officer, all as of the date set forth above.

COUNTY OF CONTRA COSTA, as Issuer

By _____

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Trustee

By _____
Authorized Officer

Acknowledged, Consented and Agreed To:

PHVP I, LP,
a Delaware limited partnership

By: PHVP I GP, LLC,
a Delaware limited liability company,
its general partner

By: _____
Name:
Title: Authorized Signatory

EXHIBIT A

FORM OF BOND

[BONDS NOT BEARING INTEREST AT A BANK RATE]

\$ _____
**COUNTY OF CONTRA COSTA
MULTIFAMILY HOUSING REVENUE BONDS
(AVALON WALNUT CREEK AT CONTRA COSTA CENTRE PROJECT)
[TAXABLE] SERIES [2006A] [2006A-T][2008A]**

No. R-____ \$ _____

Dated Date	Maturity Date	CUSIP
[March 23, 2006] [July 31, 2008]	March 15, 2046	

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT:

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”) for registration, transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or in the name of such other entity as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE OF THIS BOND FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Registered Owner of this Bond, Cede & Co., has an interest in this Bond.

Capitalized terms used in this Bond but not defined in this Bond shall have the meanings given to those terms in the Indenture (as hereinafter defined).

FOR VALUE RECEIVED, the County of Contra Costa (the “Issuer”), a political subdivision of the State of California (the “State”), promises to pay to the Registered Owner identified above or registered assigns (subject to prior redemption as hereinafter provided), on the Maturity Date set forth above, the Principal Amount set forth above, and to pay interest on the Principal Amount on each Interest Payment Date. The term “Interest Payment Date” means any date on which interest is payable, including any Adjustment Date, any Redemption Date, the Maturity Date and the date of acceleration of the Bonds.

Payment of interest on this Bond on each Interest Payment Date will be made to the Registered Owner of this Bond (as determined at the close of business on the Record Date (being the Business Day preceding the applicable Interest Payment Date) by check drawn upon the Trustee and mailed by first class mail, postage prepaid, on the Interest Payment Date to the address of the Registered Owner as it appears on the Bond Register or to such other address as may be furnished in writing by the Registered Owner to the Trustee prior to the applicable Record Date. Payment of the principal of this Bond and premium, if any, together with interest payable on any Bond Payment Date (other than interest payable on a regularly scheduled Interest Payment Date) will be made by check to the Registered Owner of this Bond only upon presentation and surrender of this Bond on or after its maturity date or date fixed for purchase, redemption or other payment at the office of the Trustee designated by the Trustee for that purpose. Notwithstanding the foregoing, payment of principal of, premium, if any, and interest on, this Bond will be made by wire transfer to any account within the United States of America designated by the Registered Owner if the Registered Owner owns \$1,000,000 or more in aggregate principal amount of the Bonds and otherwise complies with the procedures set forth in the Indenture. Notwithstanding the foregoing, payments of the principal of, premium, if any, and interest on any Bonds that are subject to the Book-Entry System will be made as provided in the Indenture.

If interest on this Bond is in default, the Trustee, prior to the payment of interest, will establish a special record date (the "Special Record Date") for such payment. A Special Record Date will be not more than 15 nor less than 10 days prior to the date of the proposed payment. Payment of defaulted interest will then be made by check or wire transfer as permitted by the Indenture, mailed or remitted to the Registered Owner in whose name this Bond is registered on the Special Record Date at the address or account of such Registered Owner as shown on the Bond Register.

The principal of, premium, if any, and interest on this Bond are payable in lawful money of the United States of America.

Interest on this Bond is payable, unless otherwise specified in accordance with the Indenture, at the _____ Rate, calculated on the basis of a 365- or 366-day year, as applicable, for the actual number of days elapsed.

THE BONDS AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY FROM THE SECURITY, WHICH IS SPECIFICALLY ASSIGNED AND PLEDGED TO SUCH PURPOSES IN THE MANNER AND TO THE EXTENT PROVIDED IN THE INDENTURE. NEITHER THE STATE OF CALIFORNIA, NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WILL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER OF THE ISSUER, AND NONE OF THE BONDS OR ANY OF THE ISSUER'S AGREEMENTS OR OBLIGATIONS WILL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER, TO THE LIMITED

EXTENT SET FORTH IN THE INDENTURE) WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER.

This Bond is one of the duly authorized issue of bonds of the Issuer designated as “County of Contra Costa Multifamily Housing Revenue Bonds (Avalon Walnut Creek at Contra Costa Centre Project) [Taxable] Series [2006A] [2006A-T] [2008A] limited in aggregate principal amount to \$_____ (the “Series [2006A] [2006A-T] [2008A] Bonds”). The [Taxable] Series [2006A] [2006A-T] [2008A] Bonds, together with “County of Contra Costa Multifamily Housing Revenue Bonds (Avalon Walnut Creek at Contra Costa Centre Project) Series [2006A] [2008A]” in the aggregate principal amount of \$_____ and “County of Contra Costa Multifamily Housing Revenue Bonds (Avalon Walnut Creek at Contra Costa Centre Project) [Taxable] Series [2006A-T] [2008A]” in the aggregate principal amount of \$_____ (collectively, the “Bonds”), have been issued under an Amended and Restated Trust Agreement, dated as of July 1, 2013, between the Issuer and the Trustee (as originally executed and delivered and as amended and supplemented from time to time, the “Indenture”).

The Bonds are equally and ratably secured as to principal, premium, if any, interest and purchase price by the Indenture. Reference is made to the Indenture (a copy of which is on file at the Designated Office of the Trustee) for a description of the Trust Estate, the nature and extent of the Security for the Bonds, the terms and conditions upon which the Bonds are secured, and the rights of the owners of the Bonds. In the event of any conflict between the terms of this Bond and the terms of the Indenture, the terms of the Indenture shall control.

THE BONDS ARE SUBJECT TO OPTIONAL AND SPECIAL MANDATORY REDEMPTION, TENDER AND PURCHASE PRIOR TO THEIR RESPECTIVE STATED MATURITIES, ON THE DATES, IN THE AMOUNTS, AT THE REDEMPTION OR PURCHASE PRICES AND UPON NOTICE AS PROVIDED IN THE INDENTURE.

The registered owner of this Bond will have no right to enforce the provisions of the Indenture or the Financing Agreement or to institute any proceeding in equity or at law for the enforcement of the Indenture or the Financing Agreement or to take any action with respect to an Event of Default under the Indenture or the Financing Agreement or to institute, appear in or defend any suit or other proceedings with respect to the Indenture or the Financing Agreement, except as provided in the Indenture.

If an Event of Default occurs, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture.

The Trustee is the Bond Registrar for the Bonds and will keep the Bond Register for the registration of the Bonds and for the registration of transfer of Bonds.

Subject to the express limitations contained in the Indenture, any Bondholder or its attorney duly authorized in writing may transfer title to a Bond on the Bond Register upon surrender of the Bond at the office of the Trustee designated by the Trustee for that purpose, together with a written instrument of transfer (in substantially the form of assignment, including

signature guarantee, attached to the Bond) satisfactory to the Trustee executed by the Bondholder or its attorney duly authorized in writing, and upon surrender for registration of transfer of any Bond, the Issuer will execute and the Trustee will authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of the same aggregate principal amount, rate of interest, maturity and tenor as the Bond surrendered and of any Authorized Denomination.

Subject to the express limitations contained in the Indenture, Bonds may be exchanged upon surrender of such Bonds at the office of the Trustee designated by the Trustee for that purpose together with a written instrument of transfer (in substantially the form of assignment, including signature guarantee, attached to the Bond) satisfactory to the Trustee, executed by the Bondholder or its attorney duly authorized in writing, for an equal aggregate principal amount of Bonds of the same aggregate principal amount, rate of interest, maturity, and tenor as the Bonds being exchanged and of any Authorized Denomination. The Issuer will execute and the Trustee will authenticate and deliver Bonds which the Bondholder making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding.

Registrations of transfers or exchanges of Bonds will be without charge to the Bondholders, but any taxes or other governmental charges required to be paid with respect to a transfer or exchange must be paid by any Bondholder requesting the registration of transfer or exchange as a condition precedent to the exercise of such privilege. Any service charge made by the Trustee for any such registration, transfer or exchange will be paid by the Borrower.

The Trustee is not required to register any transfer or exchange of any Bond (or portion of any Bond) called for redemption.

The person in whose name this Bond is registered on the Bond Register will be deemed and regarded as the absolute owner of this Bond for all purposes, and payment of or on account of either principal or interest will be made only to or upon the order of such person or its attorney duly authorized in writing, but such registration may be changed as provided in the Indenture.

In any case in which the date required for payment of principal of or interest on the Bonds or the date fixed for redemption or mandatory purchase of any Bonds or any date on which action is required to be taken is a day other than a Business Day, then any action required to be taken or any payment required to be made on such date need not be taken or made on such date, but may be taken or made on the next succeeding Business Day with the same force and effect as if made or taken on the date otherwise provided for in the Indenture and, in the case of any payment date, no interest shall accrue for the period on and after such date.

Neither the members of the governing body of the Issuer nor any officer, agent, representative or employee of the Issuer nor any person executing this Bond shall be subject to any personal liability or accountability by reason of the issuance of this Bond, whether by virtue of any Constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication on this Bond has been manually endorsed by the Trustee.

It is certified and recited by the Issuer that all conditions, acts and things required by the Indenture or by the laws of the State, including the Act, to exist, to have happened or to have been performed precedent to or in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Bond and the issue of which it forms a part is within every debt and other limit prescribed by said Constitution or statutes.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name and on its behalf by the manual signature of an Authorized Representative and attested by the manual signature of its Authorized Attesting Officer, all as of the date first above written.

COUNTY OF CONTRA COSTA

By _____
Authorized Representative

Attest:

Authorized Attesting Officer

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

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

Dated: _____

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Trustee

By _____
Authorized Signatory

ASSIGNMENT

For value received the undersigned do(es) hereby sell, assign and transfer unto _____

the within-mentioned Registered Bond and do(es) hereby irrevocably constitute and appoint

attorney, to transfer the same on the books of the Bond Registrar with full power of substitution
in the premises.

Dated: _____

Note: The signature(s) to this Assignment must correspond with the name(s) as written on the face of the within Registered Bond in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT B

FORM OF BOND

[BONDS BEARING INTEREST AT A BANK RATE]

\$ _____

**COUNTY OF CONTRA COSTA
MULTIFAMILY HOUSING REVENUE BONDS
(AVALON WALNUT CREEK AT CONTRA COSTA CENTRE PROJECT)
[TAXABLE] SERIES [2006A] [2006A-T][2008A]**

No. R- _____

\$ _____

Dated Date	Maturity Date
[March 23, 2006] [July 31, 2008]	March 15, 2046

REGISTERED OWNER:

PRINCIPAL AMOUNT:

Capitalized terms used in this Bond but not defined in this Bond shall have the meanings given to those terms in the Indenture (as hereinafter defined).

FOR VALUE RECEIVED, the County of Contra Costa (the "Issuer"), a political subdivision of the State of California (the "State"), promises to pay to the Registered Owner identified above or registered assigns (subject to prior redemption as hereinafter provided), on the Maturity Date set forth above, the Principal Amount set forth above, and to pay interest on the Principal Amount on each Interest Payment Date. The term "Interest Payment Date" means any date on which interest is payable, including any Adjustment Date, any Redemption Date, the Maturity Date and the date of acceleration of the Bonds.

Payment of interest on this Bond on each Interest Payment Date will be made to the Registered Owner of this Bond (as determined at the close of business on the Record Date (being the Business Day preceding the applicable Interest Payment Date) by check drawn upon the Trustee and mailed by first class mail, postage prepaid, on the Interest Payment Date to the address of the Registered Owner as it appears on the Bond Register or to such other address as may be furnished in writing by the Registered Owner to the Trustee prior to the applicable Record Date. Payment of the principal of this Bond and premium, if any, together with interest payable on any Bond Payment Date (other than interest payable on a regularly scheduled Interest Payment Date) will be made by check to the Registered Owner of this Bond only upon presentation and surrender of this Bond on or after its maturity date or date fixed for purchase, redemption or other payment at the office of the Trustee designated by the Trustee for that

purpose. Notwithstanding the foregoing, payment of principal of, premium, if any, and interest on, this Bond will be made by wire transfer to any account within the United States of America designated by the Registered Owner if the Registered Owner owns \$1,000,000 or more in aggregate principal amount of the Bonds and otherwise complies with the procedures set forth in the Indenture. Notwithstanding the foregoing, payments of the principal of, premium, if any, and interest on any Bonds that are subject to the Book-Entry System will be made as provided in the Indenture.

The principal of, premium, if any, and interest on this Bond are payable in lawful money of the United States of America.

Interest on this Bond is payable, unless otherwise specified in accordance with the Indenture, at the Bank Rate, calculated on the basis of a 360-day year for the actual number of days elapsed.

THE BONDS AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY FROM THE SECURITY, WHICH IS SPECIFICALLY ASSIGNED AND PLEDGED TO SUCH PURPOSES IN THE MANNER AND TO THE EXTENT PROVIDED IN THE INDENTURE. NEITHER THE STATE OF CALIFORNIA, NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WILL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER OF THE ISSUER, AND NONE OF THE BONDS OR ANY OF THE ISSUER'S AGREEMENTS OR OBLIGATIONS WILL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER, TO THE LIMITED EXTENT SET FORTH IN THE INDENTURE) WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER.

This Bond is one of the duly authorized issue of bonds of the Issuer designated as "County of Contra Costa Multifamily Housing Revenue Bonds (Avalon Walnut Creek at Contra Costa Centre Project) [Taxable] Series [2006A] [2006A-T] [2008A] limited in aggregate principal amount to \$_____ (the "Series [2006A] [2006A-T] [2008A] Bonds"). The [Taxable] Series [2006A] [2006A-T] [2008A] Bonds, together with "County of Contra Costa Multifamily Housing Revenue Bonds (Avalon Walnut Creek at Contra Costa Centre Project) Series [2006A] [2008A]" in the aggregate principal amount of \$_____ and "County of Contra Costa Multifamily Housing Revenue Bonds (Avalon Walnut Creek at Contra Costa Centre Project) [Taxable] Series [2006A-T] [2008A]" in the aggregate principal amount of \$_____ (collectively, the "Bonds"), have been issued under an Amended and Restated Trust Agreement, dated as of July 1, 2013, between the Issuer and the Trustee (as originally executed and delivered and as amended and supplemented from time to time, the "Indenture").

The Bonds are equally and ratably secured as to principal, premium, if any, interest and purchase price by the Indenture. Reference is made to the Indenture (a copy of which is on file

at the Designated Office of the Trustee) for a description of the Trust Estate, the nature and extent of the Security for the Bonds, the terms and conditions upon which the Bonds are secured, and the rights of the owners of the Bonds. In the event of any conflict between the terms of this Bond and the terms of the Indenture, the terms of the Indenture shall control.

THE BONDS ARE SUBJECT TO OPTIONAL AND SPECIAL MANDATORY REDEMPTION, TENDER AND PURCHASE PRIOR TO THEIR RESPECTIVE STATED MATURITIES, ON THE DATES, IN THE AMOUNTS, AT THE REDEMPTION OR PURCHASE PRICES AND UPON NOTICE AS PROVIDED IN THE INDENTURE.

The registered owner of this Bond will have no right to enforce the provisions of the Indenture or the Financing Agreement or to institute any proceeding in equity or at law for the enforcement of the Indenture or the Financing Agreement or to take any action with respect to an Event of Default under the Indenture or the Financing Agreement or to institute, appear in or defend any suit or other proceedings with respect to the Indenture or the Financing Agreement, except as provided in the Indenture.

If an Event of Default occurs, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture.

The Trustee is the Bond Registrar for the Bonds and will keep the Bond Register for the registration of the Bonds and for the registration of transfer of Bonds.

Subject to the express limitations contained in the Indenture, any Bondholder or its attorney duly authorized in writing may transfer title to a Bond on the Bond Register upon surrender of the Bond at the office of the Trustee designated by the Trustee for that purpose, together with a written instrument of transfer (in substantially the form of assignment, including signature guarantee, attached to the Bond) satisfactory to the Trustee executed by the Bondholder or its attorney duly authorized in writing, and upon surrender for registration of transfer of any Bond, the Issuer will execute and the Trustee will authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of the same aggregate principal amount, rate of interest, maturity and tenor as the Bond surrendered and of any Authorized Denomination.

Subject to the express limitations contained in the Indenture, Bonds may be exchanged upon surrender of such Bonds at the office of the Trustee designated by the Trustee for that purpose together with a written instrument of transfer (in substantially the form of assignment, including signature guarantee, attached to the Bond) satisfactory to the Trustee, executed by the Bondholder or its attorney duly authorized in writing, for an equal aggregate principal amount of Bonds of the same aggregate principal amount, rate of interest, maturity, and tenor as the Bonds being exchanged and of any Authorized Denomination. The Issuer will execute and the Trustee will authenticate and deliver Bonds which the Bondholder making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding.

Registrations of transfers or exchanges of Bonds will be without charge to the Bondholders, but any taxes or other governmental charges required to be paid with respect to a transfer or exchange must be paid by any Bondholder requesting the registration of transfer or

exchange as a condition precedent to the exercise of such privilege. Any service charge made by the Trustee for any such registration, transfer or exchange will be paid by the Borrower.

The Trustee is not required to register any transfer or exchange of any Bond (or portion of any Bond) called for redemption.

The person in whose name this Bond is registered on the Bond Register will be deemed and regarded as the absolute owner of this Bond for all purposes, and payment of or on account of either principal or interest will be made only to or upon the order of such person or its attorney duly authorized in writing, but such registration may be changed as provided in the Indenture.

In any case in which the date required for payment of principal of or interest on the Bonds or the date fixed for redemption or mandatory purchase of any Bonds or any date on which action is required to be taken is a day other than a Business Day, then any action required to be taken or any payment required to be made on such date need not be taken or made on such date, but may be taken or made on the next succeeding Business Day with the same force and effect as if made or taken on the date otherwise provided for in the Indenture and, in the case of any payment date, no interest shall accrue for the period on and after such date.

Neither the members of the governing body of the Issuer nor any officer, agent, representative or employee of the Issuer nor any person executing this Bond shall be subject to any personal liability or accountability by reason of the issuance of this Bond, whether by virtue of any Constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication on this Bond has been manually endorsed by the Trustee.

It is certified and recited by the Issuer that all conditions, acts and things required by the Indenture or by the laws of the State, including the Act, to exist, to have happened or to have been performed precedent to or in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Bond and the issue of which it forms a part is within every debt and other limit prescribed by said Constitution or statutes.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name and on its behalf by the manual signature of an Authorized Representative and attested by the manual signature of its Authorized Attesting Officer, all as of the date first above written.

COUNTY OF CONTRA COSTA

By _____
Authorized Representative

Attest:

Authorized Attesting Officer

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

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

Dated: _____

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Trustee

By _____
Authorized Signatory

ASSIGNMENT

For value received the undersigned do(es) hereby sell, assign and transfer unto _____

the within-mentioned Registered Bond and do(es) hereby irrevocably constitute and appoint

attorney, to transfer the same on the books of the Bond Registrar with full power of substitution
in the premises.

Dated: _____

Note: The signature(s) to this Assignment must correspond with the name(s) as written on the face of the within Registered Bond in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT C

FORM OF COST OF CONVERSION FUND REQUISITION

WRITTEN REQUISITION FOR COSTS OF CONVERSION FUND

The Bank of New York Mellon Trust Company, N.A.
700 South Flower Street, Suite 500
Los Angeles, CA 90017
Attention: Corporate Trust

Re: County of Contra Costa Multifamily Housing Revenue Bonds (Avalon Walnut Creek at Contra Costa Centre Project) Series 2006A, County of Contra Costa Multifamily Housing Revenue Bonds (Avalon Walnut Creek at Contra Costa Centre Project) Taxable Series 2006A-T and County of Contra Costa Multifamily Housing Revenue Bonds (Avalon Walnut Creek at Contra Costa Centre Project) Series 2008A

Trustee:

You are requested to disburse funds from the Costs of Issuance Fund pursuant to Section 5.08(b) of the Indenture 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 meaning given to those terms in the Amended and Restated Trust Indenture (the "Indenture"), dated as of July 1, 2013, by and between the County of Contra Costa and The Bank of New York Mellon Trust Company, N.A., as Trustee, securing the above-referenced Bonds.

1. REQUISITION NO.: 1
2. PAYMENT DUE TO: See Schedule
3. AMOUNT TO BE DISBURSED: \$
4. The undersigned certifies that:

(a) the expenditures for which moneys are requisitioned by this Requisition represent proper charges against the Costs of Conversion Fund, have not been included in any previous requisition, have been properly recorded on the Borrower's books and are set forth in the Schedule attached to this Requisition, with paid invoices attached for any sums for which reimbursement is requested; and

(b) 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 Costs of Conversion.

5. Attached to this Requisition is a Schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

Date of Requisition: _____, 2013

PHVP I, LP,
a Delaware limited partnership

By: PHVP I GP, LLC,
a Delaware limited liability company,
its general partner

By: _____
Name:
Title: Authorized Signatory

SCHEDULE TO REQUISITION CERTIFICATE